

SFCJPA - AGREEMENT FOR

(insert brief description)

THIS AGREEMENT is made as of _(date)_____, by and between the San Francisquito Creek Joint Powers Authority, a joint powers authority organized under California Government Code sections 6500 et seq. (“Authority”), and Fill In Name (“Consultant”).

RECITALS

- A. Purpose: To support the SFCJPA’s (fill in a brief reason/purpose)
B. Services: Authority desires to utilize the services of Consultant as an independent contractor to provide the following services to Authority.

Consultant is to provide (Fill in a brief description of the services in this agreement). Details of Consultant’s Scope of Work are provided in Exhibit A.

- C. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

- D. Exhibits:
- Exhibit A – Scope of Work for Consultant and Sub-Consultants
 - Exhibit B – Schedule of Performance
 - Exhibit C – Consultant’s Fee Schedule

The parties agree to the following:

1. Consultant’s Services.

- A. Scope and Level of Services. The nature, scope, and level of the specific services to be performed by Consultant (and any sub-consultants) are set forth in Exhibit A, Scope of Work, attached hereto.

- B. Time of Performance. The services shall be performed according to the Schedule of Performance attached hereto as Exhibit B.

- C. Standard of Care. Consultant hereby represents that it has the qualifications and experience necessary to undertake the services to be provided pursuant to this Agreement, and will perform the services to a standard of reasonable professional care.

- D. Compliance with Law. All services rendered hereunder by Consultant shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Authority and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.

2. Term of Agreement.

- A. This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect until (insert date, if there is a date-specific conclusion or) the services required hereunder have been completed satisfactorily by Consultant.

3. Compensation. Authority agrees to compensate Consultant for its services according to the fee schedule set forth in Exhibit C. Authority also agrees to compensate Consultant for its out-of-pocket expenses to the extent authorized in Exhibit C. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of _____(dollar amount)_____ unless specifically approved in advance, in writing, by Authority.

4. Representatives.

A. Project Manager, (NAME of Consultant's project manager), is hereby designated as the representative of Consultant authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Authority to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The Project Manager may not be changed by Consultant without the express written approval of Authority.

B. Contract Administrator. The Contract Administrator and Authority's representative shall be (Name of JPA Project Manager), or in her or his absence, an individual designated in writing by the Executive Director of Authority. If no Contract Administrator is so designated, the Executive Director shall be the Contract Administrator. It shall be Consultant's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions which must be made by Authority to the Contract Administrator. Unless otherwise specified herein, any approval of Authority required hereunder shall mean the approval of the Contract Administrator.

5. Standard of Performance. Consultant shall perform all work with the standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature in existence at the time of performance of the services.

6. Ownership of Work Product. Notwithstanding anything to the contrary, Consultant shall retain its rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the services shall remain the property of the Consultant. Any re-use of the documents by Authority for any other purpose shall be without liability to Consultant.

7. Status as Independent Contractor. Consultant is, and shall at all times remain as to Authority, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Authority or otherwise act on behalf of Authority as an agent. Neither Authority nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of Authority. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold Authority harmless from any and all taxes, assessments, penalties, and interest asserted against Authority by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold Authority harmless from any failure of Consultant to comply with applicable worker's compensation laws. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this Section.

8. Confidentiality. Consultant, in the course of its duties, may have access to financial, accounting, statistical, and personal data of private individuals and employees of Authority. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by Authority. Authority shall grant such authorization if disclosure is required by law. Consultant understands the Authority is a public agency and is subject to laws that may compel it to disclose information related to the Agreement. Upon request, all Authority data shall be returned to Authority upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

9. Conflict of Interest. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by Authority on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with Authority.

10. Indemnification.

A. Consultant shall, hold harmless and indemnify the Authority, its Board members, officers, employees, and agents, its constituent local public entities, and its constituent members' respective officers, employees, and agents (collectively, "Indemnitees"), from any claim, demand, damage, liability, loss, cost or expense, including defense costs, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, to the extent actually resulting from willful misconduct, negligent acts, errors or omissions of Consultant or any of its officers, employees, or agents in the performance of services under this Agreement.

B. Authority does not, and shall not, waive any rights that they may possess against Consultant because of the acceptance by Authority, or the deposit with Authority, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Consultant agrees that Consultant's covenant under this section shall survive the termination of this Agreement.

11. Insurance.

A. Liability Insurance. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its employees, agents, representatives, or subcontractors.

B. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). Minimum Professional Liability coverage should be \$1,000,000.

- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Any general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 combined single limit.
- (3) Employer's Liability: \$1,000,000 combined single limit.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Authority. At the option of Authority's Executive Director, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Authority, its officers, officials, employees and agents; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (4) Indemnitees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Authority, its officers, employees and agents.
- (5) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects Authority. Any insurance or self-insurance maintained by Authority shall be excess of Consultant's insurance and shall not contribute with it.
- (6) Consultant(s) policy(ies) shall be endorsed to the San Francisquito Creek Joint Powers Authority, including its officials, officers, employees, agents, and volunteers, as an "Additional Insured" with respect to liability arising out of the Consultant's operations, acts, or omissions in the performance of services under this Agreement.
- (7) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to Authority, their officers, employees, and agents.
- (8) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (9) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or cancelled by either party, or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to Authority.

F. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless waived by Authority's Risk Manager.

G. **Verification of Coverage.** Consultant shall furnish Authority with original endorsements effecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by Authority. All endorsements are to be received and approved by Authority before work commences.

H. **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

12. Cooperation. In the event any claim or action is brought against Authority relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Authority might require.

13. Termination. Authority shall have the right to terminate the services of Consultant at any time or for any reason on 5 calendar days written notice to Consultant. In case of termination resulting from Consultant's breach, Consultant shall have an opportunity to rectify the breach or present a remediation plan that is acceptable to Authority prior to expiration of the notice period.

14. In the event this Agreement is terminated by Authority, Consultant shall be paid for any services properly performed to the last working day the Agreement is in effect, and Consultant shall have no other claim against Authority by reason of such termination, including, but not limited to, any claim for compensation.

15. Suspension. Authority may, in writing, order Consultant to suspend all or any part of the Consultant's services under this Agreement for the convenience of Authority or for work stoppages beyond the control of Authority or Consultant. Subject to the provisions of this Agreement relating to termination, a suspension of the work does not void this Agreement. In the event that work is suspended for a period exceeding 120 days, the schedule and cost for completion of the work will be adjusted by mutual consent of the parties.

16. Notices. Notices other than any referenced in Section 17, below, shall be mailed to:

San Francisquito Creek Joint Powers Authority
750 Menlo Ave. Suite 250
Menlo Park, CA 94025

17. Invoicing. Invoices and any reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by email to the address noted below, or to the physical addresses noted below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section. Invoices shall be submitted in arrears for services performed. Invoices shall provide details of services provided, including

receipts or other documentation to substantiate claims, and are subject to verification by the Authority.

Authority:

San Francisquito Creek Joint Powers Authority
750 Menlo Ave. Suite 250
Menlo Park, CA 94025

Please email invoices to billing@sfcjpa.org and copy tbyler@sfcjpa.org

Consultant shall not apply any markup, surcharge, administrative fee, or other form of additional compensation to costs charged by Subconsultants. The Authority shall reimburse Consultant only for the actual, direct cost of the Subconsultant services as billed to Consultant, without markup. The Authority reserves the right to request itemized invoices for verification showing labor, materials and other direct costs for Subconsultant services.

Automobile travel mileage expenses will be paid at the current IRS rate. Per diem expenses will be paid at the current U.S. General Services Administration rates.

18. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Consultant will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

19. Assignability; Subcontracting. Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder, without the prior written consent of Authority, and any attempt by Consultant to assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

20. Compliance with Laws. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

21. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Authority of any payment to Consultant constitute or be construed as a waiver by Authority of any breach of this Agreement, or any default which may then exist on the part of Consultant, and the making of any such payment by Authority shall in no way impair or prejudice any right or remedy available to Authority with regard to such breach or default.

22. Attorney's Fees. If either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be San Mateo County or Santa Clara County.

23. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement.

24. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Authority and Consultant. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Authority”

“Consultant”

San Francisquito Creek Joint Powers
Authority

Name of consultant

By: _____
Margaret Bruce, Executive Director

By: _____
(signature)

Exhibit A
Scope of Services

Exhibit B
Schedule of Performance

**Exhibit C
Compensation**