

**AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN TOMALES VILLAGE COMMUNITY SERVICES DISTRICT
AND JOSE L. ORTIZ CONSULTING**

1. The Parties. The Parties to this agreement (the "Agreement") are:

The TOMALES VILLAGE COMMUNITY SERVICES DISTRICT (the "District"), a California Special District, and Jose L. Ortiz Consulting ("Consultant").

2. Term. The Effective Date of this Agreement is January 1, 2018 and it shall terminate at the close of business on June 30, 2020, unless extended or terminated earlier in accordance with the provisions set forth below in Sections 7 and 8 below.

3. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District general manager services, as more particularly described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. All services shall be provided by Jose L. Ortiz, unless otherwise authorized by the District in writing.

4. Compensation. District hereby agrees to pay Consultant a sum not to exceed One Hundred Twenty Thousand Dollars (\$120,000), as more specifically set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the District will pay that full amount to the Consultant but is merely a limit of potential District expenditures under this Agreement.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

Consultant shall submit invoices to the District, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- The total number of hours of work performed under the Agreement by Consultant
- At District's option, a brief description of the work, the hours spent on such work and each reimbursable expense; and
- The Consultant's signature.

District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

5. Performance Monitoring. In order to monitor Consultant's performance under this Agreement: (a) Consultant shall submit reports requested by the District to disclose compliance information; (b) the District shall have the right to inspect Consultant's documents, activities and circumstances as appropriate to monitor compliance; and (c) the District will conduct a formal evaluation of Consultant's performance annually, measuring criteria set by the District's Board of Directors.

6. Events of Default. The following constitute events of default:

A. Any material misrepresentation made by Consultant to the District, whether negligent or willful, and whether in the inducement or in the performance of the Agreement.

B. Consultant's material failure to perform any of its obligations under the Agreement including the following: (a) failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services; (b) failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory; (c) discontinuance of the Services for reasons within Consultant's reasonable control; (d) failure to comply with any other material term of the Agreement.

C. (a) The filing by Consultant of a petition or proceeding under applicable state or federal bankruptcy or solvency laws or statutes, which petition or proceeding has not been dismissed within thirty (30) days after the date of its filing; (b) the initiation against Consultant by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing; or (c) the appointment of a receiver for Consultant with respect to all or a portion of its assets.

D. Any change in ownership or control of Consultant without the prior written approval of the District, which approval the District will not unreasonably withhold.

E. Failure to comply with the provisions in the Agreement requiring compliance with all laws in the performance of the Agreement.

7. Remedies. Upon the occurrence of any event of default the District shall have the right to declare Consultant in default. The District may, in its sole and absolute discretion, give Consultant an opportunity to cure the default within thirty (30) days. The

District will give Consultant written notice of the default, after which the District may invoke any or all of the following remedies:

- A. The right to take over and complete the Services, or any part of them, at Consultant's expense, and bill Consultant for the cost of the Services. Consultant must pay the difference between the total amount of the bill and the amount the District would have paid Consultant under the terms of this Agreement for those Services;
- B. The right to terminate the Agreement as to any or all of the Services yet to be performed;
- C. The right of specific performance, an injunction, or any other appropriate equitable remedy;
- D. The right to money damages; and
- E. The right to withhold all or any part of Consultant's compensation under this Agreement.

8. Termination.

- A. **Termination for Cause.** The District reserves the right to terminate this Agreement in the event Consultant breaches or violates any term or terms of the Agreement. In the event of such termination for cause, the District shall pay for services performed and accepted by the District that are in compliance with the requirements of this Agreement prior to the date of termination.
- B. **Termination for Convenience.** The District reserves the right to terminate this Agreement without showing cause upon giving sixty (60) days written notice to the Consultant. The District shall only pay for services performed prior to the effective date of termination.

9. **Ownership of District Data.** Any and all data or confidential information that may be provided to or made available to Consultant ("District Data") is and shall remain the property of the District. Consultant and its employees, agents and sub consultants and their employees and agents shall not: (a) use the District Data other than in connection with the performance of the Services; (b) disclose, sell, assign, lease or otherwise provide the District Data to any third parties; or (c) commercially exploit the District Data.

All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Consultant hereby agrees to deliver those documents to the District upon termination of the Agreement, and the District may use, reuse or otherwise dispose of the documents without Consultant's permission

10. **Representations.** In connection with signing and carrying out the Agreement,

Consultant represents to the District that: (a) Consultant is appropriately licensed under California law to perform the Services specified in this Agreement and will perform no Service for which Consultant is not appropriately licensed; and (b) Consultant is competent to perform the Services and will provide experienced and competent personnel to carry out the Services in a timely fashion.

11. Notices. Notices permitted or required under this Agreement shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable:

Consultant: Jose L. Ortiz, P.E.
754 Pintail Court
Vacaville, CA 95688-2650

District: Tomales Village Community Services District
PO Box 303
Tomales Village, CA 94971

12. Insurance. Consultant is required to procure and maintain insurance as described below. Consultant will provide certificates of insurance showing that it has the required policies. Each company providing insurance coverage shall be authorized to do business in the State of California and shall have a Best's rating of no less than A:VII. The insurance coverage shall be primary insurance as respects the District, its officers, officials, directors, employees and volunteers. The insurance shall require thirty (30) days prior written notice to be given to the District in the event coverage is cancelled. Consultant agrees that the insurers shall waive all rights of subrogation against the District. Consultant expressly understands and agrees that any insurance protection furnished by Consultant hereunder shall in no way limit its responsibility to indemnify the District and hold it harmless under the provisions of this Agreement. Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than \$100,000.

- A. Workers Compensation, at the statutory amounts in compliance with state laws.
- B. Commercial General Liability, with limits of liability not less than \$1,000,000 per occurrence.
- C. Automobile Liability, with limits of liability not less than \$1,000,000 per occurrence.
- D. Professional Liability, with limits of liability not less than \$1,000,000 per claim and annual aggregate.

In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option: 1) obtain such insurance and deduct and

retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement

13. Disputes. This Agreement shall be governed by the laws of the State of California. The Parties agree that any dispute, which may arise under or in connection with this Agreement or the related transactions which cannot be resolved by mutual agreement, shall be submitted within 30 days after the claim or dispute arises to nonbinding mediation before a mutually acceptable mediator. After mediation, the District and Consultant may by mutual agreement submit to arbitration or other civil remedy. In the event parties cannot agree on the selection of a mediator or an arbitrator, any party may apply to the Sonoma County Superior Court for the court's appointment of a mediator and/or arbitrator. Any award issued following arbitration may be confirmed as a judgment in any court of competent jurisdiction.

14. Indemnification. To the fullest extent permitted by law, Consultant will defend, indemnify, keep and hold harmless the District, its directors, officers, representatives, agents, volunteers and employees (collectively, the "Indemnitees"), from and against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorneys' fees, to the extent caused by Consultant's negligent acts, errors or omissions or willful misconduct in the performance of this Agreement. This obligation to indemnify shall survive the termination or expiration of this Agreement.

Consultant has no obligation to pay for any of Indemnitees defense related cost prior to a final determination of liability, or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

15. Independent Consultant. This Agreement is not intended to and will not constitute, create, or give rise to a joint venture, partnership, or any other business association or organization of any kind between Consultant and the District. The rights and the obligations of the Parties are only those expressly set forth in this Agreement. Consultant shall perform under the Agreement as an independent contractor and not as a representative, employee, agent, or partner of the District.

16. Compliance with Laws. In the Consultant's best judgement, Consultant shall comply with all applicable federal, state and local laws, regulations, rules, and policies.

17. Entire Agreement & Modification. This Agreement represents the entire and integrated agreement between the Parties. This Agreement may be modified or amended only by a subsequent written agreement signed by both Parties. No modification or change to the terms of this Agreement or any Project Work Order will be binding on a Party unless in writing and signed by an authorized representative of that Party. Consultant represents and warrants to District that Consultant has and will maintain at its sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice its respective profession.

18. Assigns. District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval District. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the District.

19. Cooperation. If this Agreement is terminated for any reason, or if it expires on its own terms, Consultant agrees to: (a) make every effort to assure an orderly transition to another provider of the Services and an orderly demobilization of its own operations in connection with the Services; (b) promptly return all District property, including District Data (as defined in Section 9 above), files and documents; and (c) will otherwise comply with the reasonable requests of the District in connection with the termination or expiration upon payment in full for services provided.

20. Waiver. The making or failure to make any payment, take any action or waive any right under this Agreement shall not be deemed to be an amendment of this Agreement nor a consent to such action or failure to act, or to any other action or failure to act. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement

21. Severability. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of an interpretation by any court or other governmental body, this Agreement shall be construed as not containing that provision and all other provisions of this Agreement shall remain in full force and effect.

22. Non-Liability of Public Officials. Consultant will not charge any director, officer, representative, volunteer, official, employee or agent of the District personally with any liability or expenses of defense or hold any director, officer, representative, volunteer, official, employee or agent of the District personally liable to it under any term or provision of the Agreement or because of the District's execution, attempted execution or breach of the Agreement.

23. Conflict of Interest. Consultant covenants that it presently has no financial or other interest which has not been disclosed and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. In addition, Consultant and its sub-consultants shall complete and file a statement of economic interests Form 700 disclosing their financial interests.

24. Attorneys' Fees. Should either party to this Agreement be required to initiate legal proceedings to interpret a provision this Agreement, the prevailing party in such

proceeding or action shall be entitled to the recovery of its reasonable attorneys' fees within the limits established in this agreement.

25. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

26. Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

27. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

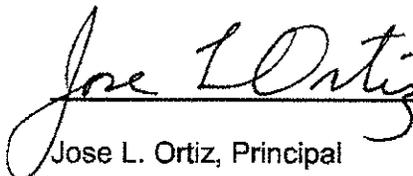
The Parties have executed this Agreement as of the Effective Date.

**TOMALES VILLAGE COMMUNITY
SERVICES DISTRICT**

JOSE L. ORTIZ CONSULTING



Dru Fallon O'Neill, Board President



Jose L. Ortiz, Principal

ATTESTED:



Cynthia Hammond, Secretary

EXHIBIT A

Scope of Work

Services to be provided for this Agreement are in 4 primary areas and include:

1. Routine services to conduct the required general management functions. These services include:
 - Interface with community members, conduct surveys, and assimilate relevant information; receive complaints and forward to the Board.
 - As directed by the Board, coordinate bid proposals and contracts for regular operations work to be performed.
 - Adhere to all local and state laws and advise Board on changes to said laws and address compliance issues.
 - Oversee submittal of regulatory monitoring reports to local and state agencies as required.
 - Coordinate with District Administrative Support Section and with Finance Section staff.

2. Provide Administrative support, including:
 - Gather backup information for ongoing Board discussions of the annual budget process.
 - Oversee all aspects of District Board meetings, including regular and special meetings, agenda setting, and meeting attendance.
 - Adhere to Tomales Village CSD Reserve Policy goals and objectives and assure that required funds are being added regularly and that use of funds follows Tomales Village CSD CIP protocols.
 - Assist with documentation of policies; maintain historical and reference documents.
 - Oversee administrative staff, ensure performance standards are being met, provide annual review of staff performance, and hire and terminate staff as necessary.

3. Sewer System Administration, including:
 - Oversee contract with sewer operations and maintenance contractor, insure performance standards are being met; oversee annual review of performance contract.
 - Oversee development of District maintenance work order system. Maintain record book.
 - Coordinate all new sewer hook-ups and insure they are all inspected and meet District standards according to ordinances and specifications.
 - Maintain maps of all sewer components and new hook-ups and annexations.

- Assure the sewer maintenance schedule is adhered to and effective at all times.
 - Oversee all capital improvement projects as directed by the Board and Standing Committees (subject to monthly hourly budget limitations).
 - Coordinate Sewer Plant Tours.
 - Develop, with board input, a five-year plan to address current district issues, including the aging collection system, illegal hookups, high electrical costs, review and implementation of currently ongoing evaluation by Matrix per the board's direction.
4. Community Park Administration, including:
- As directed by the Board, coordinate bid proposals and contracts for regular construction work to be performed.
 - Oversee contract Park Project Manager contractor and Park improvements.
 - Oversee administration of Measure A funds.
 - Review and provide feedback to Board on recommendations by Park Advisory Committee
 - Coordinate with District Administrative Support Section and with Finance Section staff.

In addition, Consultant shall perform such other services as requested by the District. If Consultant is requested to provide services that are beyond the normal scope of work, those services will be compensated at the Consultant's hourly rate.

EXHIBIT B

Compensation and Reimbursement of Expenses.

Jose L. Ortiz's hourly rate is \$125.00

Travel from Vacaville to Tomales Village will be billed at 50% of the hourly rate, \$62.50.

Miscellaneous direct costs and reimbursable expenses:

- Mileage will be charged at \$0.535 per mile (or current Federal rate, whichever is less)
- Project-related expenses will be billed at cost plus 10%. All project-related expenses must be pre-approved by the Tomales Village Community Services District.

1. NON-SCHEDULED WORK

Non-Scheduled Work will be billed at the Consultant's hourly rate. Non-Scheduled Work will be invoiced at the end of the month in which the work was performed.

2. DISTRICT INITIATED WORK

When authorized by the District, Consultant may perform work outside the scope of services as Non-Scheduled Work.

3. EMERGENCIES

In the event of an emergency situation, Consultant shall make every reasonable effort to contact the District before incurring costs for Non-Scheduled Work.

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