

**SFCJPA - AGREEMENT FOR  
(NATURE\_OF SERVICES)**

THIS AGREEMENT is made as of **DATE\_OF\_AGREEMENT**, by and between the San Francisquito Creek Joint Powers Authority, a body corporate and politic ("Authority"), and **NAME\_OF\_CONSULTANT**, [a California corporation/other legal status] ("Consultant").

**RECITALS**

**A. STATEMENT\_OF\_PURPOSE**

B. Authority desires to utilize the services of Consultant as an independent contractor to provide **NATURE\_OF\_SERVICES** to Authority.

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.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

**1. Consultant's Services.**

A. Scope and Level of Services. The nature, scope, and level of the specific services to be performed by Consultant are as set forth in Exhibit A attached hereto.

B. Time of Performance. The services shall be performed on a timely, regular basis in accordance with the Schedule of Performance attached hereto as Exhibit B.  
Standard of Care. As a material inducement to Authority to enter into this Agreement, 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 and in a manner reasonably satisfactory to Authority.

C. 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 the services required hereunder have been completed satisfactorily by Consultant unless earlier terminated pursuant to Section 13.

**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 **\$MAXIMUM\_PRICE** unless specifically approved in advance, in writing, by Authority. Any additional work authorized by Authority will be compensated in accordance with the fee schedule set forth in Exhibit C, unless otherwise approved by Authority in writing.

Consultant shall submit to Authority monthly invoices for all services rendered pursuant to this  
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Agreement. Such invoices shall be submitted within 14 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. Authority will pay Consultant all undisputed charges within 30 days of receiving Consultant's invoice. Authority will not withhold any applicable federal or state payroll and other required taxes, or other required or authorized deductions from payments made to Consultant.

#### **4. Representatives.**

A. Project Manager. **PROJECT\_MANAGER, TITLE**, is hereby designated as the representative of Consultant authorized to act on 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 **CONTRACT ADMINISTRATOR, TITLE**, or in his or her 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 to the highest professional standards and in a manner reasonably satisfactory to Authority. Consultant hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.

**6. Ownership of Work Product.** All draft and final reports, documents and other written material, and any and all images, ideas, concepts, designs including without limitation, any website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Consultant in the performance of this Agreement (collectively, "Work Product") and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of Authority without restriction or limitation upon its use, duplication or dissemination by Authority. Consultant shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Consultant hereby assigns to Authority all rights of ownership to the Work Product, including but not limited to any and all related intellectual property and proprietary rights that are not otherwise vested in the Authority pursuant to this paragraph.

A. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, Authority shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Consultant shall defend, indemnify, and hold Authority, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim, or liability in any way related to a claim that any use by the Authority of any of the Work Product violates federal, state, or local laws, or any contractual

provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents, or other means of protecting intellectual property rights, and/or interests in products, ideas, or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked documents, materials, equipment, devices, or processes in connection with its provision of the Work Product produced under this Agreement. If any use by Authority of any of the Work Product or other deliverables is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its expense, shall: (a) secure for Authority the right to continue using such Work Product and/or other deliverables by suspension of any injunction, or by procuring a license or licenses for Authority; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

B. Consultant's obligations under this Section 6 shall survive the expiration or termination of this Agreement.

**7. Status as Independent Contractor.** Consultant is, and shall at all times remain as to Authority, a wholly independent contractor and not an employee of Authority. Under no circumstances shall Consultant look to Authority as their employer, or as a partner, agent, or principal. All services provided pursuant to this Agreement shall be performed by Consultant or under Consultant's supervision. Consultant will determine the means, methods, and details of performing the services. 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 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. 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 not be entitled to any benefits accorded to Authority's employees, including workers' compensation, disability insurance, vacation, or sick pay. Consultant shall be responsible for providing, at Consultant's expense, and in Consultant's name, workers' compensation, disability, or other insurance as well as licenses and permits required by law. In the event Consultant hires a subcontractor who has employees to perform the services or any part thereof established by this Agreement, Consultant shall either require the subcontractor to obtain Workers' Compensation Insurance Coverage, or must obtain Workers' Compensation Insurance Coverage for the subcontractor's employees. Consultant further agrees to defend, 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. Consultant agrees that Consultant's covenant under this section shall survive the expiration or termination of this Agreement.

**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 from Authority. Authority shall grant such authorization if disclosure is required by law. Upon request, all Authority data shall be returned to Authority upon the expiration or termination of this Agreement. Consultant's covenant under this section shall survive the expiration or 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 defend, 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.

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 expiration or termination of this Agreement.

C. Consultant’s indemnifications and obligations in this Agreement shall survive the expiration or 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).
- (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:  
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- (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) Professional Liability Insurance (Errors and Omissions).
  - (3) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
  - (4) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- 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) Authority is 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) 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.
  - (7) 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.
  - (8) 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. As an alternative to Authority forms, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

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 requirements stated herein.

I. Waiver of Subrogation. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance. Consultant shall obtain any endorsement that may be necessary to affect this waiver of subrogation.

J. Failure to Secure or Maintain Insurance. If Consultant at any time during the term of this Agreement should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

**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 after giving 5 calendar days written notice to Consultant. 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. Upon expiration or termination of this Agreement, Consultant shall deliver to Authority all materials, reports, documents, notes, or other written materials compiled through the last working day this Agreement is in effect. Consultant shall have no other claim against Authority by reason of such termination, including, but not limited to, any claim for compensation.

**14. 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, and all work product materials shall be delivered to Authority.

**15. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by e-mail before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the  
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addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

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

Or by email to: [billing@sfcjpa.org](mailto:billing@sfcjpa.org)  
Attention: **Accounts Payable**

Consultant:  
**NAME\_OF\_CONSULTANT**  
**STREET\_ADDRESS CITY\_STATE\_ZIP**  
Attention: **NAME**  
**TITLE**

**16. 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. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. 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.

**17. Assignability.** Consultant shall not assign, transfer, or sell 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 so assign, transfer, or sell any rights, duties, or obligations arising hereunder shall be void and of no effect.

**18. Subcontracting.** Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement. Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Authority in the same manner and to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

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

**20. 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.

**21. 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.

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

**23. 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” ATTEST:

By: \_\_\_\_\_ NAME, Authority Chair

San Francisquito Creek Joint Powers Authority

By: \_\_\_\_\_ NAME, Executive Director

“Consultant”

NAME\_OF\_CONSULTANT  
[A California Corporation/other legal status]

By: \_\_\_\_\_ NAME, TITLE

By: \_\_\_\_\_ NAME, TITLE

**Exhibit A**  
**Scope of Services**

**Exhibit B**  
**Schedule of Performance**

**Exhibit C  
Compensation**