

## **AGREEMENT FOR SERVICES BY INDEPENDENT CONSULTANT**

THIS AGREEMENT is made this \_\_\_\_\_ day of month, year by and between the **Lake Elsinore & San Jacinto Watersheds Authority (LESJWA)** whose address is 11615 Sterling Avenue, Riverside, Calif. 92503, and \_\_\_\_\_ ("**Consultant**") whose address is \_\_\_\_\_ .

### **RECITALS**

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties to this Agreement:

A. LESJWA desires to engage the professional services of Consultant to perform such professional consulting services as may be assigned, from time to time, by LESJWA in writing.

B. Consultant agrees to provide such services pursuant to, and in accordance with, the terms and conditions of this Agreement and has represented and warrants to LESJWA that Consultant possesses the necessary skills, qualifications, personnel, and equipment to provide such services.

C. The services to be performed by Consultant shall be specifically described in one or more written Task Orders issued by LESJWA to Consultant pursuant to this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants contained herein, LESJWA and Consultant agree as follows:

#### **ARTICLE I** **TERM OF AGREEMENT**

1.01 Term of Agreement. This agreement shall become effective on the date first above written and shall continue until \_\_\_\_\_, 2016, unless extended or sooner terminated as provided for herein.

#### **ARTICLE II** **SERVICES TO BE PERFORMED**

2.01 Consultant agrees to provide such professional consulting services as may be assigned, from time to time, in writing by the Board and the Authority Administrator of LESJWA. Each such assignment shall be made in the form of a written Task Order. Each such Task Order shall include, but shall not be limited to, a description of the nature and scope of the services to be performed by Consultant, the amount of compensation to be paid, and the expected time of completion.

2.02 Consultant may, at Consultant's sole cost and expense, employ such competent and qualified independent professional associates, subcontractors, and consultants as Consultant deems necessary to perform each such assignment; provided, however, that Consultant shall not subcontract any of the work to be performed without the prior written consent of LESJWA.

#### **ARTICLE III** **COMPENSATION**

3.01 In consideration for the services to be performed by Consultant, LESJWA agrees to pay Consultant as provided for in each Task Order.

3.02 Each Task Order shall specify a total not-to-exceed sum of money and shall be based upon the regular hourly rates customarily charged by Consultant to its clients, as set forth on an exhibit to be attached to each Task Order issued to Consultant.

3.03 Consultant shall not be compensated for any services rendered nor reimbursed for any expenses incurred in excess of those authorized in any Task Order unless approved in advance by the Board of Directors and Authority Administrator of LESJWA, in writing.

3.04 Unless otherwise provided for in any Task Order issued pursuant to this Agreement, payment of compensation earned shall be made in monthly installments after receipt from Consultant of a timely, detailed, corrected, written invoice by LESJWA's Project Manager, describing, without limitation, the services performed, the time spent performing such services, the hourly rate charged therefore, and the identity of individuals performing such services for the benefit of LESJWA. Such invoices shall also include a detailed itemization of expenses incurred. Upon approval by an authorized SAWPA employee, SAWPA will pay within 30 days after receipt of a valid invoice from Consultant.

**ARTICLE IV**  
**OBLIGATIONS OF CONSULTANT**

4.01 Consultant agrees to perform all assigned services in accordance with the terms and conditions of this Agreement and those specified in each Task Order.

4.02 Except as otherwise provided for in each Task Order, Consultant will supply all personnel and equipment required to perform the assigned services.

4.03 Consultant shall be solely responsible for the health and safety of its employees and agents in performing the services assigned by LESJWA. Consultant hereby covenants and agrees to:

- a. Obtain a comprehensive general liability and automobile insurance policy, including contractual coverage, with combined single limits for bodily injury and property damage in an amount of not less than \$1,000,000.00. Such policy shall name LESJWA, and any other interested and related party designated by LESJWA, as an additional insured, with any right to subrogation waived as to LESJWA and such designated interested and related party;
- b. Obtain a policy of professional liability insurance in a minimum amount of \$1,000,000.00 per claim or occurrence to cover any negligent acts or omissions committed by Consultant, its employees and/or agents in the performance of any services for LESJWA;
- c. Comply with all local, state and federal laws, rules and regulations;
- d. Provide worker's compensation insurance or a California Department of Insurance-approved self-insurance program in an amount and form that meets all applicable Labor Code requirements, covering all persons or entities providing services on behalf of the Consultant's and all risks to such persons or entities.
- e. Consultant shall require any subcontractor that Consultant uses for work performed for LESJWA under this Agreement or related Task Order to obtain the insurance coverages specified above.
- f. Consultant hereby agrees to waive subrogation which any insurer of Consultant may seek to require from Consultant by virtue of the payment of any loss. Consultant shall obtain an endorsement that may be necessary to give effect to this waiver of subrogation. In addition, the Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of LESJWA for all work performed by Consultant, and its employees, agents and subcontractors.

All such insurance policy or policies shall be issued by a responsible insurance company with a minimum A. M. Best Rating of "A-" Financial Category "X", and authorized and admitted to do business in, and regulated by, the State of California. If the insurance company is not admitted in the State of California, it must be on the List of Eligible Surplus Line Insurers (LESLI), shall have a minimum A.M. Best Rating of "A", Financial Category "X", and shall be domiciled in the United States, unless otherwise approved by LESJWA in writing. Each such policy of insurance shall expressly provide that it shall be primary and noncontributory with any policies carried by LESJWA and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of LESJWA that might otherwise result in forfeiture of coverage. Evidence of all insurance coverage shall be provided to LESJWA prior to issuance of the first Task Order. Such policies shall provide that they shall not be canceled or amended without 30 day prior written notice to LESJWA. Consultant acknowledges and agrees that such insurance is in addition to Consultant's obligation to fully indemnify and hold LESJWA free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the negligence, recklessness, or willful misconduct of Consultant in performing services assigned by LESJWA.

4.04 Consultant hereby covenants and agrees that LESJWA, its officers, employees, and agents shall not be liable for any claims, liabilities, penalties, fines or any damage to property, whether real or personal, nor for any personal injury or death caused by, or resulting from, or claimed to have been caused by or resulting from, any negligent act or omission of Consultant. Further, Consultant hereby covenants and agrees to fully indemnify and save LESJWA, its agents, officers and employees, free and harmless from and against any and all of the foregoing liabilities or claims of any kind, and shall reimburse LESJWA for all costs or expenses that LESJWA incurs (including attorneys' fees) on account of any of the foregoing liabilities, including liabilities or claims made by reason of defects in the performance of consulting services pursuant to this Agreement, unless the liability or claim is proximately caused by LESJWA's negligent act or omission.

4.05 In the event that LESJWA requests that specific employees or agents of Consultant supervise or otherwise perform the services specified in each Task Order, Consultant shall ensure that such individual (or individuals) shall be appointed and assigned the responsibility of performing the services.

4.06 In the event Consultant is required to prepare plans, drawings, specifications and/or estimates, the same shall be furnished with a registered professional engineer's number and shall conform to local, state and federal laws, rules and regulations. Consultant shall obtain all necessary permits and approvals in connection with this Agreement, any Task Order or Change Order. However, in the event LESJWA is required to obtain such an approval or permit from another governmental entity, Consultant shall provide all necessary supporting documents to be filed with such entity, and shall facilitate the acquisition of such approval or permit.

#### **ARTICLE V** **OBLIGATIONS OF LESJWA**

- 5.01 LESJWA shall
- a. Furnish all existing studies, reports and other available data pertinent to each Task Order that are in LESJWA's possession;
  - b. Designate a person to act as liaison between Consultant and the Authority Administrator and Board of Directors of LESJWA.

#### **ARTICLE VI** **ADDITIONAL SERVICES, CHANGES AND DELETIONS**

6.01 During the term of this Agreement, the Board of Directors of LESJWA may, from time to time and without affecting the validity of this Agreement or any Task Order issued pursuant thereto, order changes, deletions, and additional services by the issuance of written Change Orders authorized and approved by the Board of Directors of LESJWA.

6.02 In the event Consultant performs additional or different services than those described in any Task Order or authorized Change Order without the prior written approval of the Board of LESJWA, Consultant shall not be compensated for such services.

6.03 Consultant shall promptly advise LESJWA as soon as reasonably practicable upon gaining knowledge of a condition, event, or accumulation of events, which may affect the scope and/or cost of services to be provided pursuant to this Agreement. All proposed changes, modifications, deletions, and/or requests for additional services shall be reduced to writing for review and approval or rejection by the Board of Directors of LESJWA.

6.04 In the event that LESJWA orders services deleted or reduced, compensation shall be deleted or reduced by a comparable amount as determined by LESJWA and Consultant shall only be compensated for services actually performed. In the event additional services are properly authorized, payment for the same shall be made as provided in Article III above.

**ARTICLE VII**  
**CONSTRUCTION PROJECTS:**  
**CHANGE ORDERS FOR CONSTRUCTION CONSULTANT**

7.01 In the event LESJWA authorizes Consultant to perform construction management services for LESJWA, Consultant may determine, in the course of providing such services, that a Change Order should be issued to the construction contractor, or Consultant may receive a request for a Change Order from the construction contractor. Consultant shall, upon receipt of any requested Change Order or upon gaining knowledge of any condition, event, or accumulation of events, which may necessitate issuing a Change Order to the construction contractor, promptly consult with the liaison, Authority Administrator and Board of LESJWA. No Change Order shall be issued or executed without the prior approval of the Board of Directors of LESJWA.

**ARTICLE VIII**  
**TERMINATION OF AGREEMENT**

8.01 In the event the time specified for completion of an assigned task in a Task Order exceeds the term of this Agreement, the term of this Agreement shall be automatically extended for such additional time as is necessary to complete such Task Order, and thereupon this Agreement shall automatically terminate without further notice.

8.02 Notwithstanding any other provision of this Agreement, LESJWA, at its sole option, may terminate this Agreement at any time by giving 10 day written notice to Consultant, whether or not a Task Order has been issued to Consultant.

8.03 In the event of termination, the payment of monies due Consultant for work performed prior to the effective date of such termination shall be paid after receipt of an invoice as provided in this Agreement.

**ARTICLE IX**  
**STATUS OF CONSULTANT**

9.01 Consultant shall perform the services assigned by LESJWA in Consultant's own way as an independent contractor, and in pursuit of Consultant's independent calling, and not as an employee of LESJWA. Consultant shall be under the control of LESJWA only as to the result to be accomplished and the personnel assigned to perform services. However, Consultant shall regularly confer with LESJWA's liaison, Authority Administrator, and Board of Directors as provided for in this Agreement.

9.02 Consultant hereby specifically represents and warrants to LESJWA that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily applicable to an experienced and competent professional consulting organization rendering the same or similar services. Further, Consultant represents and warrants that the individual signing this Agreement on behalf of Consultant has the full authority to bind Consultant to this Agreement.

**ARTICLE X**  
**AUDIT; OWNERSHIP OF DOCUMENTS**

10.01 All draft and final reports, plans, drawings, specifications, data, notes, and all other documents of any kind or nature prepared or developed by Consultant in connection with the performance of services assigned to it by LESJWA are the sole property of LESJWA, and Consultant shall promptly deliver all such materials to LESJWA. Consultant may retain copies of the original documents, at its option and expense.

10.02 Consultant shall retain and maintain, for a period not less than four years following termination of this Agreement, all time records, accounting records, and vouchers and all other records with respect to all matters concerning services performed, compensation paid and expenses reimbursed. At any time during normal business hours and as often as LESJWA may deem necessary, Consultant shall make available to LESJWA's agents for examination of all such records and will permit LESJWA's to audit, examine and reproduce such records.

**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

11.01 This Agreement supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to the rendering of services by Consultant for LESJWA and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

11.02 Consultant shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of LESJWA. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

11.03 In the event Consultant is an individual person, and Consultant dies prior to completion of this Agreement or any Task Order issued hereunder, any monies earned that may be due Consultant from LESJWA as of the date of death will be paid to Consultant's estate.

11.04 Time is of the essence in the performance of services required hereunder. Extensions of time within which to perform services may be granted by LESJWA if requested by Consultant and agreed to in writing by LESJWA. All such requests must be documented and substantiated and will only be granted as the result of unforeseeable and unavoidable delays not caused by the lack of foresight on the part of Consultant.

11.05 Consultant shall comply with all local, state and federal laws, rules and regulations including those regarding nondiscrimination and the payment of prevailing wages.

11.06 LESJWA expects that Consultant will devote its full energies, interest, abilities and productive time to the performance of its duties and obligations under Agreement, and shall not engage in any other consulting activity that would interfere with the performance of Consultant's duties under this Agreement or create any conflicts of interest. If required by law, Consultant shall file Conflict of Interest Statements with LESJWA.

11.07 Any dispute which may arise by and between LESJWA and the Consultant, including the Consultant's associates, subcontractor or other consultants, shall be submitted to binding arbitration. Arbitration shall be conducted by the Judicial Arbitration and Mediation Service, Inc., or its successor, or any other neutral, impartial arbitration service that the parties mutually agree upon, in accordance with its rules in effect at the time of the commencement of the arbitration proceeding, and as set forth in this paragraph. The arbitrator must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. The arbitrator's decision and award are subject to judicial review by a Superior Court of competent venue and jurisdiction only for material errors of fact or law in accordance with Section 1296 of the Code of Civil Procedure. Limited discovery may be permitted upon a showing of good cause and approved by the assigned arbitrator. Unless the parties stipulate to the contrary, prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation, conducted by the Judicial Arbitration and Mediation Services, Inc., or its successor, or any other neutral, impartial mediation service that the parties mutually agree upon, in accordance with their rules and procedures for such mediation.

11.08 During the performance of the Agreement, Consultant, and its subcontractors, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant, and its subcontractors, shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant, and its subcontractors, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12290 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 et seq., set forth in Chapter 5 of Division 4 of

