

PROFESSIONAL CONSULTING SERVICES AGREEMENT
FOR _____
(PROJECT NO. _____)

This Agreement is made as of _____, _____ (“Effective Date”), by and between the Jordan Valley Water Conservancy District, a water conservancy district organized under the laws of the State of Utah (“District”), and _____ a Utah corporation **OPTIONAL WORDING: [a Utah _____ / a (State) _____ authorized to do business and doing business in the State of Utah]** (“Engineer”).

RECITALS:

- A. The District desires to obtain professional engineering services relating to the _____;
- B. Engineer represents it has the necessary expertise and experience to perform the services requested by the District and that it is properly qualified and licensed in the State of Utah for this work; and,
- C. Engineer has submitted a proposal outlining its proposed scope of activities for performance and completion of the services, and the Engineer is willing to perform the services requested by the District, consistent with the terms of this Agreement.

TERMS:

The parties agree as follows:

ARTICLE I
DEFINITIONS

- 1.1 Unless the context requires otherwise, the terms defined in this Article shall for all purposes of this Agreement and all schedules, have the following meanings:
 - 1.1.1 **Agreement:** This Professional Consulting Services Agreement, including attachments.
 - 1.1.2 **Contract:** The agreement between the District and the Contractor for the provision of labor, materials and equipment for the construction of the Project.
 - 1.1.3 **Contract Documents:** All documents relating to construction of the Project, issued by or through the Engineer, on behalf of the District to

the Contractor, or by the District, including the Notice Inviting Bids, Instructions to Bidders, Bid, Information Required of Bidder, Bid Bond, Agreement Performance Bond, Payment Bond, General Conditions, Supplemental General Conditions, drawings, specifications, all addenda and change orders executed pursuant to the Contract.

- 1.1.4 Contractor: The party contracting with the District for the provision of labor, materials and equipment for the construction and quality control of the Project.
- 1.1.5 Contract Time: The projected date for substantial completion of the Contract.
- 1.1.6 Engineer's Fee: The Engineer's compensation for performing Services.
- 1.1.7 Phase: A logically separate aspect of the Engineer's Services on the Project which occurs in sequence or concurrently with other such aspects to allow for the orderly progress and management of the Engineer's Services for the Project.
- 1.1.8 Project: The Project is described on attached Schedule A.
- 1.1.9 Project Manager: The individual identified in Schedule D who will administer the performance of the Engineer's Services under this Agreement.
- 1.1.10 Project Representative: The individual identified in Schedule D who will provide observation and inspection of the construction of the Project. The Project Representative is the sole authorized representative of the District in all on-site relations with the Contractor, except as other properly authorized agents are designated by the Engineer and approved by the District.
- 1.1.11 Reimbursable Expenses: Non-salary expenditures made by the Engineer, its employees or its sub-consultants when performing services for the Project. Reimbursable Expenses include:
 - 1.1.11.1 Reasonable expenses of transportation, subsistence and lodging when traveling in connection with the performance of services for the Project.
 - 1.1.11.2 Reasonable expenses of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the Project.

- 1.1.11.3 Reasonable expenses of all reproduction, postage and handling of drawings, specifications, reports or other Project-related instruments of service of the Engineer.
 - 1.1.11.4 Reasonable expense of computer time as described on attached Schedule E.
 - 1.1.11.5 Other reasonable reimbursable expenses to which the parties subsequently agree.
- 1.1.12 Hourly Billing Rate: The hourly fee which the Engineer charges for the time expended on the Project. The hourly billing rate shall be considered full compensation for time expended on the Project. Specific hourly billing rates for the Project are identified in Schedule E.
- 1.1.13 Services or Engineer's Services: The Engineer's duties and responsibilities to the District for professional consulting services as set forth in Article II.
- 1.1.14 Sub-Consultant: Any registered professional engineer, architect or other specialist engaged by the Engineer in connection with the Project.
- 1.1.15 Task: An independent and defined service or collection of services to be performed by the Engineer during a Phase(s) of the Project(s), such service or services being more particularly set forth in Schedule A.
- 1.2 Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa.

ARTICLE II ENGINEER'S SERVICES

- 2.1 Basic Services: The Engineer shall provide the following Services on the Project, as more described and set out in Schedule A.
- 2.1.1 Pre-design Phase: Complete applicable investigations, evaluations, analyses, surveys, and reports.
 - 2.1.2 Design Phase: Complete all necessary drawings and technical specifications for bidding the construction of the Project.
 - 2.1.3 Construction Phase:

2.1.3.1 The Engineer shall assist the District during bidding and contract execution, administer the Contract, provide field observation and inspection of the Project, and provide management and reporting during the construction phase of the Project.

2.1.3.2 The Engineer shall designate the individuals named in Article IV as Project Manager and Project Representative to be the representatives of the District in its relations with the Contractor, subject to the requirements and limitations set out in the Contract Documents and this Agreement. Other personnel of the Engineer shall be designated as needed to administer the Contract, as further set forth in Section 2.2 and this Agreement.

2.1.3.3 The Engineer shall provide Project representation at the site, as described in Schedule A, in order to provide experienced inspection and observation of the quality and progress of the Contract construction work to verify it complies with the requirements of the Contract Documents, and to advise the District of defects and deficiencies. The Engineer shall direct its efforts toward verifying that the means, methods, techniques or procedures that are specified in the Contract Documents are faithfully observed and followed by the Contractor during construction of the Project, and, except as hereafter provided, that the completed Project conforms to the Contract Documents. The Engineer shall not be responsible for any means, methods, techniques, or procedures of construction selected by the Contractor not specified in the Contract Documents, or for safety precautions and programs incident to the work of Contractor.

2.1.3.4 The Engineer shall have the following powers and is hereby directed to exercise them as in its professional judgment are required to accomplish the above tasks, objectives and responsibilities:

Examine, review and investigate all material, equipment, work and workmanship for compliance with the Contract Documents, including the examination and investigation of plant, mill and shop facilities; require that work done in the absence of observation and examination be removed and replaced under the proper

observation and examination; make such examination and tests, as in its professional judgment are required, to verify that the work is being accomplished in accordance with the Contract Documents; reject work which does not meet the specifications of the Contract Documents and require the Contractor remove and replace such work according to the Contract Documents.

2.1.3.5 If disputes between the Contractor and the District arise, and/or if the Contractor shall file a claim or protest against the District during construction of the Project, the Engineer shall investigate and analyze all such disputes, claims and protests, and attempt to resolve them to the mutual satisfaction of the parties, and failing such resolution, recommend a course of action for the District.

2.1.3.6 The Engineer's recommendation of any payment requested in an application for payment by the Contractor will constitute a representation by the Engineer to the District, based on the Engineer's on-site observations of the Contractor's work in progress as an experienced and qualified design professional and on the Engineer's review of the application for payment and the accompanying data and schedules, that the work has progressed to the point indicated, that to the best of the Engineer's knowledge, information and belief the performance and quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work by the Engineer as a functioning Project upon Substantial Completion as defined in the Contract Documents, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in the recommendation), and that the Contractor is entitled to payment of the amount recommended. However, by recommending any such payment, the Engineer will not thereby be deemed to have represented that the Engineer acted or performed to a standard of care higher than that required of the Engineer under this Agreement and the Contract.

2.2 Guidelines for Basic Services: The Engineer shall perform the Services in conformance with the District's Guidelines for Engineering Services, as set forth in Schedule B, and in conformance with such other guidelines imposed by the District during the progress of the Services, so long as such guidelines are in conformance with standard professional consulting services.

2.3 Additional Services: The District and the Engineer recognize and agree that services not set forth in Schedule A are not covered by the Engineer's Fee and are considered to be additional services. No additional services may be provided by the Engineer, and no compensation shall be paid therefore by the District, except upon written confirmation by the District as an amendment to this Agreement.

Upon request by the District, the following additional services shall be provided by the Engineer:

2.3.1 Perform work resulting from changes in design criteria made in writing at the direction of the District, after acceptance of the criteria by the Engineer;

2.3.2 Prepare applications and supporting documents for government review or action, other than those which may be specified in Schedule A;

2.3.3 Provide additional services required as a result of delinquency or insolvency of one or more of the Contractors; or as a result of damage to the Project caused by fire, flood, earthquake, or other acts of God, wherein damage was not a direct or indirect result of Engineer's negligence or within Engineer's control;

2.3.4 Provide additional services required as a result of strikes, walkouts, or other acts of trade or labor unions;

2.3.5 Provide expert witness testimony or litigation support at depositions, trials, court appearances, and other similar judicial proceedings and cooperate in formulating and responding to interrogatories and other similar discovery methods; and,

2.3.6 Perform any other item of work not specifically mentioned above, and requested by the District in writing.

ARTICLE III
TIME TO COMPLETE

The Engineer's Services, as defined in Article II, shall be completed within the timeframe set forth in Schedule C. Notwithstanding any term or provision of this Agreement to the contrary, all of the Services shall be completed within ____ calendar days after the Effective Date of this Agreement.

ARTICLE IV
ENGINEER'S PERSONNEL

The key personnel identified in Schedule D shall perform the Engineer's Services in the assigned capacities, as shown. Any substitution of key personnel and/or changes in assignments from those shown must be approved by the District in writing before such substitution or change may be made by the Engineer.

ARTICLE V
DISTRICT-FURNISHED SERVICES

- 5.1 Information: Upon the Engineer's request, the District shall provide to the Engineer or make available for review all information and data contained in record drawings, record documents and other records routinely kept by the District pertaining to the design, construction or operation of its facilities. The District does not warrant the accuracy or completeness of such data and information originating from entities or persons other than the District.
- 5.2 Review of Documents: The District shall review and consider all sketches, drawings, reports, studies, model results, specifications, bids, proposals, contracts, and other documents submitted by the Engineer relative to Engineer's Services. Whenever prompt action is necessary, the District shall within a reasonable time inform the Engineer of its decision regarding the same so as to not unduly delay the Engineer in its performance according to the schedule set forth in this Agreement.
- 5.3 Engineer Access: The District shall, at its expense, arrange and make provision for the Engineer's entry and access to such property (public and/or private) as may be necessary to enable the Engineer to perform the Services.
- 5.4 District Representative: The District shall designate in writing an individual who shall be authorized by the District to act as the District's Representative. The Representative shall have authority to receive reports from the Engineer and give instructions to the Engineer.

OPTIONAL 5.4 District Representative: The District hereby designates and authorizes _____ to act as the District's Representative. The Representative shall have authority to receive reports from the Engineer and give instructions to the Engineer.

- 5.5 Notifications of Defects: The District shall give written notice to the Engineer whenever the District or its Representative becomes aware of any defect or deficiency in the Engineer's Services.
- 5.6 Construction Right-of-Way: Where, based upon the Engineer's design work, rights-of-way are required for construction, the District will, at its expense, obtain such rights-of-way, including appraisals and title searches, utilizing descriptions and maps provided by the Engineer.
- 5.7 Consultation with District: Employees of the District shall be available for consultation with the Engineer at all reasonable times.
- 5.8 Permit Fees: The District shall pay any required permit fees, charges for plan checking, and any other fees charged by any public agency having jurisdiction over any part of the Project, if such charges are made.
- 5.9 Legal Opinions: The District shall, at its expense, furnish legal opinions on laws and the interpretation thereof which may affect the Project, if such opinions are judged by the District to be necessary.

ARTICLE VI
COMPENSATION

- 6.1 Basic Services: The District shall pay to the Engineer as compensation for Services attributable to the Project, the hourly billing rates as set forth in Schedule E multiplied by the number of hours expended on the Project, together with reimbursable expenses attributable to the Project multiplied by ____.
- 6.1.1 Pre-design and Design Phases: In no event shall the total compensation due the Engineer for the Pre-design and Design Phases, including reimbursable expenses, exceed _____ and ____/100 Dollars (\$_____).
- 6.1.2 Construction Phase: The budget authorized for the Engineer's Services and for reimbursable expenses in the Construction Phase is _____ and ____/100 Dollars (\$_____). As work in this Phase reaches seventy-five percent (75%) of the authorized budget set forth in Schedule E, the Engineer shall notify the District, and the Engineer and the District shall thereafter mutually review the extent of work already accomplished, the extent of work remaining to be completed and the past and projected expenses related thereto. At that time, the scope of Services and corresponding compensation for Services for the Construction Phase may be adjusted by the District.

6.2 Additional Services: In the event this Agreement is amended to provide for additional services by the Engineer, the Engineer's compensation for additional services shall be the hourly billing rate multiplied by the hours expended for additional services, and reimbursable expenses attributable to the additional services multiplied by ____.

A summary showing estimated cost data for each additional service requested shall be submitted to the District for approval prior to commencement of work on that additional service. The District shall not be obligated to reimburse the Engineer for costs incurred in excess of the estimated cost set forth in that summary, and the Engineer shall not be obligated to continue work or to incur costs in excess of the estimated cost until the District notifies the Engineer in writing that the estimated cost therefore has been increased. Additional sets of Contract Documents and reduced scale drawings shall be charged at actual cost of printing and mailing.

6.3 Format for Invoices: Invoices for the Engineer's Services and expenses shall be reviewed and signed by the Engineer's Project Manager before being sent to the District. Each invoice shall include the following information:

- a. Project Name.
- b. Time period of Services (beginning of month to end of month).
- c. Current invoice charges, separated into Pre-design, Design and Construction Phases, with the following breakdown:
 - (i) Charges for Services, further described by:
 - (1) Employee name.
 - (2) Hours worked.
 - (3) Rate charged.
 - (ii) Reimbursable Expenses:
 - (1) Description.
 - (2) Cost.
- d. Account summary, including:
 - (i) Total amount authorized for the Pre-design and Design Phases under this Agreement.

- (ii) Total invoiced to date for the Pre-design and Design Phases.
 - (iii) Total amount authorized for the Construction Phase under this agreement.
 - (iv) Total invoiced to date for the Construction Phase.
- 6.4 Progress Payments: The Engineer's invoices for Services performed and for reimbursable expenses shall be delivered to the District after the end of the first calendar month following the Effective Date of this Agreement, and monthly thereafter so long as the Engineer's Services shall continue. The compensation requested on any such invoice shall be itemized to show hourly billing rate multiplied by time charged to the Project and reimbursable expenses which actually were incurred in the month identified in the invoice.
- 6.5 Payment of Invoice: The amount shown on each invoice for the Engineer's Fee and expenses shall be due and payable by the District after its review and acceptance of the Services itemized in the invoice. The Engineer may levy a simple interest charge of eight percent (8%) per annum on invoice amounts accepted for payment by the District and not paid within forty-five (45) days of the date of delivery of the invoice. Late payments made by the District shall be credited first to accrued interest and then to principal.
- 6.6 Suspension; Termination: In the event the District fails to submit payment on an invoice within sixty (60) days of the date of delivery to the District of such invoice, the Engineer may, at its discretion and upon ten (10) days written notice to the District, suspend its services or terminate this Agreement.

ARTICLE VII SPECIAL TERMS AND CONDITIONS

- 7.1 Documents: All completed original reproducible tracings, survey notes, plans, specifications, reports, engineering calculations, and other original documents prepared by the Engineer in the performance of the Engineer's Services shall be the property of the District, and the Engineer shall, upon the request of the District, deliver such documents to the District. The Engineer may retain and use copies of the documents. The District agrees to hold harmless, indemnify and defend the Engineer against all third party damages, claims, expenses and losses arising out of any reuse by the District of the plans, specifications and documents if the District does not obtain the written authorization of the Engineer for their reuse.
- 7.2 Governmental Immunity: Except for the District's obligations of indemnification as set forth in paragraph 7.1, nothing in this Agreement shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which the District or its employees, officers and trustees may assert under state or federal law, including but not limited to the Utah Governmental Immunity Act, Utah Code Ann. (1953)

§§ 63-30-1 et seq. (the "Act"). All claims against the District or its employees, officers and trustees are subject to the provisions of the Act, which Act controls all procedures and limitations in connection with any claim of liability.

- 7.3 Conflict of Interest: The Engineer shall not establish or otherwise continue any conflict of interest created by virtue of this Agreement, prohibited under state or local laws.
- 7.4 Termination Prior to Completion: This Agreement may be terminated at any time by the District prior to completion of the Engineer's Services upon written notice to the Engineer. Upon receipt of such notice, the Engineer shall immediately stop any further work in progress, and in such event, the Engineer shall be entitled to payment for all of its Services performed by the Engineer and accepted by the District, to the date of cancellation, and for all work required to organize and deliver to the District the materials developed in the course of the Engineer's Services. Payment shall be due to the Engineer within forty-five (45) days after delivery of such materials and receipt of a verified and itemized invoice therefore.
- 7.5 Construction Estimates: Estimates of contract time, construction costs and quantities prepared by the Engineer or its employees represent their best professional judgment as design professionals and are supplied for the general guidance of the District. The Engineer does not guarantee the accuracy of such estimates as the Engineer has no control over the cost of labor and material, competitive bidding, or market or other conditions.
- 7.6 Indemnity and Insurance: The Engineer shall indemnify, defend and hold the District harmless from any claims under the Workers' Compensation Act, and from any claims, demands, suits, causes of action, costs, fees, judgments, liability for bodily injury and death, and damages to property, real or personal, to the extent caused by or resulting from breach of contract, negligence, recklessness or intentional misconduct by the Engineer or by the negligence of the Engineer's subconsultants, in the performance of the Engineer's Services under this Agreement. During the course of this Agreement, and for a period of four (4) years following Substantial Completion of the Engineer's Services under this Agreement, the Engineer shall maintain both professional errors and omissions liability insurance and general commercial liability insurance providing coverage for all liability arising out of the performance of Services in connection with the Project and this Agreement. The liability insurance required shall include "prior acts" coverage for all services rendered for the Project and shall be written with a limit of liability of \$500,000.00 per claim and a Project aggregate of \$1,000,000.00.
- 7.7 Interpretation: Except as otherwise noted, releases from liability, indemnification against liability, limitations on liability, assumptions of liability and limitations on remedies which may be expressed in this Agreement, shall apply to all possible claims and/or causes of action, including but not limited to those arising under common law, equity, statute, contract, tort or otherwise.

ARTICLE VIII
GENERAL TERMS AND CONDITIONS

- 8.1 Standards of Performance: The Engineer shall perform its Services in a manner consistent with the professional skill and care ordinarily provided by other design professionals with the same or similar professional license, providing the same or similar design professional service in the same or similar locality at the same or similar time under the same or similar circumstances.
- 8.2 Force Majeure: Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents, acts of any governmental entity having jurisdiction over the parties and/or the subject matter of this Agreement (other than those governmental entities named as parties or beneficiaries to this Agreement), or other events beyond the reasonable control of the other or the other's employees and agents. In the event either party claims that performance of its obligation is prevented or delayed by such cause, that party shall promptly notify the other party of that fact and the circumstances preventing or delaying performance.
- 8.3 Assignment: Neither the District nor the Engineer shall delegate and/or assign their respective duties and/or rights under this Agreement without the prior written consent of the other. The Engineer may subcontract, however, portions of the Services as it deems necessary to efficiently accomplish the Basic Services. Nothing in this paragraph shall release the Engineer from full compliance with the terms and conditions of Article IV.
- 8.4 Severability; Waiver: In the event a court, governmental agency or regulatory agency with proper jurisdiction determines that any provision of this Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially and practicably continue to perform this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach of the same by the other party.
- 8.5 Governing Law: This Agreement shall be governed by, construed and enforced according to the laws of the State of Utah.
- 8.6 Merger; Amendments: This Agreement and the Contract Documents, including all amendments, represents the entire and integrated agreement between the District and the Engineer, and supersedes all prior negotiations, representations or agreements, whether written or oral, regarding the subject matter contained in this Agreement. The Agreement may be amended only by written instrument executed by all parties.

- 8.7 Attorney's Fees: In the event of a default or breach of this Agreement, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement or in obtaining damages, including reasonable attorney's fees, whether incurred through legal proceedings or otherwise.
- 8.8 Notice: Any formal notice required to be given under this Agreement shall be deemed given when hand-delivered or when sent by registered or certified mail, return receipt requested, to the parties at their respective addresses stated below or to any other address after notice of such change of address has been given to the parties.
- 8.9 Third Party Beneficiaries: Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the District or the Engineer. The Engineer's Services under this Agreement are being performed solely for the District's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or non-performance of Services hereunder. The District agrees to use reasonable efforts to include a provision in all contracts with other contractors and other entities involved in the Project to carry out the intent of this paragraph.

"District":

Jordan Valley Water Conservancy District
 8215 South 1300 West
 West Jordan, Utah 84088

"Engineer":

By:

 Barton A. Forsyth
 Its General Manager/CEO

By:

 [Name]
 Its _____

SCHEDULE A
SCOPE OF WORK

SCHEDULE B
GUIDELINES FOR ENGINEERING SERVICES

SCHEDULE C
TIME TO COMPLETE

SCHEDULE D
ENGINEER'S PERSONNEL

SCHEDULE E
COMPENSATION