

PROFESSIONAL CONSULTING SERVICES AGREEMENT

An Agreement 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 _____ corporation qualified to do business and doing business in the State of Utah (“Engineer”).

RECITALS:

- A. District desires to obtain professional services relating to _____;
- 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 hereto or referenced hereby, have the meanings herein specified.
- 1.1.1 Agreement: This Professional Services Agreement, including attachments.
- 1.1.2 Project: The Project is described in attached Schedule A.
- 1.1.3 Engineer's Fee: The Engineer’s compensation for performing services.
- 1.1.4 Reimbursable Expenses: Non-salary expenditures made by the Engineer, its employees or its sub-consultants when performing services for the Project. Reimbursable Expenses include:

1.1.4.1 Reasonable expenses of all reproduction, postage and handling of drawings, specifications, reports or other Project-related instruments of service of the Engineer.

1.1.4.2 Reasonable expense of computer time.

1.1.4.3 Other reasonable reimbursable expenses approved by the District.

1.1.5 Hourly Billing Rate: The hourly fee which the Engineer charges for 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 attached Schedule B.

ARTICLE II ENGINEER'S SERVICES

2.1 Basic Services: The Engineer shall complete those tasks and services identified in Schedule A.

2.2 Additional Services: The District and the Engineer recognize and agree that services not expressly 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.

ARTICLE III TIME TO COMPLETE

The Engineer's services, as defined in Article II, shall be completed in accordance with the following schedule:

ARTICLE IV KEY PERSONNEL

The following key personnel shall perform the Engineer's services in the capacities assigned as follows:

Any substitution of key personnel and/or changes in assignments from those shown must first be approved by the District in writing before such substitution or change may be made by the Engineer.

ARTICLE V COMPENSATION

- 5.1 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 B multiplied by the number of hours expended in providing services. Reimbursable expenses will be compensated at cost multiplied by 1.1. In no event, however, shall the total amount due the Engineer as compensation for services and reimbursable expenses exceed _____ and ___/100 Dollars (\$_____).
- 5.2 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 1.1.
- 5.3 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 the hourly billing rate multiplied by time charged to the Project and reimbursable expenses actually incurred in the month identified in the invoice.
- 5.4 Payment of Invoice: The amount shown on each invoice for the Engineer's fee and expenses shall be due and payable by the District on receipt of each such invoice. The Engineer may levy a simple interest charge of twelve percent (12%) per annum on invoice amounts 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 charges and then to principal.

ARTICLE VI SPECIAL TERMS AND CONDITIONS

- 6.1 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.
- 6.2 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 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.

- 6.3 Indemnity and Insurance: The Engineer shall indemnify, defend, and save the District harmless from any and all claims under the Workers' Compensation Act, and from any and all claims, demands, suits, causes of action, or liability for bodily injury, death, or damages to property, real or personal, which may arise from or otherwise be attributable to negligent, reckless or intentionally wrongful acts or omissions by the Engineer, or by Engineer's agents and employees, 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 professional errors and omissions liability insurance providing coverage for all liability arising out of the performance of services in connection with the Project and this Agreement. The professional errors and omissions liability insurance 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. The Engineer's general commercial liability insurance shall also include the District and its officers, trustees, employees and agents as additional insureds.

ARTICLE VII GENERAL TERMS AND CONDITIONS

- 7.1 Standards of Performance: The Engineer shall perform its services in a manner consistent with acceptable professional and technical standards for engineering work of this nature. The Engineer shall conduct itself in accordance with the most recent edition of Professional & Ethical Conduct Guidelines of the American Council of Engineering Companies.
- 7.2 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.
- 7.3 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 its 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.

- 7.4 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.
- 7.5 Governing Law: This Agreement shall be governed by, construed and enforced according to the laws of the State of Utah.
- 7.6 Merger; Amendments: This Agreement 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.
- 7.7 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.
- 7.8 Notice: Any notice or communication to be given under this Agreement shall be deemed given when sent by registered or certified mail, return receipt requested, to the parties at their respective addresses stated below or to any other address when notice of such change of address has been given to the parties.
- 7.9 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, UT 84088

“Engineer”:

By:

Richard P. Bay
Its Chief Executive Officer
and General Manager

By:

Its:

SCHEDULE A
ENGINEER'S SERVICES

SCHEDULE B
ENGINEER'S COMPENSATION