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## Professional Services Agreement

### Silverdale Water District / Consultant / Professional Service

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**THIS IS AN AGREEMENT** entered into between **SILVERDALE WATER DISTRICT**, a Washington municipal corporation, hereinafter called “District”, and **CONSULTANT**, hereinafter called “Consultant”.

The District seeks to have the following services performed on its behalf:

The parties have agreed to enter into a contract for these services according to the terms hereof.

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing recitals, and the promises and covenants of the parties hereinafter set forth, they agree as follows:

1. **Project Name:** Project Name
2. **Scope of Services to be Provided:** The specific services (hereinafter referred to simply as “Services”) the District shall provide to the Consultant are set forth on the attached “EXHIBIT A”, which by this reference is incorporated herein and made a part hereof. The specific services to be provided and the frequency of those services are set forth on EXHIBIT A. The Services shall be provided in a professional and competent manner.
3. **Time of Performance:** Consultant shall commence its work hereunder upon the execution of this Agreement by both parties, as outlined in EXHIBIT A.
4. **Compensation for Services:** For the services to be provided herein, Consultant shall be compensated as follows:
  - LUMP SUM.** Compensation for these services set forth in Exhibit A shall be in the amount of \$\_\_\_\_\_.
  - TIME AND MATERIALS NOT TO EXCEED.** Compensation for these services shall not exceed \$\_\_\_\_\_ without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “B.”
  - TIME AND MATERIALS.** Compensation for these services shall be on a time and materials basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “B.”
  - OTHER.** \_\_\_\_\_

5. **Professional Responsibility / Independent Contractor:** Consultant (and any sub-contractors or agents it may use to perform its Services hereunder) possess the professional skill and competence to fully and completely undertake and complete all Services it has agreed to undertake hereunder in a timely and professional manner. The standard of care for the Services shall be the care and skill ordinarily used by members of Consultant 's profession practicing under the same or similar circumstances at the same time and in the same locality. Consultant shall provide ongoing appropriate supervision and direction at all times for all its Service work to be performed hereunder to the end that all work shall be performed in a timely manner. The Consultant's relation to the District shall at all times be as an independent contractor.
6. **Non-Assignment of Services:** The Services to be provided by Consultant hereunder shall not be assigned or subcontracted without the prior express written consent of the District.
7. **Indemnity & Hold-harmless Provisions:** Consultant shall at all times indemnify, hold harmless, and defend the District, its elected officials, officers, employees, agents and representatives, from and against any and all lawsuits, damages, costs, charges, expenses, judgments, and liabilities, including reasonable attorney's fees and costs (including reasonable attorney's fees and costs in establishing indemnification), collectively referred to herein as "losses" to the extent caused by the negligent acts, errors, or omissions of Consultant in the performance of its Services under this Agreement.

The term "claims" as used herein shall mean all claims, lawsuits, causes of action, and other legal actions and proceedings of whatsoever nature, involving bodily or personal injury or death, of any person or damage to any property, including, but not limited to, persons, employed by the District, Consultant, or other persons and all property owned or claimed by the District, Consultant, or any affiliate of Consultant, or any other person or entity. The provisions of this Section shall expressly survive the expiration or termination of this Agreement.

8. **Insurance:**

A. **Limits of Insurance:** Consultant shall, before commencing work under this Agreement, file with the District certificates of insurance coverage to be kept in force continuously during the term of this Agreement, and during all work performed pursuant to all changes/amendments/additions hereto. Said certificates shall name the District as an additional named insured with respect to all coverages, except professional liability insurance and workers compensation. The insurance requirements shall be as follows:

- 1) **Commercial General Liability:** One million dollars and no/100s (\$1,000,000.00) per occurrence and aggregate for bodily injury personal injury and property damage;
- 2) **Automobile Liability:** Three hundred thousand dollars and no/100s (\$300,000.00) combined single limit per vehicle accident for bodily injury and property damage;
- 3) **Workers' Compensation:** Workers' compensation limits as required by the Workers' Compensation Act of Washington;

B. **Endorsement:** Each insurance policy shall be endorsed to state that coverage shall not be canceled or materially changed except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

C. **Acceptability of Insurers:** Insurance to be provided by Consultant shall be with a Bests rating of no less than "A:VII", or if not rated by Bests, with minimum surpluses the equivalent of Bests' "VII" rating.

D. **Verification of Coverage:** In signing this Agreement, Consultant is acknowledging and representing that the insurance coverage required herein is presently active and current.

9. **Discrimination Prohibited:** Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services, because of race, creed, color, religion, national origin, marital status, sex, age or handicap, except for a bona fide occupational qualification. Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the District immediately, and further that Consultant will be barred from performing any services for the District now or in the future, unless a showing is made satisfactory to the District that the discriminatory practices have been terminated and that recurrence of such action is unlikely.

10. **Notices:** All notices referenced in this Agreement, or issued pursuant hereto, shall be in writing, shall clearly set forth their purpose, and shall be signed and dated by the remitting party. A notice shall be deemed delivered to the receiving party: on the day it is personally served on that party, with that party signing a receipt therefore which is dated; or, within three business days from the day it is mailed by certified mail, return receipt requested, from a U.S. postal mailing site in Kitsap, Pierce, Thurston, or King Counties, Washington.

For purposes of mailing notices, notices shall be sent to the following person at the following mailing and email address:

Silverdale Water District  
c/o District Representative, Title

CONSULTANT  
c/o Representative, Title

5300 NW Newberry Hill Road, Suite 100

Address

Silverdale, WA 98383-7389

City, State Zip

[Email@swd16.org](mailto:Email@swd16.org)

[Email@.com](mailto:Email@.com)

Either party may change the person to receive notices on its behalf, or mailing address at which it will receive notices, by notifying the other party of the changes in a timely manner. In the event any notices are personally served, the above named individual for the receipt of notices for his or her principal shall be the individual served on behalf of his or her principal.

11. **Termination:** Each party hereto reserves the right to terminate this Agreement at any time, upon first providing ten (10) days' advance written notice to the other party, provided that neither party will terminate for cause without providing the other party written notice of the breach and a reasonable opportunity to cure.

If this Agreement is terminated by the District, a final payment shall be made to Consultant covering all outstanding and approved invoices within thirty (30) days of the termination date.

12. **Non-Waiver:** Waiver by the District of any provision of this Agreement or any time limitation provided for herein shall not constitute a waiver of any other provision hereof and shall be specific only to the terms of the actual waiver provided.

13. **Cooperation of Parties / Reasonable Interpretation:** The parties shall strive to cooperate in a reasonable manner with one another, in good faith, at all times, so the terms and intent of this Agreement may be fully implemented. This Agreement shall be provided with a reasonable interpretation and not interpreted in favor of or against either party for the reason that both parties have had ample opportunity to negotiate with the other regarding the contents hereof.

14. **Dispute Resolution / Arbitration:** In the event any disputes arise relating to Consultant's Services provided pursuant to this Agreement or stemming from this Agreement, the parties shall seek to meet in a spirit of cooperation and good faith bargaining to resolve all said disputes as soon as reasonably possible. In the event settlement of any disputes is not accomplished, the parties agree to submit the disputes to non-binding mediation for consideration before either party may commence legal litigation. Unless the parties subsequently agree otherwise, the mediation shall be administered by the American Arbitration Association acting under its Construction Industry Mediation Rules. If the dispute cannot be resolved by mediation, and if further legal action becomes necessary hereunder, the parties agree the venue and jurisdiction of any such legal action shall reside in Kitsap County with the Kitsap County Superior Court. In the event of legal action, the parties further agree to submit any dispute(s) hereunder or relating

to this agreement into arbitration pursuant to RCW Chapter 7.04, except as modified in this section and to provide the selected arbitrator with all jurisdiction (legal and equitable) to fully and completely settle all said disputes.

When the need for arbitration arises, the party demanding arbitration, pursuant to RCW 7.04.060, shall serve upon the other party, according to the notice provisions hereof, written notice of its intent to arbitrate. Such notice shall state in substance that unless within twenty (20) days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, the party receiving the notice shall thereafter be barred from putting in issue the existence or validity of this section of this Agreement to arbitrate or the failure to comply herewith. Application to arbitrate, pursuant to RCW 7.04.030, shall be made by motion to the court. When the matter is placed into arbitration on the motion of either party, the court action shall be stayed.

The arbitration shall proceed pursuant to the rules established in RCW Chapter 7.06 entitled "MANDATORY ARBITRATION OF CIVIL ACTIONS", except as expressly modified in this section. One arbitrator shall be selected from the court's mandatory arbitration list in the same manner as established in RCW Chapter 7.06, and the local rules, dealing with mandatory arbitration. The taking of depositions, the issuance of Interrogatories, Requests for Production, and Requests for Admission, shall be specifically authorized as provided by law as if this said case were proceeding as a civil case in Superior Court.

The arbitrator shall issue his or her decision in the same manner prescribed in RCW Chapter 7.06 within twenty (20) days from the close of the arbitration hearing.

A party may appeal the decision of the arbitrator pursuant to RCW 7.06.050: within twenty (20) days after the filing of the arbitration award, the aggrieved party to perfect its appeal rights must file with the superior court clerk a written notice of appeal and request for a trial de novo in superior court on all issues of law and fact. Provided, however, pursuant to RCW 7.06.060, and local court rules, if the aggrieved party filing the appeal does not improve its position in superior court, that party shall have assessed against it, the other party's reasonable attorney fees and costs incurred from the date the notice of appeal was filed.

The party who substantially prevails in any such arbitration action and/or court action shall be entitled to receive its reasonable attorney fees and costs of suit from the losing party.

15. **No Third-Party Rights:** This Agreement shall not create any rights or benefits to parties other than the District and Consultant.

16. **Execution in Counterparts:** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

17. **Authorization of Each Party:** Each party hereby represents to the other that it has duly considered and entered into this Agreement according to Washington Law through its duly designated representative(s). The District approved execution of this Agreement at its regularly scheduled commission meeting held on the \_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, and Consultant represents that \_\_\_\_\_ is duly authorized to sign this Agreement on its behalf and bind it to all terms and provisions hereof.

**IN WITNESS WHEREOF,** we the undersigned have executed this Agreement to evidence our consent to the terms hereof as of the date appearing hereafter.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

SILVERDALE WATER DISTRICT

CONSULTANT

by: \_\_\_\_\_

by: \_\_\_\_\_

District Representative, Title

Representative, Title

Its Duly Authorized Representative

Its Duly Authorized Representative