



## NAPA SANITATION DISTRICT

### PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)

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THIS AGREEMENT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between KNN Public Finance, LLC hereinafter referred to as "CONSULTANT," and NAPA SANITATION DISTRICT, a California Special District, Napa County, California, hereinafter referred to as "DISTRICT," as follows:

1. **Notification Information:**

**NAPA SANITATION DISTRICT**

- Cyndi Bolden
- 1515 Soscol Ferry Road
- Napa, CA 94558
- T: 707-258-6000
- (Fax) 707.258.6048

**KNN PUBLIC FINANCE, LLC**

**ATTN: David Leifer**

- **2054 University Avenue, Suite 300**
- **Berkeley, CA 94704**
- **510-839-8200**
- **Type of Services Provided: Financial Adnisors**

2. **Authorizations for Professional Services:** Authorization for any and all services under this Agreement shall be solely by written Task Order, executed by the General Manager or Purchasing Agent.

3. **Project:** The project name, number, and location will be defined by future Task Orders.

4. **Scope of Services:** Miscellaneous professional services as described in Task Orders to be issued by the DISTRICT General Manager or Purchasing Agent, and if accepted, performed by the CONSULTANT. The Task Order Form, attached hereto as Exhibit "A", shall be utilized by CONSULTANT and when completed, shall include Task Order number (issued by DISTRICT), scope of services, time for completion, list of submittals with milestone dates, and a Total Not-to-Exceed Fee amount. The CONSULTANT shall prepare as part of each Task Order a detailed task-cost spreadsheet detailing the major and secondary tasks to be accomplished along with the associated labor classification hours, fees, and other direct costs.

For each Task Order, CONSULTANT shall list the Project Manager, sub-consultants to be utilized, and any other pertinent information. CONSULTANT shall attend Board meetings on an as-needed basis, as directed by DISTRICT.



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5. **Independent Contractor:** The CONSULTANT is an independent Contractor, and shall not be considered an employee of DISTRICT. Notwithstanding any other DISTRICT, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by DISTRICT, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of DISTRICT and entitlement to any contribution to be paid by DISTRICT for employer contributions and/or employee contributions for PERS benefits.
6. **Insurance:** CONSULTANT shall, at no cost to DISTRICT, obtain and maintain insurance during the term of this Agreement. CONSULTANT shall furnish evidence of such coverage, naming DISTRICT, its Directors, officers, agents, employees and designated volunteers as additional insured, as stated in Exhibit "C."
7. **Indemnification:**
  - a. Non-Design Professional Indemnity Requirement. To the extent any of the services provided under this Agreement do not constitute "design professional" services and are therefore not subject to Section 2782.8 of the California Civil Code, CONSULTANT shall indemnify, defend with counsel selected by the DISTRICT, and hold harmless the DISTRICT and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, recklessness or negligent acts or omissions of CONSULTANT or its employees, subcontractors, or agents or by acts for which they could be held strictly liable. The foregoing obligation of CONSULTANT shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the DISTRICT or its officers, employees, agents, or volunteers and (2) the actions of CONSULTANT or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law



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- b. Design Professional Indemnity Requirement. To the extent the services provided pursuant to this Agreement are determined to be "design professional" services subject to Section 2782.8 of the California Civil Code, CONSULTANT's duties to indemnify, defend and hold harmless the DISTRICT shall be limited. In such cases, CONSULTANT shall only, to the fullest extent allowed by law, with respect to all design professional services performed in connection with this Agreement, defend with counsel acceptable to DISTRICT, indemnify, and hold DISTRICT, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT ("Claims"). CONSULTANT will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the DISTRICT shall not apply to the extent that such Liability is caused by the sole negligence, active negligence, or willful misconduct of the DISTRICT.
- c. General Indemnity Requirements. Regardless of what type of indemnity obligation is found to apply, with respect to third party claims against the CONSULTANT, the CONSULTANT waives any and all rights of any type of express or implied indemnity against the Indemnitees.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the DISTRICT from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of CONSULTANT to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

8. **Compensation:** DISTRICT agrees to pay CONSULTANT by (a) on a time and materials, not-to-exceed fee basis pursuant to the CONSULTANT'S Fee Schedule, attached hereto as Exhibit "B" and made a part hereof; or (b) by lump sum payment basis, as agreed upon and shown in each approved Task Order. Total compensation paid for a given Task Order shall not exceed the not-to-exceed value authorized in said Task Order without the written approval of the General Manager or Purchasing Agent.

CONSULTANT'S statement of charges shall be submitted monthly as the work progresses. Each invoice shall include reference to the Task Order Number and Project name, description of the services rendered and referenced to the task number(s) in the task-cost spreadsheet; list of labor classifications employed during the invoiced pay period, including labor and other direct costs; estimate of percent project complete based on actual completion of project milestones and





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other project management criteria as opposed to amount of budget spent; and listing of total authorized fee amount, current invoice amount, amount invoiced to date, and fee balance remaining. Payment will be made within thirty (30) days after receipt of such statement.

9. **Additional Services:** In no event shall CONSULTANT be entitled to compensation for additional services associated with a Task Order unless a written authorization or change order describing the work and payment terms has been executed by General Manager or Purchasing Agent prior to the commencement of the work. In the event that no rate or charge is listed for a particular type of extra work, CONSULTANT shall be paid for the extra work at the rate to be mutually agreed on prior to commencement of the extra work.
10. **Time for Completion:** Unless the time is extended in writing by DISTRICT General Manager or Purchasing Agent, CONSULTANT shall complete all services covered by this Agreement no later than the Completion Date specified in individual Task Order, but in no case, later than the termination date specified, unless an extension to this agreement is executed by the General Manager or Purchasing Agent.
11. **Documentation:** CONSULTANT shall furnish to DISTRICT project status reports, task specific deliverables and other information as specified in the Task Order and associated change orders.
12. **Ownership of Documents:** All materials and records of a finished nature, such as final plans, specifications, and reports prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of DISTRICT. All materials of a preliminary nature, such as, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to DISTRICT at no additional charge and without restriction or limitation on their use. However, reuse of such materials by DISTRICT on any other project shall be at sole risk of DISTRICT and without liability of CONSULTANT.
13. **Record Retention:** Except for materials and records delivered to DISTRICT, CONSULTANT shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least three years after CONSULTANT'S receipt of the final payment under this Agreement. Upon request by DISTRICT, CONSULTANT shall make such materials and records available to DISTRICT at no additional charge and without restriction or limitation on their use. CONSULTANT shall also make such materials and records available to authorized representatives of the state and federal governments at no additional charge.



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14. **Termination by District:** At its option, DISTRICT shall have the right to terminate this Agreement at any time upon 30 days written notice to CONSULTANT, whether or not CONSULTANT is then in default. Upon such termination, CONSULTANT shall, without delay, deliver to DISTRICT all materials and records prepared or obtained in the performance of this Agreement, and shall be paid, without duplication, all amounts due for the materials, equipment, and services rendered up to the date of termination.
15. **Abandonment by Consultant:** In the event that CONSULTANT ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, CONSULTANT shall, without delay, deliver to DISTRICT all materials and records prepared and obtained in the performance of this Agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which DISTRICT incurs as a result of such cessation or abandonment.
16. **Dispute Resolution:** The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this Agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator mutually selected by the parties. The mediator shall hear the matter and provide an informal non-binding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system.
17. **Compliance with Laws:** CONSULTANT and any of its subconsultants and subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. CONSULTANT's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
18. **Patents and Copyrights:** The issuance of a patent or copyright to CONSULTANT or any other person shall not affect DISTRICT'S rights to the materials and records prepared or obtained in the performance of this Agreement. DISTRICT reserves a license to use such materials and records without restriction or limitation, and DISTRICT shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by DISTRICT shall continue for a period of fifty years from the date of execution of this Agreement, unless extended by operation of law or otherwise.





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19. **Assignment and Subcontracts:** This Agreement shall not be assignable or transferable in whole or in part by CONSULTANT, whether voluntarily, by operation of law or otherwise; provided, however, that CONSULTANT shall have the right to subcontract that portion of the services for which CONSULTANT does not have the facilities to perform so long as CONSULTANT notifies DISTRICT of such subcontracting prior to execution of this Agreement. Any other purported assignment, transfer, or subcontracting shall be void.
20. **Markup Allowances:** The DISTRICT recognizes the risk and liability borne by the CONSULTANT when accomplishing a portion of the work through Sub-consultants. In recognition of this risk, DISTRICT will allow the CONSULTANT a markup on Sub-consultant costs. This markup shall not exceed 5%.
21. **Heirs, Successors and Assigns:** Except as provided otherwise in Section 18 above, that this Agreement shall inure to the benefit of and bind the heirs, successors, executors, personal representatives, and assigns of the parties.
22. **Consultant Entitled to Rely:** CONSULTANT shall be entitled to rely upon the accuracy of data and information provided by DISTRICT or others known by DISTRICT without independent review or evaluation.
23. **Indemnity/Additional Insured Requirements for Construction Contract Documents:**
- For any construction contract documents prepared by CONSULTANT for DISTRICT, CONSULTANT shall include the following items:
- DISTRICT requires that any Construction Contractor performing work in connection with the project for which CONSULTANT is providing professional services, hold harmless, indemnify and defend DISTRICT, CONSULTANT, their Consultants, and each of their directors, officers, agents, employees, and designated volunteers from any and all liability, claims, losses, damages and costs, including attorney's fees arising out of or alleged to arise from the Construction Contractor's performance of the work described in the construction contract documents, but not including liability that may be due to the sole negligence of the DISTRICT, CONSULTANT, their consultants, or their directors, officers, agents, and employees.
  - DISTRICT requires Construction Contractor(s) to provide Workers' Compensation insurance in accordance with statutory requirements and Employers' Liability insurance with the limits of not less than \$1,000,000.00. The policy shall be endorsed to provide that the insurer waives any right of subrogation it may acquire against DISTRICT, its directors, officers, agents, and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured.
  - The Construction Contractor will be required to provide Commercial General Liability insurance, including Completed Operations and Contractual Liability insurance, with the



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latter coverage sufficient to insure the Construction Contractor's indemnity, as above required; such insurance shall include DISTRICT, CONSULTANT, their consultants, and each of their directors, officers, agents, employees, and designated volunteers as additional insureds.

24. **Consultant's Opinion of Probable Construction Costs:** Any Opinion of the Construction Cost prepared by CONSULTANT represents his judgment as a design professional and is supplied for the general guidance of DISTRICT. Since CONSULTANT has no control over the cost of labor and material, or over competitive bidding or market conditions, CONSULTANT does not guarantee the accuracy of such opinions as compared to Construction Contractor bids or the actual cost to DISTRICT.
24. **Asbestos and/or Hazardous Materials:** In providing its services, CONSULTANT shall not be responsible for, handling, containment, abatement, or any other respect, for any asbestos or hazardous material if such is present in connection with the project. In the event that DISTRICT becomes aware of the presence of asbestos or hazardous material at the jobsite, DISTRICT shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify CONSULTANT, who shall then be entitled to cease any of its services that may be affected by such presence, without any liability to CONSULTANT arising therefrom.
25. **Construction Contractor Responsibility for Jobsite:** For construction contract documents prepared by CONSULTANT for DISTRICT, CONSULTANT shall include the following:
- a. "The Construction Contractor shall assume full responsibility for job site conditions during the process of construction of the project, including safety of all persons and property.
  - b. The DISTRICT will provide CONSULTANT with the "District Safety Requirements" package that is to be incorporated into all construction contract documents prepared by CONSULTANT. The safety package specifies documentation to be submitted by the bidders, and supplemental submittals to be furnished by the successful Construction Contractor(s).



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26. **Term of Agreement:** The term of this Agreement is from \_\_\_\_\_ 20\_\_\_\_  
through June 30, 2023.

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

John Bakker, Esq.

**APPROVED:**

**"DISTRICT"**  
NAPA SANITATION DISTRICT

**"CONSULTANT"**  
KNN PUBLIC FINANCE, LLC

By: \_\_\_\_\_

By: David Liff

Title: \_\_\_\_\_

Title: Sr. Managing Director

Date: \_\_\_\_\_

Date: 11-12-2020