

JULIE AVNIT, FACILITIES CONSULTANT

CONTRACT AGREEMENT

This Contract Agreement ("**Agreement**") dated 9/9/2020 ("**Effective Date**") is by and between Julie Avnit, Facilities Consultant, ("**Consultant**") and Vista del Mar Union School District ("**District**").

SCOPE OF SERVICES

Development of Facility and Financial Hardship applications for the Wastewater Treatment Plant, including:

- Developing necessary documentation and data
- Coordinating with engineering consultants for required supporting reports
- Working with appropriate governmental agencies for required concurrence reports
- Preparation of final submittal package to OPSC
- Preparation of responses to OPSC during their review

District shall be responsible for providing access to the sources mentioned above in order for Consultant to complete these tasks. Consultant is not responsible for the accuracy of the data as found in the district documentation.

1. Fees. In consideration for the Services, District agrees to pay Consultant the fees set forth on Exhibit A ("**Fees**"). The fees will commence on the Effective Date. Consultant shall invoice the District at the end of each month based on actual time spent during that month. Payment is due within 30 days of receipt of invoice. Past due invoices shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest amount allowed by law, whichever is lower, until the invoice and such interest is paid in full. Fees for any additional services will be mutually agreed upon by both parties and defined on Exhibit A as additional tasks/services.

2. Taxes. District shall be responsible for and pay any and all applicable use, sales or other taxes on or related to the Services, whether or not pre-identified by Consultant, except any taxes on Consultant's income.

3. Indemnity. District agrees to defend, indemnify and hold Consultant, and its subsidiaries, affiliates, officers, agents, partners, and employees (collectively, the "**Consultant Indemnitees**"), harmless from and against any damages, costs, or expenses in any form (including attorneys' fees) claims incurred by or assessed against the Consultant Indemnitees arising out of or in any way related to the District Content, District's violation of this Agreement, or District's violation of any laws or the rights of any third party. Consultant agrees to defend, indemnify and hold District, and its subsidiaries, affiliates, officers, agents, partners, and employees (collectively, the "**District Indemnitees**"), harmless from and against any damages, costs, or expenses in any form (including attorneys' fees) claims incurred by or assessed against the District Indemnitees arising out of or in any way related to the Consultant's violation of this Agreement, or Consultant's violation of any laws or the rights of any third party.

4. Termination.

4.1 For Convenience. Either party may terminate this Agreement upon written notice given at least thirty (30) days prior to the termination of the Initial Term or any Renewal Term and effective upon the conclusion of such term.

4.2 For Insolvency. In the event either party: (i) becomes insolvent, (ii) voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it (which petition is not discharged within thirty (30) days after filing) or (iii) is placed in a receivership or reorganization proceeding or is placed in a trusteeship involving an insolvency, the other party may terminate this Agreement upon written notice to the defaulting party.

4.3 For Curable Breach. In the event of any material breach of any term or provision of this Agreement, by either party, the non-breaching party may send a written notice explaining the nature of the breach to the breaching party. If the breach is not cured within sixty (60) days after the giving of the notice of breach, the non-breaching party may terminate this Agreement upon written notice to the breaching party. Notwithstanding the foregoing, excepting any payment obligations, if the cure would reasonably take greater than sixty (60) days to complete, neither party shall be considered in breach of this Agreement if it immediately commences the cure and diligently pursues such cure to completion within a reasonable time thereafter.

4.4 Effect of Termination. District and Consultant further acknowledges and agrees that upon termination of this Agreement for any reason, Consultant will provide one full electronic copy of all data files to the District. Further, District agrees that Consultant shall not be liable to District or any third party for reliance on any District Content.

5. Consultant Proprietary Rights. Consultant has, shall have and shall retain all rights, title and interest, including, without limitation, all intellectual property rights, (collectively, "**Rights**") in and to the Service and any and all products, software, documents, and other materials related thereto. District acknowledges and agrees that the Service and any software used in connection therewith contains proprietary and confidential information of Consultant that is protected by applicable intellectual property and other laws.

6. Warranty Disclaimer. Consultant makes no representation or warranty that the service will be error-free or without interruption, nor does Consultant represent or warrant any success, result or outcome from District's use of the service. District expressly agrees that use of the service is at District's sole risk. Neither Consultant nor any of its employees or agents warrant the accuracy of the results to be obtained from use of the service.

7. Limitation of Liability.

7.1 Neither Consultant nor any of its employees or agents shall be liable for any damages arising out of (A) any accessing, altering, or destroying of data; (B) damages from the inaccuracy of the service; or (C) lost data or opportunities.

7.2 In no event shall Consultant be liable to District, in the aggregate, in an amount in excess of all of the fees actually received by Consultant from District under this agreement during the twelve (12) month period immediately preceding the claim. Any claim arising out of or related to this agreement or the service shall be filed within one (1) year of the

date the party asserting the claim knew, or reasonably should have known, of the existence of the claim against the other party.

8. General Terms.

8.1 Waiver or Delay. Any waiver of any kind or character by either party of a breach of this Agreement must be in writing, shall be effective only to the extent set forth in such writing, and shall not operate or be construed as a waiver of any subsequent breach by the other party. No failure of either party to insist upon strict compliance by the other with any obligation or provision hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms of this Agreement. Nor shall either party's delay or omission in exercising any right, power or remedy upon a breach or default by the other party impair any such right, power or remedy. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

8.2 Force Majeure. If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions, appropriation or other causes beyond the control of a party hereto, either party is unable to perform in whole or in part its obligations as set forth in this Agreement (other than the payment of fees), then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party. Neither party shall be liable for any loss, injury, delay or damages suffered or incurred by the other party due to the above causes, to the extent such obligations are excused thereby.

8.3 Survival of Obligations. The parties agree that any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

8.4 Severability. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected or impaired thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law or applicable court decisions.

8.5 Governing Law. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of California as applied to transactions taking place wholly within California between California residents without reference to that state's choice of law provisions. The Superior Court of Sacramento County and/or the United States District Court for the Northern District of California shall have jurisdiction and venue over all controversies in connection herewith. The parties agree that this is a contract for services and not for goods.

8.6 Assignment and Successor Entities. Neither party shall directly or indirectly sell, transfer, assign, convey, pledge, encumber or otherwise dispose of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably

withheld or delayed. Notwithstanding the foregoing, Consultant may, without the prior written consent of the District, assign or transfer this Agreement to any entity as part of a corporate reorganization, consolidation, merger or sale of assets or stock provided the entity assumes all of Consultant's obligations hereunder.

8.7 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

8.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.9 Entire Agreement. This Agreement is the complete, entire, final and exclusive statement of the terms and conditions of the agreement between the parties. This Agreement supersedes, and the terms of this Agreement govern, any prior or collateral agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified except in a writing executed by duly authorized representatives of the parties.

8.10 Exhibits. All exhibits to this Agreement to which reference is made in this Agreement are hereby incorporated, in full, into this Agreement as an integral part of this Agreement.

8.11 Signatories. Each signatory represents and warrants that it has the authority to bind the party for whom it is signing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

Julie Avnit, Facilities Consultant

Vista del Mar Union School District

By:

Julie Avnit

Title: Owner

By: _____

Title: _____