

## SERVICES CONTRACT

**1. The Parties.** The Parties to this Contract are:

The TOMALES VILLAGE COMMUNITY SERVICES DISTRICT (the "District"), a California Special District, and Jose L. Ortiz Consulting ("Contractor").

**2. Term.** The Effective Date of this Contract is December 22, 2015. It shall remain in effect according to the Addendum, unless terminated earlier in accordance with the provisions set forth below in Sections 6 and 7 below.

**3. Additional Terms.** Additional terms and provisions of this Contract, including the description of the services to be provided and the agreement concerning compensation and reimbursement of expenses, are set forth in the Addendum to Services Contract attached hereto and incorporated into this Contract by this reference.

**4. Performance Monitoring.** In order to monitor Contractor's performance under this Contract: (a) Contractor shall submit reports requested by the District to disclose compliance information; (b) the District shall have the right to inspect Contractor's documents, activities and circumstances as appropriate to monitor compliance; and (c) the District will conduct a formal evaluation of Contractor's performance annually, measuring criteria set by the District's Board of Directors.

**5. Events of Default.** The following constitute events of default:

**A.** Any material misrepresentation made by Contractor to the District, whether negligent or willful, and whether in the inducement or in the performance of the Contract.

**B.** Contractor's material failure to perform any of its obligations under the Contract including the following: (a) failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services; (b) failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory; (c) discontinuance of the Services for reasons within Contractor's reasonable control; (d) failure to comply with the District's terms and conditions as set forth in the RFP; (e) failure to comply with any other material term of the Contract.

**C.** (a) The filing by Contractor of a petition or proceeding under applicable state or federal bankruptcy or solvency laws or statutes, which petition or proceeding has not been dismissed within thirty (30) days after the date of its filing; (b) the initiation against Contractor by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing; or (c) the appointment of a receiver for Contractor with respect to all or a portion of its assets.

**D.** Any change in ownership or control of Contractor without the prior written approval of the District, which approval the District will not unreasonably withhold.

**E.** Failure to comply with the provisions in the Contract requiring compliance with all laws in the performance of the Contract.

**6. Remedies.** Upon the occurrence of any event of default the District shall have the right to declare Contractor in default. The District may in its sole discretion give Contractor an opportunity to cure the default within thirty (30) days. The District will give Contractor written notice of the default, after which the District may invoke any or all of the following remedies:

**A.** The right to take over and complete the Services, or any part of them, at Contractor's expense, and bill Contractor for the cost of the Services. Contractor must pay the difference between the total amount of the bill and the amount the District would have paid Contractor under the terms of this Contract for those Services;

**B.** The right to terminate the Contract as to any or all of the Services yet to be performed;

**C.** The right of specific performance, an injunction, or any other appropriate equitable remedy;

**D.** The right to money damages;

**E.** The right to withhold all or any part of Contractor's compensation under this Contract.

**7. A. Termination for Cause.** The District reserves the right to terminate this Contract in the event Contractor breaches or violates any term or terms of the Contract. In the event of such termination for cause, the District shall pay for services performed and accepted by the District that are in compliance with the requirements of this Contract prior to the date of termination.

**B. Termination for Convenience.** The District reserves the right to terminate this Contract without showing cause upon giving sixty (60) days written notice to the Contractor. The District shall only pay for services performed prior to the effective date of termination.

**8. Ownership of District Data.** Any and all data or confidential information that may be provided to or made available to Contractor ("District Data") is and shall remain the property of the District. Contractor and its employees, agents and subcontractors and their employees and agents shall not: (a) use the District Data other than in connection with the performance of the Services; (b) disclose, sell, assign, lease or otherwise provide the District Data to any third parties; or (c) commercially exploit the District Data.

**9. Warranties and Representations.** In connection with signing and carrying out the Contract, Contractor represents and warrants to the District that: (a) Contractor is appropriately licensed under California law to perform the Services specified in this Contract and will perform no Service for which Contractor is not appropriately licensed; and (b) Contractor is competent to perform the Services and will provide experienced and competent personnel to carry out the Services in a timely fashion.

**10. Notices.** Notices permitted or required under this Contract shall be sent: (a) to Contractor by delivery to the Contractor's primary contact person identified in the attached Addendum to Services Contract; (b) to the District by delivery to Tomales Village Community Services District, PO Box 303, Tomales, CA 94971; or (c) to such other address that the party may designate by notice to the other which is given in

accordance with the terms of this paragraph. Notice shall be deemed to have been given five (5) days after being sent by Registered or Certified Mail, postage prepaid, return receipt requested.

**11. Insurance.** Contractor is required to procure and maintain insurance as described below. Contractor will provide certificates of insurance showing that it has the required policies. Each company providing insurance coverage shall be authorized to do business in the State of California and shall have a Best's rating of no less than A. The insurance coverage shall be primary insurance as respects the District, its officers, officials, directors, employees and volunteers. The insurance shall require sixty (60) days prior written notice to be given to the District in the event coverage is substantially changed, suspended, voided, cancelled, or not renewed. Contractor agrees that the insurers shall waive all rights of subrogation against the District. Contractor expressly understands and agrees that any insurance protection furnished by Contractor hereunder shall in no way limit its responsibility to indemnify the District and hold it harmless under the provisions of this Contract.

**A.** Workers Compensation, at the statutory amounts in compliance with state laws.

**B.** Commercial General Liability, with limits of liability not less than \$1,000,000 per occurrence.

**C.** Automobile Liability, with limits of liability not less than \$1,000,000 per occurrence.

**D.** Professional Liability, with limits of liability not less than \$1,000,000 per occurrence.

**E.** Operations and Maintenance contractors shall include a pollution endorsement in their policies.

**12. Disputes.** This Contract shall be governed by the laws of the State of California. The Parties agree that any dispute between them arising out of or relating to this Contract shall be resolved by binding arbitration before one arbitrator under the commercial rules of the American Arbitration Association. The parties shall attempt to agree on the arbitrator. If they fail to reach agreement, the arbitrator shall be appointed by the Presiding Judge of the Superior Court of Marin County, California. Unless the parties agree otherwise, the arbitration shall be held in Tomales, California. The prevailing party in any such arbitration or other legal action shall be entitled to recover its reasonable attorney's fees and costs.

**13. Indemnification.** Contractor will defend, indemnify, keep and hold harmless the District, its directors, officers, representatives, agents, volunteers and employees, from and against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorneys' fees, for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to property which may arise or which may be alleged to have arisen out of: or in connection with the performance this Contract. This obligation to indemnify shall survive the termination or expiration of this Contract.

**14. Independent Contractor.** This Contract is not intended to and will not constitute, create, or give rise to a joint venture, partnership, or any other business association or organization of any kind between Contractor and the District. The rights and the obligations of the Parties are only those expressly set forth in this Contract. Contractor shall perform under the Contract as an independent contractor and not as a representative, employee, agent, or partner of the District.

**15. Compliance with Laws.** Contractor shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders.

**16. Modifications and Amendments.** No changes, amendments or modifications of the Contract, or any part hereof, shall be valid unless in writing and signed by both Parties.

**17. Assigns.** All of the terms and conditions of the Contract are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. Neither Contractor nor the District may assign or transfer all or any portion of this Contract without the prior written consent of the other Party.

**18. Cooperation.** If this Contract is terminated for any reason, or if it expires on its own terms, Contractor agrees to: (a) make every effort to assure an orderly transition to another provider of the Services and an orderly demobilization of its own operations in connection with the Services; (b) promptly return all District property, including District Data (as defined in Section 8 above), files and documents; and (c) will otherwise comply with the reasonable requests of the District in connection with the termination or expiration.

**19. Waiver.** The making or failure to make any payment, take any action or waive any right under this Contract shall not be deemed to be an amendment of this Contract nor a consent to such action or failure to act, or to any other action or failure to act. No waiver by either Party of a breach of any provision of this Contract shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right or remedy under this Contract.

**20. Severability.** In the event that any provision of this Contract is deemed to be invalid by reason of the operation of any law or by reason of an interpretation by any court or other governmental body, this Contract shall be construed as not containing that provision and all other provisions of this Contract shall remain in full force and effect.

**21. Non-Liability of Public Officials.** Contractor will not charge any director, officer, representative, volunteer, official, employee or agent of the District personally with any liability or expenses of defense or hold any director, officer, representative, volunteer, official, employee or agent of the District personally liable to it under any term or provision of the Contract or because of the District's execution, attempted execution or breach of the Contract.

**22. Confidentiality.** Contractor acknowledges that it will be entrusted with or have access to valuable and confidential information, including documents, data and records of the District. With respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. If Contractor is presented with a subpoena or request concerning any such information which may be in Contractor's possession by reason of the Contract, Contractor shall immediately give notice to the District so that the District will have the opportunity to contest such subpoena or request before the documents, data or records are submitted to a court or third party. Contractor is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

**23. Entire Contract.** This Contract, together with the attached Addendum to Services Contract and the Request for Proposal attached to the Addendum, constitutes the entire agreement and understanding between the parties related to its subject matter. All prior or contemporaneous conversations, negotiations, agreements and representations with respect to the subject matter hereof are superseded by the written terms of this Contract. If there is a conflict between the language in this Contract and language contained in the RFP, then the language in this Contract shall govern.

**24. Authority.** The persons signing this Contract certify that they have the power and authority to enter into and execute this Contract on behalf of the contracting Parties.

**The Parties hereby agree** to the terms and provisions set forth in this Services Contract as of the Effective Date set forth above, and agree to be bound by the terms and provisions, including those set forth in the attached Addendum to Services Contract.

TOMALES VILLAGE  
COMMUNITY SERVICES DISTRICT (Contractor)

By: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

**ADDENDUM TO SERVICES CONTRACT**

**December 9, 2015**

**A. Contractor's Primary Contact person.**

Jose L. Ortiz, P.E.  
Name

574 Pintail Court  
Street Address

Vacaville, CA 95688-2650  
City, State and ZIP Code

(707) 330-3542  
Telephone Number

(707) 452-0944  
Alternate Telephone Number

**B. Services to be Provided.**

The Services to be provided under this Contract are generally summarized in the attached Scope of Work and described in detail in the attached Request for Proposal ("RFP") which is hereby incorporated into this Services Contract by this reference.

In the event that Contractor is requested to provide services that are beyond the normal scope of work as described in the RFP, those services will be compensated as set forth in the "Non-Standard Duties" section of the RFP.

**C. Term.**

**C.1. 90-Day Kick-off Period**

This Contract contains a not-to-exceed 90-day kick-off period to lay a foundation for how the overall Services will be provided to the District. During this time the Contractor will review existing procedures, gather and review data and background reports, existing contracts and agreements, and regulatory requirements and self-monitoring reporting procedures. In addition to reviewing the District's records, etc., the Contractor will provide routine general management services.

At the Board meeting near the end of the 90-day period, the Contractor will report to the Board his findings and gain consensus on his recommendations for providing general management services.

Contractor agrees to perform the agreed scope of services during the 90-day kick-off period for a not-to-exceed limit of \$12,500.00.

C.2. 9-Month Period after Kick-Off

Time per month and scope of work to be reviewed and adjusted accordingly after the 90-Day Kick-Off Period and new Term will be set for the remainder of the first year (9 months) of this Services Contract.

C.3. Years 2 Through 5

The General Manager RFP states that the contract is from 3-5 years. This Services Contract is for the first year. At its discretion, the District may extend the contract annually for a total contract term of not more than five (5) years.

**D. Compensation and Reimbursement of Expenses.**

Jose L. Ortiz's hourly rate is \$125.00

Travel from Vacaville to Tomales will be billed at 50% of the hourly rate, \$62.50.

Miscellaneous direct costs and reimbursable expenses:

- Mileage will be charged at \$0.575 per mile (or current Federal rate)
- Project-related expenses will be billed at cost plus 10%. All project-related expenses must be pre-approved by the Tomales Valley Community Services District

1. NON-SCHEDULED WORK

Non-Scheduled Work will be billed at the Contractor's hourly rate. Non-Scheduled Work will be invoiced at the end of the month in which the work was performed.

2. DISTRICT INITIATED WORK

When authorized by the District, Contractor may perform work outside the scope of services as Non-Scheduled Work.

3. EMERGENCIES

In the event of an emergency situation, Contractor shall make every reasonable effort to contact the District before incurring costs for Non-Scheduled Work.

4. PROPOSED BUDGET FOR YEAR 1:

| Task                            | Hours (Annually) | Rate     | Total       |
|---------------------------------|------------------|----------|-------------|
| 1. General Management Functions | 100              | \$125.00 | \$12,500.00 |
|                                 |                  |          |             |
| 2. Administrative Support       | 120              | \$125.00 | \$15,000.00 |
|                                 |                  |          |             |

|  |             |                 |                    |
|--|-------------|-----------------|--------------------|
| 3. Sewer System Administration                                     | 80          | \$125.00        | \$10,000.00        |
|  |             |                 |                    |
| 4. Direct costs or reimbursable expenses (Mileage, printing, etc.) |             | L.S.            | \$1,000            |
|  |             |                 |                    |
| <b>Total</b>   | <b>300*</b> | <b>\$125.00</b> | <b>\$38,500.00</b> |

\*It is anticipated that approximately 100 hours of work per month will be required during the 90-Day Kick-Off Period of this contract to assess the District's needs. In the 9-months after the kick-off period, it is anticipated that 20-24 hours of work per month will be required to conduct routine general management functions listed in the scope of work.

Contractor agrees to perform the agreed scope of services for a not-to-exceed limit of \$40,000.00 for the first year, pending a review and approval of the Contractor's recommendations after 90-days.

## Scope of Work

Services to be provided for this contract are in 3 primary areas and include:

1. Routine services to conduct the required general management functions. These services include:
  - Interface with community members, conduct surveys, and assimilate relevant information; receive complaints and forward to the Board.
  - As directed by the Board, coordinate bid proposals and contracts for regular operations work to be performed.
  - Adhere to all local and state laws and advise Board on changes to said laws and address compliance issues.
  - Submit regulatory reports to local and state agencies as required.
  - Coordinate with District Administrative Support Section and with Finance Section staff.
2. Provide Administrative support, including:
  - Gather backup information for ongoing Board discussions of the annual budget process.
  - Adhere to TVCSD Reserve Policy goals and objectives and assure that required funds are being added regularly and that use of funds follows TVCSD CIP protocols.
  - Assist with documentation of policies; maintain historical and reference documents.
3. Sewer System Administration, including:
  - Oversee contract with sewer operations and maintenance contractor, insure performance standards are being met; oversee annual review of performance contract.
  - Devise and maintain work order system. Maintain record book.
  - Coordinate all new sewer hook-ups and insure they are all inspected and meet District standards according to ordinances and specifications.
  - Maintain maps of all sewer components and new hook-ups and annexations.
  - Assure the sewer maintenance schedule is adhered to and effective at all times.
  - Oversee all capital improvement projects as directed by the Board and Standing Committees.
  - Coordinate Sewer Plant Tours.

**ADDENDUM NO. 2 TO SERVICES CONTRACT**

**March 9, 2016**

**A. Contractor's Primary Contact person.**

Jose L. Ortiz, P.E.  
Name

574 Pintail Court  
Street Address

Vacaville, CA 95688-2650  
City, State and ZIP Code

(707) 330-3542  
Telephone Number

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**B. Services to be Provided.**

The Services to be provided under this Contract are generally summarized in the attached Scope of Work and described in detail in the attached Request for Proposal ("RFP") which is hereby incorporated into this Services Contract by this reference.

In the event that Contractor is requested to provide services that are beyond the normal scope of work as described in the RFP, those services will be compensated as set forth in the "Non-Standard Duties" section of the RFP.

**C. Term.**

**C.1. 90-Day Kick-off Period**

This Contract contains a not-to-exceed 90-day kick-off period to lay a foundation for how the overall Services will be provided to the District. During this time the Contractor reviewed existing procedures, gathered and reviewed data and background reports, existing contracts and agreements, and regulatory requirements and self-monitoring reporting procedures. In addition to reviewing the District's records, etc., the Contractor provided routine general management services.

Contractor agreed to perform the scope of services during the 90-day kick-off period for a not-to-exceed limit of \$12,500.00.

At the March 9, 2016 Board meeting, the Contractor reported to the Board his findings and his recommendations for providing general management services for the 9-month period following the 90-day kick-off period. The terms for the 9-month period are found in C.2.

## C.2. 9-Month Period after Kick-Off

Services to be provided under this contract for the remainder of the first year (9 months) are in 3 primary areas and include general management functions, administrative support, and sewer system administration. Typical tasks and duties can be found in the Scope of Work.

It is anticipated that approximately 32 hours of work per month will be required to conduct routine general management functions listed in the Scope of Work. The revised budget for year 1, which includes the 90-day kick-off period and the following 9 months, is shown in Section D.4.

Contractor agrees to perform the agreed scope of services during the 9-month period for a not-to-exceed limit of \$37,500.00.

## C.3. Years 2 Through 5

The General Manager RFP states that the contract is from 3-5 years. This Services Contract is for the first year. At its discretion, the District may extend the contract annually for a total contract term of not more than five (5) years.

## **D. Compensation and Reimbursement of Expenses.**

Jose L. Ortiz's hourly rate is \$125.00

Travel from Vacaville to Tomales will be billed at 50% of the hourly rate, \$62.50.

Miscellaneous direct costs and reimbursable expenses:

- Mileage will be charged at \$0.575 per mile (or current Federal rate)
- Project-related expenses will be billed at cost plus 10%. All project-related expenses must be pre-approved by the Tomales Valley Community Services District

### 1. NON-SCHEDULED WORK

Non-Scheduled Work will be billed at the Contractor's hourly rate. Non-Scheduled Work will be invoiced at the end of the month in which the work was performed.

### 2. DISTRICT INITIATED WORK

When authorized by the District, Contractor may perform work outside the scope of services as Non-Scheduled Work.

### 3. EMERGENCIES

In the event of an emergency situation, Contractor shall make every reasonable effort to contact the District before incurring costs for Non-Scheduled Work.

4. PROPOSED BUDGET FOR YEAR 1:

| Task   | Hours<br>(Annually) | Rate            | Total              |
|--|---------------------|-----------------|--------------------|
| 1. General Management Functions                                    | 130                 | \$125.00        | \$16,250.00        |
|  |                     |                 |                    |
| 2. Administrative Support  | 150                 | \$125.00        | \$18,750.00        |
|  |                     |                 |                    |
| 3. Sewer System Administration                                     | 110                 | \$125.00        | \$13,750.00        |
|  |                     |                 |                    |
| 4. Direct costs or reimbursable expenses (Mileage, printing, etc.) |                     | L.S.            | \$1,000.00         |
|  |                     |                 |                    |
| <b>Total</b>   | <b>390</b>          | <b>\$125.00</b> | <b>\$49,750.00</b> |

Contractor agrees to perform the agreed scope of services for a not-to-exceed limit of \$50,000.00 for the first year.

## **Scope of Work**

Services to be provided for this contract are in 4 primary areas and include:

1. Routine services to conduct the general management functions, including:
  - Interface with community members, conduct surveys, and assimilate relevant information; receive complaints and forward to the Board.
  - As directed by the Board, coordinate bid proposals and contracts for regular operations work to be performed.
  - Adhere to all local and state laws and advise Board on changes to said laws and address compliance issues.
  - Submit regulatory reports to local and state agencies as required.
  - Coordinate with District Administrative Support Section and with Finance Section staff.
2. Provide Administrative support, including:
  - Gather backup information for ongoing Board discussions of the annual budget process.
  - Adhere to TVCSD Reserve Policy goals and objectives and assure that required funds are being added regularly and that use of funds follows TVCSD CIP protocols.
  - Assist with documentation of policies; maintain historical and reference documents.
3. Sewer System Administration, including:
  - Oversee contract with sewer operations and maintenance contractor, insure performance standards are being met; oversee annual review of performance contract.
  - Devise and maintain work order system. Maintain record book.
  - Coordinate all new sewer hook-ups and insure they are all inspected and meet District standards according to ordinances and specifications.
  - Maintain maps of all sewer components and new hook-ups and annexations.
  - Assure the sewer maintenance schedule is adhered to and effective at all times.
  - Oversee all capital improvement projects as directed by the Board and Standing Committees.
  - Coordinate Sewer Plant Tours.
4. Sewer System Administration, including:
  - As directed by the Board, coordinate bid proposals and contracts for regular construction work to be performed.
  - Oversee administration of Measure A funds.
  - Review and provide feedback to Board on recommendations by Park Adv. Comm.
  - Coordinate with District Administrative Support Section and with Finance Section staff.