

PROFESSIONAL SERVICES AGREEMENT
(Oken Swale Project)

This agreement ("Agreement"), effective upon the date of execution ("Effective Date") is by and between the Sonoma County Agricultural Preservation and Open Space District, a California special district (hereinafter "District"), and Sonoma County Water Agency, a special district of the state of California (hereinafter "Sonoma Water").

RECITALS

WHEREAS, the District owns the 76-acre Oken property ("the Property"); and

WHEREAS, the District wishes to deepen and reshape an existing drainage swale in the southwestern portion of the property; and

WHEREAS, District requires the services in the area of public works construction contract procurement, management, and administration and related services in order to complete this project; and

WHEREAS, Sonoma Water represents that it is duly qualified and experienced in these areas; and

WHEREAS, in the judgment of the General Manager of the District, it is necessary and desirable to employ the services of Sonoma Water to administer a competitive bid process and procure and manage a contract with a qualified contractor for implementation of the Project on District's behalf; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

- 1.1 Sonoma Water's Specified Services. Sonoma Water shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "B" (Estimated Cost Breakdown) and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A," the provisions in the body of this Agreement shall control.
- 1.2 Cooperation with District. Sonoma Water shall cooperate with District and District staff in the performance of all work hereunder. Sonoma Water shall

coordinate the work with the District's Project Lead, per the contact information and mailing addresses below:

Name: Marina Montes	Name: Dennis Daly
Address: 747 Mendocino Avenue	Address: 404 Aviation Bl
Santa Rosa, California 95401	Santa Rosa, California 95403
Email: marina.montes@sonoma-county.org	Email: dennis.daly@scwa.ca.gov

1.3 **Assigned Personnel.**

a. Sonoma Water shall assign only competent personnel to perform work hereunder.

2. **Payment.** For services described in Exhibit A, Sonoma Water shall be paid pursuant to the rates described in Exhibit B on a time and materials basis, with a not-to-exceed amount of Seventy-Five Thousand Dollars (\$75,000) for all work specified.

2.1 Invoices shall show or include:

- a. Sonoma County Water Agency.
- b. Name of Project: Oken Drainage Swale Project Public Works Contracting Services
- c. District Contract Number: 1565
- d. Copies of all sub-Sonoma Water invoices, if any.
- e. Description of services performed.
- f. Time devoted to services performed.
- g. Copies of receipts for reimbursable materials/expenses, if any.
- h. Any other information requested by the District.

2.2 Expenses not expressly authorized by the Agreement shall not be reimbursed. Unless otherwise noted in this Agreement, payments shall be made within the normal course of District business after presentation of an invoice in a form approved by the District for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the District in its sole discretion.

3. **Term of Agreement.** The term of this Agreement shall be from the Effective Date and expire on May 31, 2027 (05/31/2027), unless terminated earlier in accordance with the provisions of Article 4 below.

4. **Termination.**

4.1 **Termination Without Cause.** Notwithstanding any other provision of this Agreement, at any time and without cause, either party shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to the other party.

4.2 **Termination for Cause.** Notwithstanding any other provision of this Agreement, should either party fail to perform any of its obligations hereunder, within the time

and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the other party may immediately terminate this Agreement by giving written notice of such termination, stating the reason for termination.

- 4.3 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Sonoma Water, within 14 days following the date of termination, shall deliver to District all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Sonoma Water or Sonoma Water's subcontractors, and other agents in connection with this Agreement and shall submit to District an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 4.4 Payment Upon Termination. Upon termination of this Agreement, Sonoma Water shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Sonoma Water bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Sonoma Water shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate.
- 4.5 Authority to Terminate. The Board of Directors of the Sonoma County Agricultural Preservation and Open Space District has the authority to terminate this Agreement on behalf of the District. In addition, the District's General Manager, in consultation with Counsel, shall have the authority to terminate this Agreement on behalf of the District.

The Board of Directors of the Sonoma County Water Agency has the authority to terminate this Agreement on behalf of Sonoma Water. In addition, Sonoma Water's General Manager, in consultation with Counsel, shall have the authority to terminate this Agreement on behalf of Sonoma Water.

5. Insurance. The District and Sonoma Water mutually represent and acknowledge that they are self-insured or are insured through a pooled-risk joint powers authority, that they have exchanged documentation evidencing the other's self-insurance program, and that the programs represent reasonable assurance of the ability of each to perform their respective obligations under this Agreement.

6. **Prosecution of Work.** The execution of this Agreement shall constitute Sonoma Water's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Sonoma Water's performance of this Agreement shall be extended by a number of days equal to the number of days Sonoma Water has been delayed. r changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by District's General Manager in a form approved by District Counsel, and by Sonoma Water's General Manager in a form approved by Sonoma Water Counsel. The District's Board of Directors and Sonoma Water's Board of Directors must authorize all other extra or changed work.

7. **Representations of Sonoma Water.**

7.1 **Status of Sonoma Water.** The parties intend that Sonoma Water, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Sonoma Water is not to be considered an agent or employee of District and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits District provides its employees. In the event District exercises its right to terminate this Agreement pursuant to Article 4, above, Sonoma Water expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

7.2 **No Suspension or Debarment.** Sonoma Water warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Sonoma Water also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Sonoma Water becomes debarred, Sonoma Water has the obligation to inform the District.

7.3 **Taxes.** Sonoma Water agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not

limited to, state and federal income and FICA taxes. In case District is audited for compliance regarding any withholding or other applicable taxes, Sonoma Water agrees to furnish District with proof of payment of taxes on these earnings.

- 7.4 Records Maintenance. Sonoma Water shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to District for inspection at any reasonable time. Sonoma Water shall maintain such records for a period of four (4) years following completion of work hereunder.
- 7.5 Conflict of Interest. Sonoma Water covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Sonoma Water further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by District, Sonoma Water shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with District disclosing Sonoma Water's or such other person's financial interests.
- 7.6 Nondiscrimination. Without limiting any other provision hereunder, Sonoma Water shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religious creed, belief or grooming, sex (including sexual orientation, gender identity, gender expression, transgender, pregnancy, childbirth, medical conditions related to pregnancy, childbirth or breast feeding), marital status, age, medical condition, physical or mental disability, genetic information, military or veteran status, or any other legally protected category or prohibited basis, including without limitation, the District's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 7.7 AIDS Discrimination. Sonoma Water agrees to comply with the provisions of Chapter 19, Article 11, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.
- 7.8 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or

format, assembled or prepared by Sonoma Water or Sonoma Water's subcontractors, and other agents in connection with this Agreement shall be the property of District. District shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Sonoma Water shall promptly deliver to District all such documents, which have not already been provided to District in such form or format, as District deems appropriate. Such documents shall be and will remain the property of District without restriction or limitation. Sonoma Water may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of District, unless required by law.

- 7.9 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Sonoma Water.
8. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits District's right to terminate this Agreement pursuant to Article 4.
9. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
10. Method and Place of Giving Notice, Submitting Invoices, Making Payments. Formal notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service and shall be addressed as follows:

TO DISTRICT:	Sonoma County Agricultural Preservation and Open Space District
	747 Mendocino Avenue Santa Rosa, CA 95401
	Submit payments electronically to: aposed.ap@sonoma-county.org.

TO: SONOMA WATER	Sonoma County Water Agency
	404 Aviation Boulevard Santa Rosa, California 95403
	Remit payments to Anika McLea Same address as above

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

11. **Miscellaneous Provisions.**

- 11.1 **No Waiver of Breach.** The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 11.2 **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Sonoma Water and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation

of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Sonoma Water and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

- 11.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 11.4 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 11.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 11.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 11.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 11.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 11.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

11.10 Counterpart; Electronic Signatures. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via electronic means, or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

TW 24/25-073

SONOMA COUNTY WATER AGENCY

SONOMA COUNTY AGRICULTURAL
PRESERVATION AND OPEN SPACE DISTRICT

By: _____
Grant Davis
General Manager

By: _____
Misti Arias
General Manager

Date: _____

Date: _____

REVIEWED AS TO FUNDS:

APPROVED AS TO SUBSTANCE FOR DISTRICT:

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

By: _____
Sheri Emerson
Stewardship Manager

APPROVED AS TO FORM FOR SONOMA
WATER:

APPROVED AS TO FORM FOR DISTRICT:

By: _____
Adam Brand, Assistant County Counsel

By: _____
Lisa Pheatt, County Counsel

Date: _____

Date: _____

CERTIFICATES OF INSURANCE
ON FILE WITH DISTRICT:

By: _____
Michelle Nozzari, Administrative Aide

Date: _____

Exhibit A

Scope of Work

Ag & Open Space District (District) - Oken Drainage Swale Project Public Works Contracting Services

Project Management

All work will be performed under the direction of Sonoma Water's Project Manager, in consultation with District staff.

Task 1 - Contract Document Preparation

Sonoma Water will prepare procurement documents including General Conditions of the Contract, Bidding Requirements, and General Requirements (Divisions O and 1). These "front end" documents will include all the applicable Sonoma County and Public Contract Code construction bid requirements, including prevailing wage, bonding, and insurance requirements. Sonoma Water will also coordinate and incorporate into the contract documents the technical specifications and plans prepared by the District's design engineering consultant (Consulting Engineer). Sonoma Water will prepare a draft of the Project Manual and will submit one set electronically to District for review and comment. Sonoma Water will prepare procurement documents for publishing. Sonoma Water will provide District with a final complete set of the bidding documents in both electronic and hard copy format.

Task 2 - Bidding and Award

Sonoma Water will seek authorization to award the contract to the low responsible and responsive bidder. Sonoma Water will perform the necessary work to advertise the Project and provide notification to contractor and local trade organizations. During the bidding phase, Sonoma Water will conduct pre-bid site visits with District and District's Consulting Engineer participation and assist District in responding to bidders' written questions during the bid advertisement period. District's staff, District's Consulting Engineer, and Sonoma Water staff will not respond verbally to any bidder questions during the bid period. With assistance from District's Consulting Engineer, Sonoma Water will draft and issue addenda as needed in response to bidder questions or as otherwise determined necessary. Sonoma Water staff will assist District in conducting the bid opening and provide analysis and recommendations to District on lowest responsible and responsive bid. Upon receiving authorization to award contract from the Board of Directors, Sonoma Water will issue a Notice of Award to the successful bidder.

Task 3 - Contract Administration

Upon award of the contract, Sonoma Water will conduct a combined post-Notice of Award meeting and pre-construction meeting with the successful contractor. Sonoma Water will manage the project documents including reviewing submittals, responding to requests for information, preparing change orders, and giving written direction and instruction to the contractor. District shall ensure that Consulting Engineer is available to assist Sonoma Water in reviewing submittals and responding to requests for information (RFIs). Sonoma Water will utilize its web-based contract management system. All the parties will have access to the project documents through the secured web-hosted software. Sonoma Water will schedule, prepare agenda for, and conduct meetings on a regular basis. Sonoma Water will review the construction contractor's schedule, progress payments, and DIR certified payroll confirmations on a monthly basis and provide recommendations to the District regarding payment of monthly contract billings. Sonoma Water will document potential claims, provide responses to potential claims, and assist with claim negotiation and resolution. Sonoma Water will also conduct the necessary work for the close-out of the Project including contract turn-in of Project record drawings, final progress payments, final Project accounting, and a release of claims for acceptance by contractor. Upon completion of the Project Sonoma Water will file the necessary documents with the Board of Directors for final acceptance of the Project and issuance of a Notice of Completion. At the completion of the Project, Sonoma Water will prepare a final construction report with photographs (before and after) for distribution to regulatory agencies (California State Fish & Wildlife, the U.S. Army Corps of Engineers, and the North Coast Regional Water Quality Control Board).

Task 4 - Construction Inspection

Sonoma Water will staff a field construction inspector on site throughout construction of the Project. Under the direction of the Construction Manager, the inspector will be responsible for contractor compliance with the contract documents and permit requirements, including quality assurance testing and materials inspection. The inspector will maintain daily Project records, quality assurance testing records, and daily diaries covering construction events and labor, materials, and equipment usage on Project. These reports will include an ongoing photographic record of the progress of the work. Sonoma Water's inspector will also regularly confirm that the contractor is maintaining current and accurate information on contract drawing changes for Project record documents. The inspector will be supported by Construction Management's Registered Professional Engineer and Principal Engineer in enforcing the requirements of the contract and permits.

Exhibit B
Estimated Cost Breakdown

Title	Hours	Rate	Amount
Advertisement			
Tech Writing Mgr	8	\$264.48	\$2,115.84
WA Senior TW Specialist	8	\$229.70	\$1,837.60
WA TW Specialist	40	\$208.63	\$8,345.20
=		Subtotal	\$12,298.64
Construction			
WA Principal Engineer	89	\$352.68	\$31,388.52
Project Specialist	26	\$184.46	\$4,795.96
WA Engineering Tech III	137	\$193.38	\$26,493.06
		Subtotal	\$62,677.54
		TOTAL	\$74,976.18