

Report of the advisory Legal Services Review Committee

Dated: April 2, 2013

Bill Rosen, Chair

John Cunningham, Member

The committee met on March 19, 2013, March 21, 2013 and April 2, 2013 to discuss and review the provision of legal services for the Goleta Water District and to interview a potential candidate for counsel. At its meeting on March 21, 2013, the committee interviewed Mary McMaster, an attorney, formerly employed by the County of Santa Barbara. The Chair discussed the actions by the District with David Laredo, Esq., a principal of the firm of Delay and Laredo.

At its meeting on April 2, 2013, the committee voted unanimously to recommend to the Board of Directors that the Board terminate the existing legal services contract and enter into an agreement for legal services with Mary McMaster. Compensation to be based on legal fee billing of \$200 per hour in 1/10s with a base of \$17,000 per month subject to adjustment quarterly. Litigation services to be provided by general counsel or such other counsel as the Board shall require. No change in budgetary funding is expected.

Attached:

Copy of Certificate creating Committee

Copy of Resume of Mary McMaster

Copy of Proposed Legal Services Contract



## Mary McMaster, Attorney at Law

### **SUMMARY OF QUALIFICATIONS**

I have over eighteen years experience advising California public entities including extensive knowledge of the Brown Act, the Public Records Act, takings jurisprudence, real estate law, and contract law.

### **Experience**

#### **Santa Barbara County, Deputy County Counsel, Senior Deputy County Counsel 1997-2012 (retired)**

- Primary attorney for County Redevelopment Agency, Historic Landmark Commission and County Housing and Community Development Department
- Negotiated and drafted contracts, resolutions and ordinances
- Advised County on real estate, contract, regulatory and land use issues

#### **Associate, Oliver, Vose, Sandifer Murphy & Lee, 1993-1997**

- Advised cities and agencies on land use and regulatory issues
- Drafted ordinances, resolutions, loans and grants
- Second chaired eminent domain and contract court cases

#### **Associate, Sullivan, Workman and Dee, 1992-1993**

- Represented public and private entities on land use and eminent domain issues
- Provided advice and litigation support

#### **Associate, Morrison and Foerster 1990-1991**

- Provided advice and litigation support on regulatory and transactional matters

### **Education**

#### **Boalt Hall School of Law, U.C. Berkeley, J.D.**

- Editor of Ecology Law Quarterly
- Clerkship with San Francisco City Attorney's Office

#### **U.C.L.A. Graduate School of Architecture and Urban Planning, M.A. Urban Planning**

#### **Occidental College, B.A.**

- Phi Beta Kappa
- Departmental Honors

### **Activities**

Santa Barbara County Assessment Appeals Board, Cold Spring Elementary School GATE Committee, Attorney Coach Santa Barbara Mock Trial Team

GOLETA WATER DISTRICT  
LEGAL SERVICES CONTRACT

AGREEMENT made April \_\_\_ 2013 between

**GOLETA WATER DISTRICT**, a California Water District, with its offices at 4699 Hollister Avenue, Goleta CA 93110 (hereinafter GWD or District), and

**MARY MCMASTER**, Attorney at Law, with an office at \_\_\_\_\_ Santa Barbara, CA 931\_\_ (hereinafter General Counsel).

**NOW THEREFORE**, the parties agree as follows:

1. Services.

- a. General Counsel shall provide to, or on behalf of the District the following legal services which shall include but not be limited to the following:
  - i. day-to-day legal advice, written opinions, legal document review, staff consultation;
  - ii. appearances at all meetings of the District Board;
  - iii. appearances at all meetings of committee or subcommittees of the District, as requested;
  - iv. consultation with General Manager;
  - v. oversight of special counsel (but General Counsel shall have no liability for the performance of legal services by special counsel even though General Counsel shall have reviewed and/or approved the work of special counsel);
  - vi. preparation of resolutions, ordinances, rules and regulations, drafting of legal documents including but not limited to contracts, real estate deeds, easements and instruments, mortgages, notes and obligations;
  - vii. litigation advice and litigation services, including but not limited to general litigation, enforcement of ordinances and prosecution of violations, eminent domain;
  - viii. Advice with respect to employment, discipline and labor issues and securities issues; and
  - ix. Other services as requested by the General Manager, or members of the District Board, subject to the rules and policies of the District.
- b. Litigation services shall be provided by General Counsel's firm or by a firm under the supervision of General Counsel's firm and subject to the terms and provisions of this agreement for which General Counsel shall be fully responsible.
- c. For the purposes of this agreement, the District Board is the hiring authority. The General Manager may request legal services.
- d. Notwithstanding subparagraph b of this paragraph, the General Manager shall have the authority to direct services of the General Counsel with respect to the activities of the General Manager and staff

2. Representations. General Counsel has

- a. A clear understanding and experience dealing with and representing public bodies in the State of California;
- b. A thorough knowledge or ability to acquire knowledge of the California Government and Water Codes applicable to the District and specific knowledge of the Ralph M. Brown Act (GC 54950) and Public Records Act (GC 6250).

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- c. A familiarity with conflict of interest legislation including GC 1090 et seq, and GC 81000 et seq and applicable regulations.
  - d. A familiarity with federal laws and regulations applicable to water and public finance (GC 53600 et seq).
  - e. Knowledge of the California legal procedure and court rules.
  - f. Not been disciplined by any state bar.
3. Conflicts of Interest.
  - a. General Counsel has provided to the District a list of all clients whose interests are or may be adverse to that of the District requiring the recusal of General Counsel. Based on such disclosure the District has determined that there is no evidence that General Counsel's representation of such clients will disqualify General Counsel from representing the District except as set forth in schedule A.
  - b. Where a conflicting interest arises after the date of execution of this agreement, or with respect to a previously retained client who had no disclosed adverse interest, General Counsel will make facts of a conflict known as soon as General Counsel shall have reason to believe that such client has an interest adverse to the District. General Counsel shall attempt to obtain a waiver of the conflict and represent the District. In the event that General Counsel cannot obtain a waiver of such conflict from such client, General Counsel shall forego all fees from the District in connection with a matter involving such client. For good cause shown, such obligation may be waived by the District Board.
  - c. General Counsel has been advised that the District does not waive conflicts of interest or consent to multiple representation without cause. The District will not consider waiving a conflict for the benefit of General Counsel. The District will consider a waiver of the conflict if the client consents and General Counsel represents the District.
  - d. Waivers of conflicts shall be prepared and obtained at no cost at the District.
  - e. If during the term of this agreement, General Counsel shall associate with a firm of attorneys, the requirements of this paragraph shall be deemed to apply to such firm and such firm shall provide the information required by subparagraph a of this paragraph 3 so that the District may make the determination required therein.
4. Professional Liability Insurance. General Counsel has attached a copy of the declaration page of the carrier of General Counsel's professional liability insurance showing coverage of not less than \$1,000,000/\$1,000,000 provided by a carrier authorized to do business in California rated by A.M. Best at least "A." The scope of this insurance shall limit the extent of any indemnification requirement imposed upon General Counsel, including but not limited to paragraph 12 of the standard contract rider. Except as to any claim or action brought by GWD, General Counsel, including its employees and agents, are deemed employees of GWD with respect to immunities and defenses that apply to its acts or omissions.
5. General Counsel shall be available by fax and secure email; confidential information to be sent under password protection provided any expenses related to confidential transmission are paid by GWD.
6. Staffing. General Counsel is a sole practitioner. Fees and Billing:
  - a. Definitions: The following terms shall have the meaning set forth herein:
    - i. "Base hours" shall mean 87.5 billable hours per month.
    - ii. "Base rate" shall mean \$200 per billable hour.
    - iii. "Base monthly rate" shall mean \$17,500.00 (base hours times base rate).

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- iv. "Adjustment hours" shall mean, in the case where actual hours billed calculated in 1/10s during a month are less than base hours, base hours less actual hours plus 10 hours.
  - v. "Monthly adjustment" shall mean adjustment hours times \$200 which sum shall be adjusted on a quarterly basis.
  - vi. "Litigation services" shall mean services for matters pending in a court of the state of California or United States of America or an arbitration or grievance procedure after the filing of a complaint, demand for arbitration or grievance under any agreement or policy of GWD. Litigation shall not include the appeal procedure established pursuant to section 8.30.010 et. seq. of the Goleta Water Code.
  - vii. "Labor negotiations" shall mean actual labor negotiation with the recognized union representing employees of GWD.
- b. General Counsel shall be paid as follows for legal services rendered on and after the date of this agreement:
- i. Each month, the base monthly rate; and
  - ii. For each hour in excess of base hours in each month, General Counsel shall be compensated at the rate of \$250 per hour billed in 1/10s for such legal services; less
  - iii. A monthly adjustment for adjustment hours for the applicable quarter which shall be credited against outstanding fees during months of September, December, March and June of each year.
  - iv. Notwithstanding the foregoing, if during a calendar quarter, actual hours billed in 1/10s do not exceed and average for such quarter of 67.5 hour on average, then and in such event the base monthly rate shall be reduced to actual hours billed plus 10 hours times base rate for the ensuing quarter, provided however, that if in any month of such quarter, actual hours billed shall exceed average hours for the quarter, General Counsel shall be compensated for each such hour billed at the base rate until total hours exceed base hours for such month and in such instance, adjustment hours for such month shall be determined without regard for this subparagraph.
- c. Litigation Fees. In addition to legal fees paid pursuant to subparagraph b, litigation services shall be compensated at the rate of \$250 per hour billed in 1/10s.
- d. Labor Relations Services. In addition to legal fees paid pursuant to subparagraph b, labor negotiations compensated at the rate of \$250 per hour billed in 1/10s.
- e. Invoices. Billing invoices shall set forth information in sufficient detail to permit monitoring of the services provided. Bills shall be structured to provide reports by service area and by subject and files shall be coded by number or other identifiable method agreed upon by the parties.
- f. GWD reserves the right to seek a agreed upon fee for services for particular matters under subparagraph b, c and d of this paragraph 6 at the rate set forth in such paragraph or at a different rate or to retain other counsel at its option. During any month in which GWD exercises this reserved right with respect to services performed by General Counsel, no adjustment hours shall accrue except that such fees shall be in lieu of the fees calculated in accordance with subparagraph b(i) –b(ii) of this paragraph 7 in excess of 10 hours. If a matter is referred to outside counsel, this paragraph shall not apply.
- g. Litigation Budgets. General Counsel will provide the District with a proposed litigation budget setting forth expected fees, costs, disbursements and other charges that are reasonably anticipated to be incurred for any particular matter at District's request for approval. Such budgets may be modified from time to time.

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- h. Interest. No amount due General Counsel for fees and disbursements shall accrue interest until the approval process of the District shall have been completed. If District Board approval is required, invoices shall be submitted at least 10 days prior to the date of the meeting at which such approval shall be given and if untimely, the approval will take place at the next succeeding meeting of the District Board. Payment shall be made not more than 10 days following approval after which time interest may be accrued. Thereafter, interest shall accrue at ten percent per year. Amounts disallowed shall not bear interest until sufficient information shall be provided by General Counsel to the District to permit approval of the amount disallowed.
7. Expenses and Disbursements.
- a. The District will pay for all reasonable and necessary expenses incurred by General Counsel on behalf of the District including but not limited to postage, legal filing fees, steno fees in depositions or hearings, witness fees and related travel, food and lodging, other than lodging and food in Goleta area, court document printing charges, process service, research charges, long distance and telephone charges. Expense in excess of \$1,000 shall be subject to prior approval. GWD shall reimburse General Counsel for reasonable expenses related to attending one ACWA, CSDA or League of Cities conference each calendar year.
  - b. Attorney travel time and travel expense to and from law office to district are not compensable. Allowed travel time will be billed at 75% of the applicable base or litigation rates.
  - c. The District will not pay for normal overhead such as staff time, rent, equipment rental, legal research subscriptions, books, bar charges or club memberships, fax charges, routine document copy charges, word processing charges, staff time except where the urgency of the matter requires that overtime costs be incurred and such costs have been authorized in writing.
  - d. The District may disallow any expense believed to be in violation of the rules herein.
8. Document Ownership. Except with respect to attorney work product, the District shall retain ownership of all original documents prepared in connection with representation. All original documents shall be delivered by General Counsel to District without cost. Copies of files shall be provided to District without cost during the term of representation or within six months at the conclusion of such representation without cost. Copies of documents request by the District more than six months after the conclusion of such representations shall be subject to a reasonable fee for securing and copying documents. Copies of attorney work product shall be delivered to the District in accordance with this paragraph.
9. Standard Contract Rider. To the extent applicable the attached standard Contract Rider is applicable except that paragraphs 4, 5, 6, 11a, 11b shall not apply. The request for proposals and General Counsel's response attached hereto shall be deemed to be a guide for the parties but such RFP and response shall not be deemed to be incorporated into this agreement.
10. Termination. This agreement may be terminated at any time by a majority of the District Board but the District shall remain liable for fees and expenses and disbursements incurred prior to termination. At the option of the District, General Counsel may be further retained to complete pending matters.
11. Modification. This agreement may be modified by a written agreement signed by the parties. If the parties have not agreed to modification of rates on or before June 30, 2014, those hourly rates shown in paragraphs 7a ii, 7c and 7d shall each be increased by \$25.
12. This agreement supersedes all prior agreements between the parties.

The parties have executed this agreement.

GOLETA WATER DISTRICT  
LEGAL SERVICES CONTRACT

GOLETA WATER DISTRICT

BY: \_\_\_\_\_  
William C Rosen, President

De LAY AND LAREDO

BY: \_\_\_\_\_  
Mary McMaster

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Proposed



GOLETA WATER DISTRICT  
LEGAL SERVICES CONTRACT

Notwithstanding anything contained in the attached contract and unless such contract shall specifically state that a provision thereof modifies this rider, the following provisions shall apply to this contract and shall be interpreted as if more fully set forth therein:

1. DEFINITIONS: Unless the context requires a different meaning, the following terms shall have the meanings set forth herein:

- a. "GWD" or District shall mean Goleta Water District.
- b. "Board" shall mean the Board of Directors of GWD.
- c. "President" shall mean GWD Board President.
- d. "General Manager" shall mean the chief executive officer of GWD or such other person who shall have authority and who supervises this contract.
- e. "County" shall mean the County of Santa Barbara.
- f. "State" shall mean the State of California.
- g. "Agency" shall mean a governmental entity of the State or County.
- h. "Vendor" or "Contractor" shall mean the party who is required to perform services or supply goods to GWD pursuant to this contract.
- i. "Person" shall mean a natural person, corporation, partnership, firm or other entity.

2. REPRESENTATIONS OF VENDOR: The Vendor represents and warrants to GWD that:

- a. Vendor has the knowledge and experience necessary to perform this contract and provide the services on Vendor's part to be provided hereunder.
- b. Vendor has not filed or had filed against Vendor a petition in bankruptcy.
- c. Vendor and Vendor's officers, directors, owners or persons having an ownership interest in Vendor equal or exceeding 10% have not been convicted of a crime under the laws of the United States or of the State or any other state.
- d. Vendor has not been disqualified from performing any contract funded by the Federal government, the State, or the County and that there is no proceeding pending or threatened against Vendor by any such governmental authority.
- e. If required by this contract or applicable law, Vendor is licensed or employs employees who are licensed to perform the services to be provided pursuant to this contract.
- f. No officer or employee of GWD has an interest in this contract that would disqualify the Vendor from performing this contract and receiving payment therefore.



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if allowed by the financial assistance program, Federal funds received by the Vendor may be applied to payment of the cost of the audit. A violation of this paragraph shall constitute a default under this contract. . [This paragraph does not apply per section 10 of the contract.]

7. **AUDIT OF PAYMENT:** GWD (or any other agency or the State) shall have the right at any time during the term of this contract and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Vendor shall comply with any demand made by GWD to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Vendor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account that is approved in writing by GWD prior to the date of this contract. The revenues and expenditures of the Vendor in connection with this contract shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment that are not fully documented may be disallowed. Vendor agrees to provide to or permit GWD to examine or obtain copies of any documents relating to the payment of money to the Vendor or expenditures made by the Vendor for which reimbursement is made to the Vendor by GWD. The right of GWD hereunder shall not be dependent upon GWD bringing any action to enforce this provision. The Vendor shall maintain all records required by this paragraph for 7 years after the date this contract is terminated or ends.
8. **MONITORING OF PERFORMANCE:** GWD (or any other agency or the State) shall have the right during the term of this contract and for the period limited by the applicable statute of limitations to insure that the services provided or to be provided by the Vendor have been provided as herein agreed. GWD shall have the right to monitor the total operations of the program, including but not limited to actual program activity and the preparation of progress reports and evaluations by GWD. The Vendor shall submit to GWD quarterly reports. GWD or the attached contract may require more frequent or different reports as therein provided. [This provision that requires the submission of reports may be waived by GWD in writing, for good cause shown.] The Vendor hereby consents to the examination of Vendor's records and agrees to provide to or permit GWD to examine or obtain copies of any documents relating to the performance of this contract. The right of GWD hereunder shall not be dependent upon GWD bringing any action to enforce this provision. The Vendor shall maintain all records required by this paragraph for 7 years after the date this contract is terminated or ends.
9. **NON-DISCRIMINATION:**
  - a. Vendor shall not discriminate against any person who is to participate in or receive benefits under this contract on the basis of characteristics protected by federal or state law.
  - b. The Vendor assures GWD that it will comply with all applicable laws and regulations prohibiting discrimination in employment on basis of characteristics protected by federal or state law. The Vendor understands and agrees that this contract to which this assurance relates can be terminated upon a finding by any governmental agency that the undersigned is in violation of applicable discrimination laws and that such finding will also disqualify the Vendor for future contracts with GWD. The Vendor certifies to GWD that there is no pending or outstanding decision, ruling or order against Vendor finding the Vendor in violation of laws against discrimination nor is any such action pending or threatened. No funds received by Vendor pursuant to this contract will be used for sectarian purposes or to further the advancement of any religion.

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- c. The Vendor shall attach the provisions of this paragraph to any subcontract that is executed pursuant to this contract.

10. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Vendor shall comply with all applicable Federal or State laws and regulations. If the Vendor or persons in Vendor's employ are required to be licensed by the State or any other agency, the Vendor shall employ the required licensed personnel and shall not permit or suffer any unlicensed personnel to perform any services required to be performed pursuant to this contract by a licensed employee. Upon Vendor's request, GWD will advise Vendor of references to or copies of all applicable regulations.

11. **INSURANCE:** The Vendor shall provide to GWD at Vendor's own cost and expense the following insurance coverages by carriers satisfactory to GWD and licensed to do business in the State:

- a. **GENERAL LIABILITY** insurance with policy limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to GWD) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit. [This subparagraph does not apply per section 10 of the contract.]

- b. **WORKER'S COMPENSATION and DISABILITY BENEFITS** insurance covering employees of the Vendor as required by law in accordance with the provisions of Section 3700 of the California Labor Code and by Vendor's signature, does hereby certify that such Vendor is aware of the requirements of said section. This section does not apply per section 10 of the contract.]

- c. **PROFESSIONAL LIABILITY** insurance with policy limits as may be common in the profession of the Vendor for each professional employee performing services under this contract. Unless otherwise agreed, coverage shall be \$1,000,000 per claim and annual aggregate.

- d. **ADDITIONAL INSURANCE** as GWD may require to cover the reasonable risks related to this contract, provided however, if such insurance coverage is required after the date of this contract and was not the usual coverages carried for performance of work of a similar nature, then and in that event GWD shall pay to the Vendor as additional compensation under this contract the reasonable premium for such insurance coverage.

- e. **OTHER REQUIREMENTS:**

- i. Vendor shall provide to GWD certificates of insurance for each policy required to be provided or carried by the Vendor. All such certificate of insurance shall be in such form and contain such endorsements as shall be satisfactory to GWD (Accord Form 25-S or equal). All policies shall be subject to approval of GWD. Any retainages or deductibles shall be approved in writing by GWD. Vendor agrees that it will confirm insurance for all subcontractors, if any and provide evidence of such coverage.

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- ii. All policies that name GWD as an additional insured shall have the standard 30- day notice of cancellation provision (10-days for non-payment of premium) that shall provide for notice of cancellation to be given to GWD.
- iii. The company issuing the policy shall be of sufficient size and amount of capital to cover the loss insured against. Ratings shall be determined upon review of same as set forth in A.M. Best ratings for the current year. GWD may waive in writing compliance with ratings.
- iv. All required policies of insurance shall be in effect prior to commencement of any work, labor or services or delivery of goods to be provided hereunder and shall be renewed or replaced during the term of this contract and shall continue in effect until the termination of this contract.
- v. Claims made policies shall be supplemented by additional policies or extended period reporting that shall provide coverage in the amounts herein required for a period after the expiration of this contract which measured by the expiration of the applicable statute of limitations plus one year.
- vi. Coverage shall be as broad as Insurance Services Office Commercial General Liability Coverage (Form CG 0001); Insurance Service Office Business Auto Coverage (Form CA 0001) covering symbol 1 (any auto).

12. INDEMNIFICATION:

- a. The Vendor shall indemnify and hold harmless GWD, its directors, officers, employees, agents, servants and authorized volunteers and each of them all claims and demands of all persons arising out of the performance of the work or the furnishing of materials; including but not limited to, claims by the Vendor or Vendor's employees for damages to persons or property except for the sole negligence or willful misconduct or, with respect to construction, the active negligence of GWD, its directors, officers, employees, or authorized volunteers and from any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Vendor and any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Vendor to faithfully perform the work and all of the Vendor's obligations under the agreement.
- b. Vendor shall defend from any loss arising as a result of performance of any act or, the omission or failure to perform any act required, intended or necessary to be performed by the Vendor pursuant to this contract. GWD shall give the Vendor notice of any claim or action filed by any person against GWD, its directors, officers, employees, agents and servants which is or may be related to Vendor's performance of this contract. If Vendor is a party to any litigation arising from the performance of this contract, the Vendor shall give notice of the commencement of such litigation no later than 30 days following the date upon which the Vendor is served with process or is advised of the threat of litigation.

13. EVENTS OF DEFAULT: The following events shall constitute an event of default:

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- a. The failure of the Vendor to properly perform this contract or the failure to file a report required to be filed hereunder.
- b. The failure of the Vendor to perform any term, provision or covenant of this contract.
- c. The failure of the Vendor to maintain adequate books and records of account or of performance of this contract.
- d. The filing by or against the Vendor of a petition in Bankruptcy or under any law relating to insolvency.
- e. The assignment of the performance of this contract or of any funds due or to become due hereunder or permitting or suffering a levy or attachment to be made upon any such funds.
- f. The termination, lapse or cancellation of any insurance policy required to be provided or maintained hereunder.
- g. The failure of the Vendor to comply with any statute, rule or regulation applicable to the performance of this contract.
- h. It shall be determined that any representation or certification made hereunder shall be false or shall become untrue.

14. REMEDIES:

- a. If the Vendor shall be in default under this contract, GWD at its option may:
  - i. Terminate this contract. GWD shall remain liable for all approved services performed by Vendor prior to the termination date.
  - ii. Deduct from payment of any monies due the Vendor all charges for disallowed costs and expenses theretofore paid by GWD to the Vendor.
  - iii. Seek recovery of any monies overpaid, disallowed or otherwise not due the Vendor. Take any other action to protect the interest of GWD, including but not limited to requiring the Vendor to take such action as may be necessary to cure an Event of Default.
  - iv. Recover monetary damages.
  - v. Costs, disbursements and other expenses incurred by GWD to enforce the provisions of this contract.
  - vi. The remedies provided to GWD are cumulative.
- b. If GWD shall be in default under this contract, the Vendor may seek recovery of any monies due the Vendor, provided however, that in the event that GWD shall have disallowed costs or expenditures after audit and after notice to the Vendor, it shall be a condition precedent to the institution of any action or proceeding by the Vendor against GWD that Vendor shall have paid such amounts so claimed by GWD.

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- c. GWD may procure, upon such terms and in such manner, as GWD may deem appropriate, supplies or services similar to those so terminated, and the Vendor shall be liable to GWD for any excess costs for such similar supplies or services.
15. COUNSEL FEES AND EXPENSES OF LITIGATION: In the event a party shall institute legal proceedings of any kind against the other party, counsel fees and expenses of litigation incurred by a party shall be borne such party regardless of the outcome of any litigation, proceeding or action.
16. VENUE: In any proceeding instituted against GWD, the venue for such action shall be in the Superior Court of the State of California in and for the County of Santa Barbara; and in the United States District Court for the Central District of California. Arbitrations shall be conducted in Santa Barbara County.
17. NOTICES: Notices required by this contract to be sent by one party to the other shall be sent by GWD to the Vendor at the address set forth herein and by the Vendor to GWD at 4699 Hollister Avenue, Goleta, CA 93110. Notices shall be mailed by certified mail, return receipt requested or delivered to the party personally. The parties may give written notice of a change of address.
18. BINDING NATURE: This contract shall bind the parties hereto their heirs and successors. The performance of any services to be performed pursuant to this contract by the Vendor shall not be assigned without the prior written consent of GWD. The Vendor shall not assign the payment of any monies due under this contract.
19. AMENDMENT: This contract may be modified only in writing.
20. ADDITIONAL RIDERS AND APPENDICES: Attached to this contract are additional riders and appendices or required provisions of law, budgets and operating plans, all of which provisions are a part of this contract and shall be complied with by the Vendor.
21. FACSIMILE SIGNATURES AND TRANSMISSION: This contract may be executed in several counterparts signed by each party separately and transmitted to the other party by facsimile transmission. Such contract shall be valid evidence of execution for all purposes except payment. For payment GWD shall be provided with a manually or digitally signed contract. All documents required to be submitted by one party to the other may be transmitted by such party to the other by facsimile transmission. A contract may be digitally transmitted by email or other electronic means with a binding digital signature encoded in a manner required by law.
22. TIME OF THE ESSENCE: With respect to performance of this contract by the Vendor, time shall be of the essence.
23. ARBITRATION: Any dispute as to the interpretation, meaning or implementation of this agreement shall be submitted to arbitration in accordance with the rules of the American Arbitration Association or similar forum agreed to by the parties. No claim shall be made more than 180 days after the occurrence of facts which shall have given rise to such claim. The parties waive any and all rights to litigate issues related to this agreement in a court or with a jury trial and do hereby consent to arbitration of any such dispute. Upon giving notice of a claim for arbitration, the parties shall each select an arbitrator and the two arbitrators so selected shall choose a third, neutral arbitrator. The parties agree that any written settlement agreement may

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waive arbitration and finally settle any and all disputes between the parties. BY SIGNING THIS AGREEMENT, EACH PARTY ACKNOWLEDGES THAT THIS AGREEMENT TO ARBITRATE RESULTS IN A WAIVER OF EACH PARTY'S RIGHTS TO A COURT OR JURY TRIAL FOR ANY DISPUTE ARISING UNDER THIS CONTRACT INCLUDING THE RIGHT TO AN APPEAL.

Proposed