

TUOLUMNE CITY SANITARY DISTRICT AGREEMENT FOR GENERAL MANAGER CONSULTING SERVICES

THIS AGREEMENT is made and entered into this 7th day of February, 2024, by and between the TUOLUMNE CITY SANITARY DISTRICT hereinafter referred to as “District” and COOLEY ENVIRONMENTAL CONSULTING, a LIMITED LIABILITY COMPANY (LLC) hereinafter referred to as “Consultant”.

RECITALS

WHEREAS, District desires to obtain services from Consultant as specified in Section 1; and

WHEREAS, Consultant is duly experienced, qualified, and capable to perform said services for the benefit of District; and

WHEREAS, District does not anticipate Consultant services to exceed six-hundred and twenty-five (625) hours in a fiscal year; and

WHEREAS, the performance of such services by Consultant has been determined by the District Board of Directors to be in the public interest.

NOW, THEREFORE, District and Consultant agree as follows:

1. **Scope of Work.** The District engages the services of Consultant as an independent contractor to perform the work and render the services described in the attached *Exhibit A* (hereinafter referred to as the “*Work*”), which is incorporated herein as fully set forth. The work is generally described as follows: part-time management of the District’s administrative, operations and maintenance functions as well as providing specific tasks as may be authorized and prioritized by the Board of Directors. Such work shall not exceed six hundred and twenty-five hours in any fiscal year without prior written approval by the Board of Directors of the District.

Consultant shall (a) provide all labor, equipment, material, supplies, advice, consultation, analysis, administration, and preparation of policies, procedures and documents required or necessary to properly, competently and completely perform the *Work*; (b) determine the method, details and means of doing the *Work*; and (3) perform the *Work* in a manner commensurate with the highest professional standards of qualified and experienced personnel in Consultant’s field.

2. **Payment.** In exchange for the *Work*, the District shall pay to Consultant a fee based on Consultant’s actual time and material necessarily and actually expended on the *Work* in accordance with *Exhibit A* and incorporated herein.

Consultant shall submit to District an invoice for the *Work* performed on a monthly basis which shall specifically describe the details of the *Work* performed for District during the period which compensation is requested, and itemize the actual time expended by Consultant in providing such *Work*. If the *Work* is satisfactorily completed and the invoice is accurately computed District shall pay the invoice within thirty (30) days of its receipt. There shall be no compensation for extra or additional *Work* or services by Consultant other than those specifically described in Section 1 hereof, unless approved in advance by the Board of Directors.

3. **Term.**

A. This Agreement shall take effect on the above date and shall continue in effect until terminated by the Consultant or District as provided herein, or December 31, 2026, whichever occurs first. Consultant shall perform the *Work* diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress of the *Work*.

B. Time is of the essence in this Agreement.

C. This Agreement may be terminated for any or all portions of the *Work* by either party upon written notice to the other party in the event of a substantial failure of performance by such other party; or if District, by resolution or minute order of its Board of Directors, should deem it necessary or desirable to abandon or indefinitely postpone the prosecution of any part or all of the *Work*. Any changes or modifications to this agreement shall only be valid by written amendment to this agreement signed and approved by both Parties.

D. In the event of such abandonment, postponement, or default by District, District shall pay to Consultant as full payment for all services performed and all expenses incurred under this Agreement, in an amount which bears the same ratio to the total fee otherwise payable under this Agreement as the services actually rendered hereunder by Consultant bear to the total services necessary for the full performance of the *Work*. There shall be deducted from such amount, however, all payments heretofore made by District to Consultant under this Agreement. In ascertaining the services actually rendered hereunder up to the date of such termination of this Agreement, consideration shall be given to both completed services and services in the process of completion.

E. In the event of default in performance by Consultant, the provisions of Section 4 hereof shall apply.

4. **Default by Consultant.** If Consultant fails to expeditiously advance the *Work*, or performs work that does not comply with the requirements of this Agreement, or fails to perform any task or produce any documents required by this Agreement, or is guilty of any other material breach of the terms of this Agreement, District may request that Consultant remedy any identified defects, lack of performance or breach, or may immediately terminate this Agreement upon payment of costs in accordance with 3 (D) above.

5. **Ownership of Documents.** Every document prepared by Consultant under this Agreement shall be the exclusive property of District. By this Agreement, Consultant transfers all of its right, title, and interest in such documents to District. To the extent any document prepared under this Agreement constitutes a copyrightable work, the *Work* under this Agreement shall be considered a work for hire and by this Agreement Consultant shall be deemed to transfer all rights, title, and interest in the copyrightable work to District, including the exclusive copyright. Documents prepared by Consultant under this Agreement shall not be provided by Consultant to any other person without District's prior written approval.

6. **Compliance with Laws.** Consultant shall perform the *Work* in compliance with all applicable federal, state, and local laws and regulations regarding safety of persons and property and their protection from damage, injury, or loss, including applicable Cal-OSHA regulations. Consultant also shall possess and maintain all permits, licenses and certificates that may be required for it to perform the *Work*. Consultant shall comply with all laws and regulations as required by

local, state, and federal agencies regarding nondiscrimination including, but not limited to, Title VII of the Civil Right of 1964, the Americans with Disabilities Act, the Age Discrimination Employment Act of 1967, and the California Fair Employment and Housing Act. The Consultant is aware of the District's anti-harassment policy and agrees to abide by the policy, practices and procedures set forth and established by the District.

7. **Indemnification.** Consultant shall indemnify, defend, protect, and hold harmless District, and its officers, employees, volunteers and agents from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and Consultant fees, and litigation costs) of every type and description to which it may be subjected or put to by reason of or resulting from: (1) the performance of or failure to perform the *Work* or any other obligations of this Agreement by Consultant or Consultant's agents or employees; (2) any alleged negligent act or omission of Consultant, or Consultant's agents or employees in connection with any acts performed or required to be performed pursuant to this Agreement; or (3) any dangerous or defective condition arising or resulting from any actions or omissions of Consultant, Consultant's agents or employees in carrying out the provisions of this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees. Consultant's obligations under this indemnification provision shall survive the termination, or completion of *Work*, under this Agreement.

8. **Insurance.**

A. Types and Limits. Consultant at its sole cost and expense shall procure and maintain for the duration of this agreement the following types and limits of insurance:

<u>Type</u>	<u>Limits</u>	<u>Scope</u>
Commercial Public Liability and Property Damage	\$1,000,000 per occurrence	at least as broad as ISO CG 0001
Automobile Liability	\$1,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)
Workers' Compensation	statutory limits	
Employers' Liability	\$1,000,000 per accident	
Professional Liability (errors and omission)	\$1,000,000 per occurrence	

B. Other Requirements. The public liability, property damage and automobile liability insurance furnished by Consultant shall name District as an additional insured and shall directly protect, as well as provide the defense for District, its officers, agents and employees as well as Consultant, and its agents, and employees, if any, from all suits, actions, damages, losses or claims of every type and description to which they may be subjected by reason of or resulting from Consultant's operations in the performance of the *Work* pursuant to this Agreement, and all insurance policies shall so state. Said insurance shall also specifically cover the contractual liability of Consultant. Said insurance shall also specify that it acts as primary insurance and District's insurance shall not contribute with Consultant's insurance. If Consultant fails to maintain such insurance, District may declare a default in the performance of this Agreement and exercise the remedies specified in Section 4 of this Agreement.

C. Consultant shall be permissibly self-insured or shall carry full workers' compensation coverage for all persons employed, either directly or through subcontractors, in carrying out the *Work* contemplated by this Agreement and in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California. If Consultant fails to maintain such insurance, District may declare a default in the performance of this Agreement and exercise the remedies specified in Section 4 of this Agreement.

D. Consultant agrees to furnish a certificate or certificates substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement and all endorsements substantiating coverage of District and its agents and employees as additional insureds. All insurance is to be placed with insurers with a current A.M. Best rating A: VII or better unless otherwise accepted in writing by District.

Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after District shall receive notification of such cancellation or reduction.

9. **Independent Contractor.** The parties hereto agree that at all times during the term of this Agreement Consultant, Consultant's employees and agents hired to perform services pursuant to this Agreement are independent contractors and are not agents or employees of District. Due to the fact that the District has only five (5) employees and the work involved will not exceed six-hundred and twenty-five (625) hours in a fiscal year Consultant's services are outside the usual course of the District's business and Consultant is customarily engaged in an independently established trade, occupation, or business of the same nature as the services to be performed.

Further, it is intended that the services provided pursuant to this Agreement are provided under a continuing bona fide business-to-business contracting relationship as defined in California Labor Code section 2776. This Agreement does not bind the respective parties to perform mutually exclusive services to each other, and the District and the Consultant are free to enter into similar agreements with other entities.

10. **Entire Agreement.** This writing and the documents incorporated herein by reference as Exhibit A, represent the sole, entire, exclusive, and integrated contract between the parties concerning the *Work*, and supersedes all prior oral and/or written negotiations, representations, or contracts. Each party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the incorporated documents shall be valid or binding. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.

11. **Successors and Assignment.** This Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties; however, Consultant shall not subcontract, assign, or transfer this Agreement or any part of it without the prior written consent of District.

12. **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by District to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

13. **Severability.** If any part of this Agreement is held to be void, invalid or unenforceable, then the remaining parts will nevertheless continue in full force and effect.

14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

15. **Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

District: Tuolumne City Sanitary District
P.O. Box 1238
(18050 Box Factory Road)
Tuolumne, CA 95379
Attention: Brenda Bonillo, Office Manager / District Secretary

Consultant: Cooley Environmental Consulting, LLC
790 Buck Avenue
Vacaville, California 95688
Attention: Jeff Cooley

Any party may change its address by notifying the other party of the change in the manner provided above.

16. **Attorney's Fees.** In the event of litigation between the Parties, or if a Party becomes involved in litigation because of wrongful acts of the other Party, the prevailing or innocent Party shall be entitled to an award of reasonable attorney's fees from the other Party. The prevailing Party will be entitled to an award of attorney's fees in an amount sufficient to compensate the prevailing Party for all attorney's fees incurred in good faith.

TUOLUMNE CITY SANITARY DISTRICT

By: _____

John Feriani Board President
Tuolumne City Sanitary District

CONSULTANT

By: _____

Jeff Cooley, Owner
Cooley Environmental Consulting, LLC

EXHIBIT A

A. Overview:

Consultant proposes to work with the Tuolumne City Sanitary District ("District") Board of Directors and District Staff to identify operational, infrastructure, permitting, policy, financial, personnel, administrative and management issues. In addition, the Consultant proposes to provide on-going general and operational management services to the District on a part-time basis.

Consultant proposes to conduct an initial assessment of the District in respect to its' operating policies, procedures, and personnel to identify and evaluate any potential issues and to provide measures to remediate any of these issues. Consultant activities will be conducted in close coordination with the Board of Directors and District staff and include an assessment of personnel needs, policies, permits and other operational and administrative issues and activities.

B. Consultant Tasks:

Task 1.) In conjunction with the District Secretary/Office Manager, prepare agenda topics, background information, and attend the regular monthly Board of Directors meetings and such special meetings as may be called. It is assumed that the Consultant would attend a majority of the meetings as requested by the Board of Directors.

Anticipated Time: Up to 10 hours per month.

Task 2.) Prepare, travel, and meet with members of the Board of Directors and/or District Staff on at least a twice monthly basis (preferably weekly) to:

- A.) evaluate District activities and employee performance;
- B.) discuss District issues and priorities;
- C.) monitor District operations, contracts, plans, construction projects, budgets, and programs;
- D.) respond to employee questions and concerns regarding operational issues, policies, and procedures; and
- E.) attend meetings with outside agencies, respond to customer service issues and address any other outstanding concerns.

Anticipated Time: Up to 24 hours per month.

Task 3.) Review and evaluate District plans, permits, policies, board minutes, contracts, budgets, financial reports, infrastructure, equipment, maps, information technology systems, operation & maintenance activities, staffing, emergency

response procedures, administrative and customer services activities, safety compliance and other programs, activities, reports, documents, and procedures.

Anticipated Time: Up to 100 hours – one time.

Task 4.) On an on-call and as needed basis, respond by text, phone and email to questions and issues raised by members of the Board of Directors and District staff during the month.

Anticipated Time: Up to 6 hours per month.

Task 5.) Research issues, prepare reports, memos, and updates relative to a variety of District documents including, but not limited to, District Ordinances, plans, employee policies and personnel rules, maintenance reports, purchasing policies, operating procedures, budgets, and financial and other reports.

Anticipated Time: Up to 16 hours per month, as needed.

Task 6.) Participate in discussions and provide staff support and analysis in respect to District re-organization and/or consolidation options including, but not limited to, forming a Community Services District.

Anticipated Time: Hours as directed by Board of Directors.

Task 7.) Attending local, Board Committee, community and regional meetings regarding issues associated with the operation and administration of the District including meetings with regulatory and grant funding agencies.

Anticipated Time: Hours as needed or directed by Board of Directors.

Task 8.) Perform such optional work or other tasks and activities as agreed to by the Board of Directors and Consultant including, but not limited to, grant writing and preparing permit applications, *Requests for Proposals* (RFP's), equipment bids, manuals and other specialized reports and evaluations.

Anticipated Time: Hours to be determined.

C. District Activities, Actions and Responsibilities:

The District will perform the following activities and actions in respect to the work performed by Consultant:

- Provide administrative assistance in the research and preparation of District reports and documents through the District Secretary/Office Manager, Chief Plant Operator, and other staff members;

- Provide access to and use of District facilities and equipment by Consultant while performing work at the District, including, but not limited to, office space and copy equipment;
- The Board of Directors shall provide Consultant with direction at Board of Directors meetings and support in implementing approved District policies and objectives.

D. Consultant Cost Summary and Start Date:

Consultant shall provide the services indicated above at a cost of ninety-five dollars (\$95.00) per hour.

1.) On-going direct costs shall be on an hourly basis for those hours performing services for the Tuolumne City Sanitary District.

2.) Reimbursable expenses shall only include travel costs and copy/printing charges. To minimize the costs, the District Consultant will not charge automobile mileage reimbursement for travel to and from Tuolumne County destinations. Further, Consultant will utilize District copy equipment where possible to reduce copy charges. Where travel is authorized to meetings in other destinations, actual meal, travel, and lodging costs pursuant to District policies will be reimbursed by the District. Travel by automobile will be reimbursed by the District at the current IRS mileage rate at the time of travel which is currently \$0.67 per mile for actual miles driven for District business. Copy charges will be billed at actual costs for work performed by a third-party, or \$0.05 per page for black and white and \$0.25 per page for color when provided by Consultant. All other expenses not specifically identified herein shall be covered by the hourly rate charged by the Consultant.

3.) Travel time by Consultant to the District's office and wastewater treatment plant will be billed at Consultant's approved hourly rate above, but shall not exceed two (2) hours per trip. The consultant shall not be reimbursed for travel time home from Tuolumne City.

4.) Consultant shall commence work under this contract effective March 11, 2024.