



June 20, 2019

Board of Directors  
Ventura Regional Sanitation District  
Ventura, California

## **APPROVE, AND AUTHORIZE THE BOARD CHAIR TO SIGN, PROPOSED CONTRACT NO. 19-009 WITH DRAGOMIR DESIGN-BUILD, INC. FOR STORM WATER MANAGEMENT SERVICES AT THE TOLAND ROAD LANDFILL**

### **RECOMMENDATION**

Approve, and authorize the Board Chair to sign, proposed Contract No. 19-009 with Dragomir Design-Build, Inc. for storm water management services in an amount not to exceed \$75,000 in FY2019-20.

### **FISCAL IMPACT**

The funding for this contract is included in the adopted FY2019-20 District budget for Solid Waste environmental services (account code 25-401-52079-400301 - \$25,000) and Solid Waste capital – Detention Basin Modification project (account code 90-490-52074-499932 - \$50,000).

### **BACKGROUND/ANALYSIS**

Dragomir Design-Build, Inc. (Dragomir) began providing storm water management services for the District in February, 2019. Services were procured through the negotiated procurement provisions outlined and in accordance with Section 403 of the VRSD Resolution 89-13. During this period, Dragomir has been preparing various storm water reports required under the District's Industrial General Permit (IGP).

As part of this reporting under the IGP, Dragomir has been assisting staff prepare a design package for bidding purposes to satisfy the permit requirement to improve storm water discharge from the detention basin outfall at the Toland Road Landfill. This design package will include full plans and specifications to create a sand filter within the detention basin. Once a contract is awarded for construction of the sand filter within the basin, Dragomir will provide construction management services for the District to ensure the sand filter is built to the project specification.

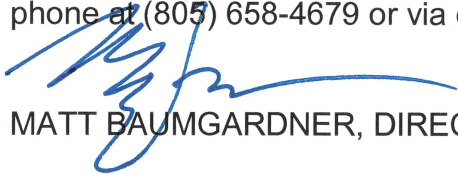
### **PROPOSAL**

The District desires to streamline contract processing in the future. To this end, staff has written the contract to minimize administrative burden and cost to achieve this goal. Going

forward, staff would request additional funding annually by including the associated costs within each fiscal year's proposed budget. Additionally, the contract contains language indicating extension is contingent upon approval of future year funding. This leaves the fiscal control in the hands of the VRSD Board but at the same time minimizes the administrative burden and cost to VRSD to extend the contract.

This letter and the associated contract have been reviewed by Legal Counsel as to form.

If you should have any questions or need additional information, please contact me by phone at (805) 658-4679 or via email at [mattbaumgardner@vrzd.com](mailto:mattbaumgardner@vrzd.com).




MATT BAUMGARDNER, DIRECTOR OF OPERATIONS

APPROVED FOR BUDGET IMPACT:

  
\_\_\_\_\_  
Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA:

  
\_\_\_\_\_  
Chris Theisen, General Manager

Attachments: VRSD Contract No. 19-009

**VENTURA REGIONAL SANITATION DISTRICT  
CONTRACT NO. 19-009**

**AGREEMENT FOR  
STORM WATER MANAGEMENT SERVICES  
BETWEEN  
VENTURA REGIONAL SANITATION DISTRICT  
AND  
DRAGOMIR DESIGN-BUILD, INC.**

THIS AGREEMENT is made and entered into this 20<sup>th</sup> day of June 2019, by and between the VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq. (“DISTRICT”) and DRAGOMIR DESIGN-BUILD, INC., a California Corporation (“CONSULTANT”). Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

**RECITALS**

A. DISTRICT has a need for a consultant who has specialized knowledge and experience in providing storm water management services to the DISTRICT.

B. CONSULTANT represents that it has the expertise and experience to provide storm water management services to the DISTRICT.

C. DISTRICT has selected CONSULTANT, based upon the above representations and in conformance with the negotiated procurement provisions of Section 403 of the DISTRICT Purchasing Resolution No. 89-13, to provide storm water management services at the Toland Road Municipal Solid Waste Landfill.

D. Parties agree to enter into this Agreement based upon the valuable and mutual consideration set forth below and the recitals above and to abide by its terms and conditions as set forth herein.

**AGREEMENT**

**ARTICLE 1: WORK STATEMENT/SCOPE OF SERVICES**

A. CONSULTANT shall provide the consulting services to the DISTRICT as described in the STATEMENT OF WORK & RATE SHEET which is attached as Exhibit “A” to this Agreement and incorporated herein by reference.

B. CONSULTANT shall use its best professional efforts and best industry practices in providing consulting services to DISTRICT and shall cooperate fully with DISTRICT and provide DISTRICT with all available information and assistance in relation to Exhibit A.

C. The Parties acknowledge and agree that CONSULTANT owes the DISTRICT a fiduciary duty to conduct all affairs of the DISTRICT in accordance with all applicable federal and state laws and the highest standards of good faith, trust, confidence and candor, and to endeavor, to the best of CONSULTANT’S ability, to promote and protect the best interests of the DISTRICT.

D. CONSULTANT shall not, at any time during the term of this Agreement, directly or indirectly, act as a partner, officer, director, consultant or employee, or provide storm water management services to any other business enterprise or governmental agency that conflicts with the DISTRICT's mission and business operations or CONSULTANT's duty of loyalty or fiduciary duty to the DISTRICT.

E. CONSULTANT shall begin work, as needed, immediately after the Agreement is signed by both parties. PARTIES agree that any and all work shall be done in a diligent and professional manner to DISTRICT's satisfaction.

## **ARTICLE 2: TERM OF CONTRACT**

A. Unless otherwise earlier terminated, this Agreement shall continue in force until the services specified herein have been fully performed. Upon execution of this Agreement by both Parties, CONSULTANT shall diligently pursue work to assure completion on a timely basis. Unless otherwise extended in writing by both Parties, this contract shall automatically terminate on June 30, 2024.

B. This Agreement may be extended annually, no more than four (4) times, by mutual agreement of the Parties. The DISTRICT General Manager, on behalf of the DISTRICT Board of Directors ("BOARD") shall prepare in a form approved by the DISTRICT Legal Counsel.

C. The Parties acknowledge and agree that this Agreement for storm water management services is dependent upon the availability of District funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the District Board of Directors, or is not allocated or allotted to this Agreement by the District Board of Directors for periodic payment in the current or any future fiscal period, then the obligations of the District to make payments after the effective date of such non-allocation or non-funding will cease and terminate.

D. If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the District Board of Directors for this Agreement, or is not allocated or allotted in full by the District Board of Directors for this Agreement for periodic payment in the current or any future fiscal period, then the CONSULTANT shall either accept the delayed or reduced payment obligations of District or agree that District has the right to terminate the Agreement as provided in Article 6. If such funding is reduced, District in its sole discretion shall determine which aspects or tasks of the Agreement shall proceed and which work or tasks shall be performed, with corresponding CONSULTANT's Charges for such Services and associated Deliverables. In these situations, District agrees to pay CONSULTANT for Services and Deliverables and certain of its costs in accordance with the terms of Exhibit A to the Agreement. Any obligation to pay by District will not extend beyond the end of District's then-current funding period, except as otherwise provided herein.

E. CONSULTANT expressly agrees that no penalty or damages shall be applied to, or shall accrue to, District in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

## **ARTICLE 3: INDEPENDENT CONSULTANT RELATIONSHIP**

A. It is expressly understood between the Parties that no employee/employer relationship is intended, the relationship of CONSULTANT to DISTRICT being that of an independent CONSULTANT. DISTRICT shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to CONSULTANT.

B. CONSULTANT is solely responsible for selecting the means, methods and procedures for performing its services hereunder as assigned by DISTRICT and for coordinating all portions of the work

so the result will be satisfactory to the DISTRICT. CONSULTANT will supply all tools and instrumentalities required to perform its services under this Agreement.

C. CONSULTANT, pursuant to this Agreement, is rendering professional services only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in the performance of services.

#### **ARTICLE 4: CONFIDENTIAL RELATIONSHIP and OWNERSHIP OF DOCUMENTS**

A. CONSULTANT agrees that all dealings of the Parties under this Agreement shall be confidential and no report, data, information or communication developed, prepared or assembled by CONSULTANT under this Agreement, or any information made available to CONSULTANT by DISTRICT, shall be revealed, disseminated or made available by CONSULTANT to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, drawings and other documents developed, prepared, completed or acquired by CONSULTANT during the performance of its services hereunder shall be given or turned over to DISTRICT upon termination of this Agreement.

B. CONSULTANT shall provide copies of original source electronic files (i.e., Microsoft Word or Excel files, digital photos, etc.) of all work completed as part of this Contract. Such files shall not be protected, encrypted or otherwise have their access restricted.

C. Any and all documents, reports, surveys, data compilation, interview results or records produced pursuant to this Agreement by the CONSULTANT shall be the property of the DISTRICT and under the ownership of the DISTRICT.

#### **ARTICLE 5: PAYMENT TO CONSULTANT**

A. In consideration of CONSULTANT's performance of services as described herein, DISTRICT shall pay CONSULTANT fees for its services according to the schedule of rates set forth in Exhibit "A" attached and incorporated by reference herein. On or prior to the tenth (10<sup>th</sup>) day of each calendar month after actual work is started, CONSULTANT shall submit an invoice in sufficient detail to show the total amount of work done to the last day of the month preceding the one in which the invoice is submitted. DISTRICT shall review and approve CONSULTANT's invoice for accuracy and agree with CONSULTANT on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONSULTANT for all approved work and materials within thirty (30) days of agreement on the amount of the invoice. In the event of disagreement with CONSULTANT on adjustments or disallowances, said amounts and disputes shall be withheld until resolved. Upon resolution of the disagreements, payment of the approved amount shall be made within thirty (30) days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees or compensation to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$75,000 without a mutually acceptable, written amendment hereto.

#### **ARTICLE 6: TERMINATION OF CONTRACT**

CONSULTANT specifically acknowledges and agrees that DISTRICT may terminate CONSULTANT's services at any time with or without cause, regardless of whether CONSULTANT's services or the Project are completed. Any termination or any special instructions hereunder from DISTRICT shall be made in writing. In the event of such termination, CONSULTANT shall have the right to expend additional time (not to exceed 10% of the total fees payable under this Agreement) to assemble the work in progress for the purpose of proper filing and closing the job. Such additional time shall not increase CONSULTANT's total compensation beyond the maximum stated in Article 5.

## **ARTICLE 7: INDEMNIFICATION AND HOLD HARMLESS**

CONSULTANT agrees to defend, indemnify and hold harmless DISTRICT and its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses, however caused, resulting directly or indirectly from or connected with CONSULTANT's negligent performance of this Agreement (including, but not limited to such liability, cost, damage, loss, claim or expense arising from the death of or injury to, or damage to property of CONSULTANT, DISTRICT, or their respective employees or agents), except to the extent that such liability, damages, costs, losses, claims or expenses are caused by the negligent or wrongful acts or omissions of DISTRICT or any of its agents or employees.

## **ARTICLE 8: INSURANCE**

CONSULTANT shall provide and keep in effect during the term of this Agreement insurance as follows:

- A. Workers' Compensation and Employer's Liability policies in accordance with and as required by applicable laws.
- B. Commercial General Liability policies with combined single limit coverage of at least \$1,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of at least \$1,000,000 for personal injury, death, or property damage.

CONSULTANT shall provide certificates of such insurance to DISTRICT prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in Items B and C above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONSULTANT's insurance shall be primary for the coverage in Items B and C above; and (3) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set forth in this Agreement.

## **ARTICLE 9: SUBCONSULTANTS**

This Agreement is a personal service contract and the consulting work hereunder shall not be delegated or assigned by CONSULTANT to any person or entity without the prior written consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

## **ARTICLE 10: AUTHORITY TO EXECUTE AGREEMENT**

Both DISTRICT and CONSULTANT do covenant that each individual executing this Agreement on behalf of each Party is a person duly authorized and empowered to execute Agreements for such Party.

## **ARTICLE 11: NO WAIVER**

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONSULTANT shall operate as a waiver of the default, of any subsequent or other default by CONSULTANT, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

## **ARTICLE 12: PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this Agreement is found 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.

**ARTICLE 13: TERMS**

No alteration or amendment of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties.

**ARTICLE 14: CALIFORNIA LAW**

This Agreement shall be interpreted and construed pursuant to the laws of the State of California. This Agreement shall be governed by the Uniform Commercial Code of the State of California, as amended. The Parties agree that should litigation arising from this Agreement be commenced within California, such litigation shall occur within a court of competent jurisdiction within the County of Ventura.

**ARTICLE 15: COMPLIANCE WITH LAWS**

CONSULTANT shall be solely responsible for giving all notices and complying with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to CONSULTANT's work, the safety of the persons or property involved, and their protection from damage or injury. CONSULTANT shall defend, indemnify and hold DISTRICT harmless from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and costs, brought or recovered against DISTRICT, for or on account of any liability under said laws, ordinances, rules, regulations and orders which may be incurred by reason of any work to be performed by CONSULTANT with this Agreement.

**ARTICLE 16: FORCE MAJEURE**

Neither CONSULTANT nor DISTRICT shall be liable or deemed to be in default for any delay or failure in performance under this Agreement due to interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of CONSULTANT or DISTRICT.

**ARTICLE 17: DISPUTE RESOLUTION**

In the event that CONSULTANT and DISTRICT have a dispute concerning the payment of sums pursuant to their Contract, the Parties agree to be governed by Public Contracts Code Section 20104, et seq. In the event of such dispute, CONSULTANT shall file a written claim with DISTRICT. DISTRICT shall respond in writing within forty-five (45) days or, within thirty (30) days request additional documentation and respond within fifteen (15) days after said request.

**ARTICLE 18: MODIFICATION or AMENDMENT**

This Agreement, in whole or in part, may not be amended, modified, or altered in any way unless it is first put in writing and then mutually agreed to by authorized representatives of the Parties.

**ARTICLE 19: NOTICES**

All notices or other official correspondence relating to contractual matters between the Parties shall be made by depositing the same as first-class, postage-paid mail addressed as follows:

To CONSULTANT: Chris Dragomir

DRAGONMIR DESIGN-BUILD, INC.  
8440 Paseo De Caballo  
Atascadero CA 93422

To DISTRICT: Finance & Administration  
VENTURA REGIONAL SANITATION DISTRICT  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003-0704

or to such other address as either Party may designate hereinafter in writing delivered to the other Party. All notices shall be deemed to have been received three (3) days after mailing.

**ARTICLE 20: EXECUTION IN COUNTERPARTS**

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement, as may be amended from time to time. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or other electronic means shall have the same impact and effect as original counterparts and shall be valid, enforceable and binding.

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**IN WITNESS WHEREOF**, the Parties hereto have executed this agreement the day and year first above written.

VENTURA REGIONAL  
SANITATION DISTRICT

By \_\_\_\_\_  
KEVIN KILDEE  
Chairman of the Board

DRAGOMIR DESIGN-BUILD, INC.

By  \_\_\_\_\_  
CHRIS DRAGOMIR  
Principal

APPROVED AS TO FORM:

ARNOLD, LAROCHELLE,  
MATHEWS, VANCONAS & ZIRBEL, LLP

By \_\_\_\_\_  
ROBERT N. KWONG  
Legal Counsel for District

ATTEST:

By \_\_\_\_\_  
JULIET RODRIGUEZ  
Clerk of the Board

## EXHIBIT A

### STATEMENT OF WORK & RATE SHEET

The following specifies the work statement/scope of work to be performed by CONSULTANT and the rates to be charged in connection with CONSULTANT'S delivery of storm water management services to DISTRICT at its open and closed landfills.

CONSULTANT will provide storm water management services as outlined in the tasks below:

**TASK 1: RESEARCH AND REVIEW DOCUMENTATION** – Consultant shall review the list of documents below that will be used to set the overall storm water management project constraints. Consultant's review will be a cooperative effort with DISTRICT's staff to determine the appropriate site constraints and obstacles to overcome.

- a. Water Quality Design Guidelines: CONSULTANT will research and review applicable local, state, and federal ordinances related to stormwater discharge requirements and the Clean Water Act (CWA). CONSULTANT will review the Industrial General Permit (IGP) requirements issued by the Los Angeles Regional Water Quality Control Board (LARWQCB). It is CONSULTANT'S understanding that the Project Site is discharging stormwater runoff to Santa Clara River, a receiving water body listed in the CWA Section 303(d) as having impairments. CONSULTANT will research the Site's current sampling parameters against those listed in the IGP and in the CWA 303(d) list, in order to understand whether the Site is currently following proper sampling protocols.
- b. SMARTS Online Profile: CONSULTANT will review all documents previously submitted by others for the Site to the SMARTS profile page to establish historical knowledge of the Site's past performance.
- c. Survey Data: CONSULTANT will review existing survey files provided by DISTRICT in electronic CAD format of most recent aerial Site survey, to understand stormwater runoff general flow direction, conveyances, obstacles, storage, and the like.
- d. Geotechnical Data: CONSULTANT will review existing geotechnical reports relevant to soil characteristics of the Site, to understand soil types and settling velocities for the establishment of sediment removal options from stormwater runoff.
- e. WDR and JTD: CONSULTANT will review of the Site's current Waste Discharge Requirements (WDR) and Joint Technical Document (JTD) to establish historical knowledge of the Site.
- f. Existing Site Drainage Map and Hydrology: CONSULTANT will review the most recent Site drainage map and hydrology calculations of major flow paths, conveyance structures, as well as sedimentation basin size and outlet structures, in order to understand the existing stormwater runoff conveyance, management, and treatment systems in place.

**TASK 2: LEVEL 2 ERA TECHNICAL REPORT** –

- a. CONSULTANT shall prepare a Level 2 Exceedance Response Action (ERA) Technical Report, as required by the California Industrial General Permit (IGP), to address the past Numeric Action Level (NAL) and Technology-Based Numeric Action Level (TNAL) exceedances, which placed the Toland Road landfill site at IGP Discharger Level 2.

b. CONSULTANT shall submit this report prior to June 30, 2019, pursuant to a six-month extension request granted by the LARWQCB in lieu of original due date of January 1, 2019, as per the IGP.

**TASK 3: STORMWATER MULTIPLE APPLICATION & REPORT TRACKING SYSTEM (SMARTS) COMPLIANCE**

a. CONSULTANT will update and/or assist with maintaining the Toland Road Landfill Site's SMARTS profile and bring it current with the new ERA 2 Technical Report, Stormwater Pollution Prevention Plan (SWPPP) updates, AD HOC Monitoring Reports, Annual Reports, and Inspection Reports.

**TASK 4: MEETINGS with REGULATORY AGENCIES and DISTRICT**

On and on-going and as-needed basis, CONSULTANT shall attend DISTRICT and agency meetings and conference calls in furtherance of all other tasks in this Agreement.

**TASK 5: SITE INSPECTIONS**

a. CONSULTANT will provide as-needed Site inspection services at the request of DISTRICT.

b. Site Inspection services may include, but not be limited to pre-storm, post storm, and during a storm event, as well quarterly and/or yearly general Site inspections for various submittals required by the LARWQCB.

**TASK 6: SAND FILTER DESIGN**

CONSULTANT shall provide DISTRICT with engineering drawings and specifications for a sand filter in the stormwater detention basin / debris basin at the Toland Road Landfill so that District can draft the necessary request for proposal for competitive project bidding.

**TASK 7: CONSTRUCTION MANAGEMENT**

CONSULTANT will provide construction management and oversight throughout the construction of the sand filter.

**HOURLY LABOR BILLING RATES AND  
EXPENSE REIMBURSEMENT SCHEDULE  
CALENDAR YEAR 2019  
(Non-Prevailing Wage)**

<b>LABOR CATEGORY</b>	<b>MAX. HOURLY RATE (U.S. \$) (NON-PREVAILING WAGE)</b>
<b>Professional</b>	
Engineering Intern	\$50.00
Technical Writer	\$100.00
Designer/CAD Operator	\$115.00
Engineer I	\$120.00
Engineer II	\$125.00
Engineer III/Senior Designer	\$135.00
Senior Engineer	\$140.00
Project Engineer/Project Coordinator	\$150.00
Project Manager/Sr. Project Coordinator	\$185.00
Senior Project Manager	\$205.00
Principal	\$230.00
Expert Witness Testimony*	\$450.00
<b>Administrative</b>	
Administrative Clerk	\$50.00
Senior Administrative Clerk	\$75.00
Word Processor/Administrative Support	\$65.00
Graphic Designer/Research	\$110.00

Outside reproduction, special photography, postage, delivery services, express mail, out-of-area telephone calls, printing and any other services performed by others will be billed at cost plus 10%.

**Reimbursable In-House Costs**

Photo Copies (B&W 8.5"x11") ..... \$ 0.20/Each  
 Photo Copies (B&W 11"x17") ..... \$ 0.35/Each  
 Color Copies (up to 8.5"x11") ..... \$ 1.50/Each  
 Color Copies (to 11"x17") ..... \$ 2.50/Each  
 Large Format Copies ..... \$ 1.00/S.F.  
 Mileage ..... \$ 0.545/Mile

**NOTE:** All rates are effective to December 31, 2019. There will be a negotiated increase in rates, 5% minimum per year, for contracts extending beyond December 31, 2019.

\* Four-hour minimum