

**AGREEMENT
BIOLA COMMUNITY SERVICES DISTRICT
DISTRICT ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into effective the 16th day of November, 2023, by and between the BIOLA COMMUNITY SERVICES DISTRICT, a California Special District (hereinafter referred to as "DISTRICT") and AM CONSULTING ENGINEERS, Inc. a California Corporation, (hereinafter referred to as "ENGINEER").

RECITALS

WHEREAS, DISTRICT desires to retain a professional engineer to provide Technical Assistance with regards to various CDBG funded districtwide projects; and

WHEREAS, ENGINEER is a firm consisting of registered Professional Engineers and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement will be administered for DISTRICT by District Manager or his designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. ENGINEER shall perform to the satisfaction of DISTRICT the services described in the various Task Orders issued under this agreement.
2. Term of Agreement. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for a period of five years from the Effective Date, subject to termination in accordance with this Agreement.
3. Payment for Services.

(a) Compensation. ENGINEER'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be time and materials in accordance with the rates shown in Exhibit "A". At the request of the DISTRICT, ENGINEER shall negotiate the scope of work and compensation for services provided for any specific project or assignment.

4. Termination.

(a) Termination for Convenience. Either party may terminate this Agreement at any time by giving notice of such termination (including the effective termination date) at least

thirty (30) calendar days before the effective date of such termination. In the event of termination for convenience, following payment by DISTRICT for all services performed before termination, DISTRICT shall be provided copies of all finished or unfinished documents and other materials as described in the Scope of Work.

(b) Termination for Cause. If for any cause either party fails to fulfill in a timely and proper manner its obligations under this Agreement (the "breaching party"), the other party (the "terminating party") shall have the right to terminate the Agreement by giving not less than five (5) working days' written notice to the breaching party of the intent to terminate and specifying the effective date thereof. The terminating party shall, however, provide the breaching party with a detailed statement of the grounds for termination. This statement shall include, as appropriate, references to specific provisions of this Agreement, dates, dollar amounts and other information relevant to the decision to terminate for cause.

(c) In the event of termination, all finished or unfinished documents, reports, or other materials prepared by ENGINEER under this Agreement shall remain ENGINEER'S property. DISTRICT shall be entitled to copies of all such materials. ENGINEER shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.

5. Confidential Information, Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by ENGINEER pursuant to this Agreement shall not be made available to any individual or organization by ENGINEER without the prior written approval of the District Manager. During the term of this Agreement, and thereafter, ENGINEER shall not, without the prior written consent of DISTRICT, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of DISTRICT, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary to DISTRICT.

(b) Any and all writings and documents prepared or provided by ENGINEER pursuant to this Agreement are instruments of professional service and shall remain the property of ENGINEER. DISTRICT shall have the right to the documents and materials prepared by ENGINEER under this Agreement but shall only use them for purposes expressly contemplated therein. ENGINEER shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

6. Professional Skill.

(a) Standard of Care. It is further mutually understood and agreed by and between the parties hereto that in as much as ENGINEER represents to DISTRICT that ENGINEER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, DISTRICT relies upon the skill of ENGINEER to do and perform such services in a skillful manner and ENGINEER agrees to thus perform the services. Therefore, any acceptance of such services by DISTRICT shall not operate as a release of ENGINEER from said professional standards.

(b) Opinions of Cost. ENGINEER's opinions of probable construction costs are to be made on the basis of ENGINEER's experience and qualifications and represent

ENGINEER's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction costs prepared by ENGINEER.

7. Indemnification.

a) To the furthest extent allowed by law, ENGINEER shall indemnify, hold harmless, and defend DISTRICT and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of ENGINEER, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligation under this paragraph is in addition to and is not limited by any insurance which ENGINEER is otherwise required to maintain under this Agreement.

b) ENGINEER agrees to reimburse DISTRICT for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to ENGINEER's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement. Likewise, DISTRICT agrees to reimburse ENGINEER for any expenditures, including reasonable attorney fees, incurred in the defense against claims ultimately determined to be due to DISTRICT's negligent, or deliberately wrongful, acts, errors, or omissions in connection with the performance of this Agreement.

c) If ENGINEER should subcontract all or any portion of the services to be performed under this Agreement, ENGINEER shall require each subcontractor to indemnify, hold harmless and defend DISTRICT and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

d) This section shall survive termination or expiration of this Agreement.

8. Insurance Throughout the life of this Agreement, ENGINEER shall pay for and maintain in full force and effect all insurance as required in Exhibit "B".

9. Conflict of Interest and Non-Solicitation.

(a) ENGINEER shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*). ENGINEER shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, ENGINEER shall immediately notify DISTRICT of these facts in writing.

(b) In performing the work or services to be provided hereunder, ENGINEER shall not employ or retain the services of any person while such person either is employed by DISTRICT.

(c) ENGINEER represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefit hereunder.

(d) ENGINEER has the potential for conflicts of interest in providing professional services to property owners or developers for projects within the DISTRICT limits or sphere of influence for the DISTRICT. In order to *avoid* such conflicts, without the consent of the DISTRICT, ENGINEER shall not bid for or perform any services pursuant to any contract in connection with any private development project located within the DISTRICT limits or sphere of influence for the DISTRICT during the term of this Agreement.

(e) If ENGINEER should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, ENGINEER shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

10. Nondiscrimination. To the extent required by controlling federal, state, and local law, ENGINEER shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, ENGINEER agrees as follows:

(a) ENGINEER will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) ENGINEER will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. ENGINEER will ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to ENGINEER'S employment practices including, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

11. Independent Contractor.

(a) In the furnishing of the services provided for herein, ENGINEER is acting solely as an independent contractor. Neither ENGINEER, nor any of its officer, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of DISTRICT for any purpose. DISTRICT shall have no right to control or supervise or direct the manner or method by which ENGINEER shall perform its work and functions. However, DISTRICT shall retain the right to administer this Agreement so as to verify that ENGINEER is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between ENGINEER and DISTRICT. ENGINEER shall have no authority to bind DISTRICT absent DISTRICT'S express written consent. Except to the extent otherwise provided in this Agreement, ENGINEER shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, ENGINEER and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to DISTRICT employees. ENGINEER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare, and retirement benefits. In addition, together with its other obligations under this Agreement, ENGINEER shall be solely responsible, indemnify, defend, and save DISTRICT harmless from all matters relating to employment and tax withholding for and payment of ENGINEER'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in DISTRICT employment benefits, entitlements, programs and/or funds offered employees of DISTRICT whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, ENGINEER may be providing services to others unrelated to DISTRICT or to this Agreement.

12. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.

13. Assignment.

(a) This Agreement is personal to ENGINEER and there shall be no assignment by ENGINEER of its rights or obligations under this Agreement without the prior written approval of the District Manager or his designee. Any attempted assignment by ENGINEER, its successors or assigns, shall be null and void unless approved in writing by the District Manager or his designee.

(b) ENGINEER hereby agrees not to assign the payment of any monies due ENGINEER from DISTRICT under the terms of this Agreement to any other individual(s), corporation(s), or entity(ies). DISTRICT retains the right to pay any and all monies due ENGINEER directly to ENGINEER.

14. Compliance with Law. In providing the services required under this Agreement, ENGINEER shall at all times comply with all applicable laws of the United States, the State of California, and DISTRICT, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

15. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

16. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

17. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

18. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

19. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

20. Attorneys' Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.

21. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

22. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, and shall be null and void.

23. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not

intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

25. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both DISTRICT and ENGINEER.

IN WITNESS WHEREOF, the parties have executed this Agreement at Biola, California, the day and year first written above.

BIOLA COMMUNITY SERVICES DISTRICT
A California Special District

AM CONSULTING ENGINEERS, INC.
A California Corporation

By _____
Jennifer Duarte, Board President

By _____
Alfonso Manrique, President

Address:
Biola Community Services District
4925 7th Ave
Biola, CA 93606

Address:
AM Consulting Engineers, Inc.
5150 N Sixth Street, Suite 124
Fresno, CA 937

Attachments:
Exhibit "A"- Fee Schedule
Exhibit "B" -Insurance Requirements



Exhibit A
Fees for Professional Services
Hourly Rate Schedule
 (Effective until January 1, 2027)

CLASSIFICATION	RATE
Engineering	
Assistant Engineer	\$105.00 per hour
Associate Engineer	\$115.00 per hour
Senior Engineer	\$125.00 per hour
Principal Engineer	\$165.00 per hour
Project Manager	\$165.00 per hour
Designing/Drafting	
Design CADD Operator	\$105.00 per hour
Support Staff	
Technical Typist/Word Processor	\$80.00 per hour
Miscellaneous	
Fax	\$0.10 per page
8"x11" Copies/Impressions	\$0.20 per page
Reproducible Copies (Mylar).....	\$1.00 per sq. ft.
Reproducible Copies (Bond).....	\$1.00 per sq. ft.
Mileage.....	\$0.55 per mile
Airfare, Meals and Lodging	At cost

Notes:

1. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. It is understood and agreed that these rates and charges include normal equipment and materials used in connection with the production of the required engineering and/or architectural services. If authorized by the client, an overtime premium multiplier of 1.5 will be applied to the direct wage cost of hourly personnel who work overtime in order to meet a deadline which cannot be met during normal hours. Applicable sales taxes, if any, will be added to these rates.
3. Fee schedule is subject to general revision. New equipment categories and charges may be added or revised from time to time.

EXHIBIT B INSURANCE REQUIREMENTS

ENGINEER shall procure and maintain for the duration of the agreement, insurance against claims for injuries to persons or damage to property that may arise from, or be in connection with, the performance of the work described herein by ENGINEER, its agents, representatives, employees, and subconsultants. At the very least, ENGINEER shall maintain the insurance coverage, limits of coverage and other insurance requirements as described below:

A. General Liability

At least \$1,000,000 combined single limit per occurrence coverage for bodily injury, personal injury and property damage. If a general aggregate limit is used, then either the general aggregate limit shall apply separately to each project/location, or the general aggregate limit shall be twice the required per occurrence limit. ENGINEER or its insurance carrier shall notify DISTRICT if incurred losses covered by the policy exceed 50% of the aggregate limit.

B. Automobile Liability

At least \$100,000 to cover bodily injury for one person and \$300,000 for two or more persons, and \$50,000 to cover property damages. However, policy limits for construction projects shall be at least \$1,000,000 combined single limit per accident for bodily injury and property damage for autos used by

ENGINEER to fulfill the requirements of the contract, and coverage shall be provided for "any auto" code 1 as listed on the Acord form "Certificate of Insurance".

C. Workers' Compensation and Employer's Liability

If ENGINEER has employees, it shall maintain continuously Workers' Compensation insurance to cover ENGINEER and its employees and partners. Such insurance shall include coverage up to policy limits and Employer's Liability insurance each with policy limits of at least \$1,000,000 for bodily injury or disease.

D. Professional Liability

Coverage for professional services, including errors and omissions, shall be provided in an amount of at least \$1,000,000 per occurrence or \$1,000,000 on a claims-made basis. However, if coverage is written on a claims-made basis, the policy shall be endorsed to provide at least a two-year extended reporting provision.

All insurance shall include DISTRICT, its elected officials, officers, and employees as an additionally insured, and shall not be reduced or canceled without 30 days' written prior notice delivered to DISTRICT.

ENGINEER shall provide DISTRICT with a certificate of insurance as evidence of insurance protection upon execution of any agreement. Insurance certificates provided shall not contain the language "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company", or similar language.