

Appendix E: RCD Contract Template

Contact the RCD to establish an official contract.



**Santa Cruz County
Resource Conservation District**

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Capitola, California 95010

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sccrcd@sccrcd.org

PROFESSIONAL SERVICES AGREEMENT

CONTRACT NO: **IWRP – (Component Contractor - #)**

This agreement is entered into this ____ day of ____ by and between the Santa Cruz County Resource Conservation District, hereinafter called the RCD, and ____ hereinafter called the CONTRACTOR. The parties agree as follows:

1. **DUTIES**

The CONTRACTOR agrees to exercise special skill to accomplish the following result: the CONTRACTOR is responsible to _____. The CONTRACTOR is responsible for the above task as described in Attachment 1 – _____. (Project Work Program)

2. **COMPENSATION**

- A. In consideration for the CONTRACTOR accomplishing said services, the RCD agrees to pay the CONTRACTOR an amount not to exceed \$____, including all taxes, licenses and fees in accordance with the budget detail outlined in **Attachment 1** which is made part of this agreement by this reference, for completion of the tasks also shown in **Attachment 1**.
- B. The CONTRACTOR shall submit invoices, upon completion of tasks, for costs incurred during the _____. All receipts, invoices, time sheets and a report of work shall accompany invoices, by task/subtask, completed during the billing period. The RCD shall make payment to the CONTRACTOR upon receipt of payment from the **State Coastal Conservancy**. Payment by the RCD shall be contingent upon completion of work described in **Attachment 1**.
- C. Pursuant to **State Coastal Conservancy conditions, 10% will be withheld (by SCC)** until project completion and approval of final report and/or products as defined in **Attachment 1**. Upon completion of the final report, the RCD shall complete their review and approval with a maximum time period of one hundred and twenty (120) days and then reimburse the 10% withholding as per above.

3. **TERM**

The term of this agreement shall be from ____ to ____, unless terminated in accordance with Paragraph 4. The CONTRACTOR may request reimbursement for work undertaken on the project beginning ____ that is in compliance with the approved work program.

4. **EARLY TERMINATION**

Either party hereto may terminate this agreement at any time by giving seven (7) days written notice to the other party. Any data or work product materials collected prior to termination must be submitted to the RCD upon termination of the contract.

5. **WORK PRODUCT**

All materials and work products, including data collected for compilation of work products identified in **Attachment 1**, produced by the CONTRACTOR as a result of this agreement are the property of the Santa Cruz County Resource Conservation District and the State Coastal Conservancy. Any final products distributed or produced will acknowledge the Santa Cruz County Resource Conservation District and the State Coastal Conservancy

6. **SUBCONTRACTING**

- A. The CONTRACTOR shall not subcontract any portion of the work required by this

____/____

Agreement without prior approval of the RCD. The RCD shall retain final approval authority for any and all "Scope of Services" of subcontractors for this project. The CONTRACTOR shall retain responsibility for satisfactory completion of all tasks to be carried out under any subcontract for work under this project.

- B. The CONTRACTOR agrees to include sections 6-11 in all contracts and tier subcontracts directly related to project performance.

7. AUDIT, ACCESS TO RECORDS

- A. The CONTRACTOR and any subcontractors shall maintain books and records pertinent to performances of all work related to this contract in an adequate manner and in accordance with generally accepted accounting principles and practices. The records must be sufficient to assure that contract funds are allocable to allowable costs.

- B. At all reasonable times during the term of this contract and for five (5) years following final payment and closure of all other pending matters, the State Auditor General, the State Board, and the Resources Agency shall have access to the records of the CONTRACTOR and any subcontractors related to work performed under this contract and the CONTRACTOR shall make such records available for audit, examination, excerpts, and transcriptions.

8. NONDISCRIMINATION CLAUSE

- A. During the performance of this contract, The CONTRACTOR and its subcontractors (if applicable) shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), medical condition (cancer related), marital status, age (over 40), gender, sexual preference, or any other non-merit factor unrelated to job duties. Such action shall include, but not be 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. The CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

- B. The CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

9. INDEMNIFICATION FOR DAMAGES, TAXES, AND CONTRIBUTIONS

The CONTRACTOR shall exonerate, indemnify, defend, and hold harmless the RCD (which for purposes of paragraphs 11 and 12 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- A. The Consultant shall defend, indemnify, and hold harmless the RCD, its officers, agents, employees, and servants from all damages as a result of this agreement, loses, claims,

suits, or actions of any kind and nature whatsoever, including attorneys' fees brought as a result of damage to property, or injuries or death of any person, including Consultant, arising directly or indirectly, wholly or partially, from the performance of this Agreement, to the extent caused by the negligence, errors, omissions, or willful misconduct of Consultant or employees.

- B. Any and all federal, State, and local taxes, charges, fees, or contributions required to be paid with respect to the CONTRACTOR and the CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

10. INSURANCE

The CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects the RCD and any insurance or self-insurance maintained by the RCD shall be excess of the CONTRACTOR'S insurance coverage and shall not contribute to it.

A. Types of Insurance and Minimum Limits

- (1) Worker's Compensation for Contractor's employees.
- (2) Automobile and General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit.

11. CONSULTANT CONDUCT

- A. All interactions during the creation of the ____ shall be professional and civil.
- B. Conclusions and recommendations made for the ____ must be substantiated by associated data and literature review.
- C. Conclusions and recommendations made for the ____ will be based on professional judgment and will be limited to consultants accredited in that field of expertise.

12. CONFLICT RESOLUTION

At any time during the ____ process that any consultant has a disagreement with conclusion(s), recommendation(s), and/or the direction of the process, the consultant(s) shall bring those concern(s) to the RCD Contract Manager and the Technical Advisory Committee and/or the Steering Committee for resolution.

13. FINAL APPROVAL

The CONTRACTOR agrees that all reports, manuals, statistics, and any other documentation required under the terms of this Agreement are subject to final approval by the RCD's Board of Directors before project goals and objectives will be considered completed.

14. PARTIAL PERFORMANCE

It is hereby agreed that payments called for under this Agreement are based on performance of the items listed under Paragraph 1 (Duties). In the event all duties are not completed or delivered, the amount due under this Agreement shall be reduced on a pro-rated basis to be determined by the RCD.

15. NONASSIGNMENT OF AGREEMENT

The CONTRACTOR shall not assign or subcontract this Agreement to a third party unless prior written approval is obtained by the RCD. Any assignment without such written consent shall automatically terminate this Agreement.

16. SUBCONTRACTS

The CONTRACTOR agrees to maintain and make available to the RCD copies of all written subcontracts.

17. AMENDMENTS TO THIS AGREEMENT

This agreement may not be amended except as agreed to in writing and signed by the RCD.

No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

18. INDEPENDENT CONTRACTOR STATUS

The CONTRACTOR and the RCD have reviewed and considered the principal test and secondary factors below and agree that the CONTRACTOR is an independent contractor and not an employee of the RCD. The CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. The CONTRACTOR is not entitled to any employee benefits. The RCD agrees that the CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than the RCD has the right to control the manner and means of accomplishing the result contracted for. SECONDARY FACTORS: (a) The extent of control which, by agreement, the RCD may exercise over the details of the work is slight rather than substantial; (b) The CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by the CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the RCD supplies the instrumentalities, tools and workplace; (f) The length of time for which the CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of the CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of the RCD; (I) The CONTRACTOR and the RCD believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The RCD conducts public business. It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors, which indicate that the CONTRACTOR is an independent contractor.

By their signature to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first written above.

RESOURCE CONSERVATION DISTRICT

CONTRACTOR

Date

Date

Signature

Signature

Printed Name / Title

Printed Name / Title

Street Address

Street Address

City, State, Zip

City, State Zip