

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into on this day 21st of November 2022, by and between Tranquillity Public Utility District, hereinafter called "CLIENT," and AM Consulting Engineers, Inc., a California corporation, hereinafter called "AMCE" as follows:

CLIENT engages AMCE to perform professional engineering services with regards to the design of Sewer Lift Station Improvements, hereinafter called the "PROJECT."

CLIENT and AMCE, for mutual consideration, agree as follows:

1. **Scope of Services.** AMCE agrees to provide and perform certain professional services for CLIENT in connection with the PROJECT as set forth in Exhibit "A" attached hereto and incorporated by this reference.
2. **Schedule.** AMCE shall perform its services in accordance with the schedule set forth in Exhibit "A." CLIENT agrees that AMCE shall not be responsible for delays which are due to causes beyond AMCE's reasonable control. In the case of any such delay, the time for completion of AMCE's services hereunder shall be extended accordingly.
3. **Compensation.**
 - a. **Fees.** CLIENT agrees to pay AMCE as compensation for its services as described in Exhibit A. Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. Should CLIENT dispute in good faith any portion of an invoice, CLIENT shall pay the undisputed portion as provided herein. Interest of 1.5% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts wrongfully withheld or not paid within thirty days of the billing date, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorneys' fees or other costs incurred in collecting any delinquent amount shall be paid by CLIENT.
 - b. **Project Delay.** In the event that AMCE's services hereunder are delayed for a period in excess of six months due to causes beyond AMCE's reasonable control, AMCE's compensation shall be subject to renegotiation.
 - c. **Retention.** If any portion of AMCE's fee is held in retention, such amount shall be released within thirty days after completion of the corresponding services. Interest shall be paid at the rate of 1.5% per month on any retention amounts not paid within this thirty-day period.
 - d. **Partial Services.** In the event any portion of the work prepared or partially prepared by AMCE is suspended, abandoned, or terminated, CLIENT shall pay AMCE for the work performed on such portion on an hourly basis, not to exceed any maximum contract amount specified herein.
 - e. **Limited to Grant Funding.** AMCE understands and agrees that the funding for this project as set forth in Exhibit A, is limited to the amount of fund provided by the grant and will not look to the CLIENT for payment beyond those funds available for AMCE's as provided for in the grant.
4. **Standard of Care.** In the performance of its professional services, AMCE will use that degree of care and skill ordinarily exercised by a professional engineer under similar conditions in similar localities and no other warranties, express or implied, are made or intended in any of AMCE's proposals, contracts or reports. AMCE shall be entitled to rely upon the accuracy of data and information provided by

CLIENT or others without independent review or evaluation unless provided otherwise in Exhibit "A." AMCE shall perform its services in connection with applicable laws, rules, regulations and standards that are in effect as of the date of this agreement. If any changes occur in such laws, rules, regulations or standards that materially affect the scope of work or schedule of this agreement, AMCE's compensation shall be renegotiated accordingly.

5. **Construction Safety and Methods.** CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the PROJECT, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. AMCE shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. AMCE shall not have the authority to stop or reject the work of the construction contractor.
6. **Opinion of Construction Cost.** Any Opinion of the Construction Cost prepared by AMCE represents its judgment as a design professional and is supplied for the general guidance of CLIENT. AMCE does not, however, have control over the cost of labor and materials or have control over competitive bidding or market conditions.
7. **Instruments of Service.** All original tracings, survey notes, machine-readable information and data ("CADD data") and other original documents are instruments of service and shall remain the property of AMCE, except where by law or precedent these documents become public property. AMCE shall furnish CLIENT reproducible copies of all final documents as detailed in Exhibit A.
8. **Reuse of Documents.** Documents, including drawings and specifications, prepared by AMCE pursuant to this agreement are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from AMCE will be at CLIENT'S sole risk and without liability to AMCE. Further, any and all liability arising out of changes made to AMCE's deliverables under this agreement by CLIENT or persons other than AMCE is waived as against AMCE and the CLIENT assumes full responsibility for such changes unless CLIENT has given AMCE prior notice and has received from AMCE written consent for such changes.
9. **CADD Data.** Electronic CADD data delivered to CLIENT shall not include the "wet-stamped" professional stamp or signature of an engineer or architect. CLIENT agrees that AMCE shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by CLIENT, or anyone authorized by CLIENT, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by CLIENT, or anyone authorized by CLIENT, of CADD data for additions to this PROJECT, for the completion of this PROJECT by others, or for any other project, excepting only such use as is authorized, in writing, by AMCE.
10. **Construction Contractor.**
 - a. **Construction Contractor Indemnification.** CLIENT will require that any construction contractor performing work in connection with the PROJECT hold harmless, indemnify and defend CLIENT, AMCE, their consultants, and each of their directors, officers, agents and employees from any and all liabilities, claims, losses, damages and costs, including attorneys' fees, arising out of or alleged to arise from the construction contractor's performance of the work described in the construction contract documents, but not including liability that may be due to the negligence of CLIENT, AMCE, their consultants, or their directors, officers, agents and employees.

- b. Construction Contractor Insurance. CLIENT also will require that the construction contractor provide workers' compensation and commercial general liability insurance, including completed operations and contractual liability, with the latter coverage sufficient to insure the construction contractor's indemnity, as above required; and such insurance shall include CLIENT, AMCE, their consultants, and each of their directors, officers, agents and employees as additional insureds. The insurance afforded to these additional insureds shall be primary insurance. If the additional insureds have other insurance which might be applicable to any loss, the amount of the insurance provided under this paragraph shall not be reduced or prorated by the existence of such other insurance.
- c. Construction Contract Documents. CLIENT will provide a copy of the construction contract documents before they are executed in order that AMCE may confirm that the above requirements have been met. CLIENT agrees to forward to AMCE a complete copy of the fully executed construction contract documents. The documents copied to AMCE will include, but not be limited to, the executed agreement, bonds, insurance certificates and endorsements.
11. Fees and Permits. CLIENT shall pay the cost of all fees, permits, bond premiums, title company charges, blueprints and reproductions in connection with the PROJECT and AMCE'S services hereunder unless otherwise specified in Exhibit "A."
12. Asbestos/Hazardous Materials. AMCE is not licensed to provide services involving the identification or handling of asbestos or hazardous materials. Therefore, in providing its services hereunder, AMCE shall not be responsible for the identification, handling, containment or abatement of any asbestos or other hazardous material present in connection with the PROJECT. In the event that CLIENT becomes aware of the presence of asbestos or any other hazardous material at the jobsite, CLIENT immediately shall notify AMCE. AMCE shall be entitled to cease any of its services that may be affected by the asbestos or other hazardous material and shall not be liable for damages in connection with such termination of services. CLIENT shall be responsible for complying with all applicable federal and state rules and regulations in connection with the asbestos or other hazardous material. Further, CLIENT shall indemnify and defend AMCE, its consultants, agents, directors, officers and employees from all claims, damages, losses and expenses, including but not limited to attorneys' fees and court and arbitration costs (collectively "the Liabilities"), which Liabilities are related to asbestos or other hazardous materials and arise out of work performed on the PROJECT by others.
13. Termination of Agreement. This agreement may be terminated by either CLIENT or AMCE upon thirty days' written notice in the event of substantial failure of the other party to perform in accordance with the terms of this agreement. In the event of termination of this agreement, CLIENT shall promptly pay AMCE for all of the fees, charges and services performed by AMCE in accordance with the compensation arrangements under this agreement or on an agreed hourly basis.
14. Dispute Resolution. The parties agree in good faith to attempt to resolve amicably; without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the parties agree to endeavor to settle the dispute by mediation. Either party may make a written demand for mediation, which demand shall specify the facts of the dispute. The matter shall be submitted to a mediator who shall hear the matter and provide an informal nonbinding opinion and advice in order to help resolve the dispute. The mediator's fee shall be shared equally by the parties. If the dispute is not resolved through mediation, the matter may be submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.
15. Assignment. Services provided under this agreement are for the exclusive use of CLIENT. Neither CLIENT nor AMCE shall assign its interest in this agreement without the written consent of the other.

16. **Severability.** Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this agreement are declared to be severable.
17. **Other Agreements.** There are no understandings or agreements except as herein expressly stated. Any purchase order issued by CLIENT for the services to be provided hereunder shall be deemed to have been issued for its own purchasing, accounting and other record-keeping purposes only and shall not be deemed to be a part of this agreement or to modify or amend this agreement in any way. This agreement may only be modified by a writing signed by both parties.
18. **Counterparts.** This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
19. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the state of California.

IN WITNESS WHEREOF, AMCE and CLIENT have executed this agreement this ____ day of November, 2022.

“AMCE”

“CLIENT”

AM Consulting Engineers, Inc.

TRANQUILLITY PUBLIC
UTILITY DISTRICT



By: Michael Pugh

By: Alfonso Manrique

Title: Board Chairman

Title: President

License No.: C63673

LIST OF EXHIBITS:

Exhibit "A" Scope of Services/Fees