



REGULAR BOARD MEETING AGENDA
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, November 22, 2022 at 6:00PM

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.
- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order:

2. Roll Call: President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

3. Certification: Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. Consent Agenda. The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.

- a. Minutes of the Recreation Workshop Meeting of November 1, 2022.
- b. Minutes of the Regular Board Meeting of November 8, 2022.

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by: _____; **Second by:** _____

5. Old Business:

- a. **Resolution No. 11-08-2022.** Continued discussion from the last meeting for consideration and necessary action on a resolution to approve the adoption of an agreement with Yamabe and Horn for engineering services related to the CDBG WWTP Nitrogen Reduction project.

Recommended action: Approve and adopt Resolution No. 11-08-2022, as amended or presented.

Motion by: _____; **Second by:** _____

6. New Business:

- a. **KYA Services.** An invoice of \$60,398.47 was submitted for the completion of the walking path at the park.

Recommended action: to approve payment of \$60,398.47 to KYA Services, LLC.

Motion by: _____; **Second by:** _____

- b. **Per Diem.** Adjustment to directors per diem.

Recommended action: boards pleasure.

7. Incorporation Reports:

- a. Discussion for potential town hall meeting.

8. Recreation Reports:

9. Engineer Reports:

- a. District Engineer Report. None for this meeting.
- b. CDBG Engineer Report: Old business item.

10. General Manager's Report:

- a. Tree Fresno flyer.
- b. Letter to SJVAPCD
- c. Lone operator request.

11. President's Report:

12. Vice President's Report:

13. Director's Reports:

14. Legal Counsel Report:

15. Communications:

- a. Written Communications:
- b. Public Comment: *The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three **(3)** minutes or less per individual/group per item per meeting, with a fifteen **(15)** minutes maximum.*

16. Closed Session:

- a. Personnel. General Manager contract (Government Code Section 54957).

17. Adjournment:

Motion by: _____, **Second by:** _____

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing agenda for the Regular Meeting of the Board of Directors of November 22, 2022 was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, at 5:00P.M. On 11/18/2022.

Norma Melendez

Norma Melendez, District Clerk



**SPECIAL BOARD MEETING MINUTES
RECREATION WORKSHOP
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3582 SOUTH WINERY AVE
FRESNO, CALIFORNIA 93725
Tuesday November 1, 2022 at 6:00PM**

item 4.a.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order: 6:00pm

- 2. Roll Call:** President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

All present.

Also present: Moises Ortiz and Michael Slater.

- 3. Certification:** Certification was made that the Board Meeting Agenda was posted 24 hours in advance of the meeting.

- 4. Recreation Workshop.** Discussion about programs, roles, and organization.
Members of the recreation department were present at the workshop. Together with the board of directors they discussed plans of organization for each program the committee hosts. In discussion, the Christmas Tree Lighting program date has been changed from December 3rd to November 26.

- 5. Closed Session:** None for this meeting.

- 6. Adjournment:**

Motion by Vice President Cerrillo, Second by Director Cerrillo, Jr. and by a 5-0 vote to adjourn the meeting at 7:09pm.

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing minutes for the Special Board Meeting of the Board of Directors of November 1, 2022 was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, at 5:00P.M. 11/23/2022.

Norma Melendez

Norma Melendez, District Clerk



REGULAR BOARD MEETING MINUTES
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, November 8, 2022 at 6:00PM

item 4.b.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.
- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order:

- 2. Roll Call:** President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

All present.

Also present: Neal Costanzo, Norma Melendez & Moises Ortiz

- 3. Certification:** Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. Old Business: none for this meeting.

5. New Business:

- a. **Resolution No. 11-08-2022.** Consideration and necessary action on a resolution to approve the adoption of an agreement with Yamabe and Horn for engineering services related to the CDBG WWTP Nitrogen Reduction project.

Recommended action: Approve and adopt Resolution No. 11-08-2022, as amended or presented.

Item tabled. Need clarification of the 10% charged in the agreement.

- b. **Sub account.** Consideration and necessary action adding a sub account for the recreation committee events.

Recommended action: approve creation of a sub account for the recreation committee.

Motion by Vice President Cerrillo; Second by Director Tovar, Jr. and by a 5-0 vote to approve the creation of a sub account for the recreation committee.

6. Incorporation Reports: none for this meeting.

7. **Raffle.** Selection of Thanksgiving basket winners.
21 winners were selected to win a basket at random.
8. **Recreation Reports:** To be presented during meeting.
Prize amounts for the Christmas parade and Christmas house decorating contest were discussed. Director Castaneda would like the purchase of a laptop for recreation committee use.
9. **Engineer Reports:**
 - a. District Engineer Report. None for this meeting.
 - b. CDBG Engineer Report:
10. **General Manager's Report:**
 - a. VEI complaint.
 - b. SJVAPCD notice of violation.
 - c. Reimbursement request for information only.**Other reports the GM included were: Well #8 malfunctioned due to condensation on the coils, PFAS order received for well #6 & 8 and creating S.O.P's for every event recreation hosts.**
11. **President's Report:**
President Garabedian, Jr. has a good feeling the current directors that are running in this year's elections will be re-elected and continue to do work for Malaga.
12. **Vice President's Report:**
Vice President Cerrillo reported how the visit to the district's wastewater plant was eye opening. A priority list needs to be drafted to repair the plant. He also reported the day-long power outage that occurred on November 7.
13. **Director's Reports:**
Director Cerrillo, Jr. reported on the Thanksgiving luncheon of November 5. The music, food and drinks were great. He thanks the staff and recreation committee for a good event.
14. **Legal Counsel Report:**
No report for this meeting. Would like to wish good luck to the three directors running for re-election.
15. **Consent Agenda.** The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.
 - a. Minutes of the Regular Board Meeting of October 25, 2022.
 - b. Minutes of Special Board Meeting of October 29, 2022.
 - c. Financial Statement and Accounts Payable Reports.**Check for SJVAPCD is to be voided. Legal counsel to draft a letter in regard to the N.O.V. received by the district.**

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by Director Cerrillo, Jr.; Second by Director Tovar, Jr. and by a 5-0 vote to approve the consent agenda as amended.

16. Communications:

a. Written Communications:

1. Invitation to the Trailblazers for Prosperity Through Education & Training 9th annual awards luncheon. Luncheon will be held Wednesday, November 16 at the Fresno Fair Grounds beginning at 11:30 AM. Ticket or table must be purchased to attend.

The board's pleasure is to purchase a table and have staff attend the luncheon.

b. Public Comment: *The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three (3) minutes or less per individual/group per item per meeting, with a fifteen (15) minutes maximum.*

17. Closed Session: none for this meeting.

18. Adjournment:

Motion by Vice President Cerrillo, Second by Director Cerrillo, Jr. and by a 5-0 vote to adjourn the meeting at 7:40pm.

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing minutes for the Regular Meeting of the Board of Directors of November 8, 2022, was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, on 11/23/2022.

Norma Melendez

Norma Melendez, District Clerk

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MALAGA
COUNTY WATER DISTRICT APPROVING AN AGREEMENT WITH YAMABE &
HORN FOR PROFESIONAL SERVICES RELATED TO THE MALAGA COUNTY
WATER DISTRICT NITROGEN REDUCTION PROJECT**

WHEREAS, the County of Fresno has awarded the Malaga County Water District a \$500,000 Community Development Block Grant (“CDBG”) to reduce the effluent nitrogen content at the Districts waste water treatment facility (the “Malaga Wastewater Treatment Plant nitrogen reduction Project; CDBG project #214561” or “Project”); and

WHEREAS, on July 28, 2020, after issuing an FRQ, the District entered into an agreement with Yamabe & Horn, to act as the District’s CDBG engineer; and

WHEREAS, the Board of Directors of the Malaga County Water District desire to enter into an agreement for professional services with Yamabe & Horn to provide engineering services related to the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE MALAGA COUNTY WATER DISTRICT AS FOLLOWS:**

1. That the foregoing recitals are true and correct and incorporated by this reference herein as though fully set forth at this point.
2. The Board of Directors hereby approves the professional services agreement with Yamabe & Horn as attached hereto and incorporated herein by this reference as Attachment “1”.
3. The Board of Directors hereby authorizes the President of the Board of Directors to sign the agreement attached hereto as Attachment 1 on behalf of the District.
4. The Board of Directors hereby authorizes the General Manager to execute, on behalf of the District, all other documents related to the Project save and except for the notice of completion which shall be approved by the board.

Passed and adopted by the Board of Directors of the Malaga County Water District
at their meeting held on this 22nd day of November, 2022, by the following vote:

AYES:

NOES:

ABSENT:

Charles Garabedian, Jr., President
Malaga County Water District

ATTEST:

Moises Ortiz, General Manager-
Secretary of the Board of Directors
Malaga County Water District

SHORT FORM OF AGREEMENT BETWEEN CLIENT AND CONSULTANT

This short form of agreement (Form A.1) was developed by the American Council of Engineering Companies of California and is intended primarily for the use of ACEC California members and may not be reproduced without the permission of the American Council of Engineering Companies of California. © 2017, 2013, 2010, 2009, 2008, 2007, 2003, 2001.

Project No. _____

Agreement entered into at _____ on this date of _____,

by and between: _____

Client:		Consultant:	
Name:		Name:	
Address:		Address:	
City, St, Zip:		City, St, Zip:	
Phone:		Phone:	
Mobile:		Mobile:	
Fax:		Fax:	
Email:		Email:	
License No:		License No:	

Client and Consultant agree as follows:

A. Client retains Consultant to perform services for (hereinafter called "project."):

B. Consultant agrees to perform the following scope of services:

C. Client agrees to compensate Consultant for such services as follows:

D. This agreement is subject to the Provisions of Agreement contained in paragraphs 1 through 33, and the provisions of the exhibits attached hereto and made a part hereof. (List exhibits below.)

PROVISIONS OF AGREEMENT

Client and Consultant agree that the following provisions shall be part of this agreement:

1. Client and Consultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this agreement. Both Client and Consultant shall endeavor to maintain good working relationships among members of the project team.
2. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
3. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other. Neither Client nor Consultant shall assign claims arising from the agreement without the prior written consent of the other.
4. This agreement contains the entire and integrated agreement between Client and Consultant relating to the project and the provision of services for the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Client and Consultant.
5. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the agreement.
6. If any term, condition or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on both the Client and Consultant.
7. This agreement shall be governed by and construed in accordance with the laws of the State of California.
8. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all such documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all costs involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement. In the event Client is in default of any of the terms and conditions of this agreement, any license or right to utilize the instruments of service by Client, is automatically revoked.
9. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and stamped or sealed by Consultant. Client acknowledges that all documents on electronic files, or drawings, reports and data on any form of electronic media generated and furnished by the Consultant, are not final plans or documents. Client shall be responsible for any such use of all non-final plans, specifications, drawings, cost estimates, reports, electronic files, or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client agrees, to the extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from a violation of this paragraph by Client. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described on page 1 of 7 of this agreement and such use is subject to the terms and conditions of this agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by

Consultant. If signed check prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.

10. In accepting and utilizing any electronic files, or drawings, reports and data on any form of electronic media generated and furnished by Consultant ("electronic files"), Client covenants and agrees that all such electronic files are instruments of service of Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

Client agrees not to use or reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this agreement. Client agrees not to make changes to or transfer these electronic files to others without the prior written consent of Consultant. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes, use, or reuse of the electronic files for any other project by anyone other than Consultant.

Client acknowledges that Client and Consultant have agreed on all hardware and software specifications that may be necessary for transmission of electronic files relevant to the project. These specifications, if applicable, are attached as **Exhibit** _____ to this agreement.

Electronic files furnished by either party shall be subject to an acceptance period of fifteen (15) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

Electronic files, such as computer-aided drafting and design files, are not construction documents, and Consultant makes no representation as to their accuracy or completeness. Client is aware that differences may exist between the electronic files delivered and the printed hard copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed and stamped or sealed hard copy construction documents, copies of which shall be kept by the Consultant, shall govern.

In addition, Client agrees, to the extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any unauthorized changes made by anyone other than Consultant or from any use or reuse of the electronic files for any other project without the express written permission of the Consultant.

Under no circumstances shall delivery of electronic files for use by Client be deemed a sale of a product by Consultant nor shall Consultant's instruments of service ever be considered a product even if reduced to a written and tangible form, and Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Consultant be liable for indirect or consequential damages as a result of Client's use or reuse of the electronic files.

11. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services performed. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to paragraph 22. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 22. If Client is in default under this agreement and Client requests Consultant continue providing some or all services, Consultant has no obligation to provide any further services unless Client provides financial assurances satisfactory to Consultant and otherwise cures any default.

12. Unless the scope of services to be provided by Consultant expressly includes Consultant's assistance in determinations regarding the application of prevailing wages, Client and Consultant acknowledge that it is Client's exclusive responsibility to determine whether the project, which is the subject of this agreement, is a "public work" as defined in California Labor Code Section 1720, or whether prevailing wage rates are to be paid to certain workers in connection with the project, or determine the rate of prevailing wages to be paid certain workers. Consultant will develop its schedule of labor rates in reliance on the determinations of Client. In the event of a dispute regarding whether the project is a "public work", whether prevailing wages are to be paid, or the amount of prevailing wages to be paid to individual workers, Client agrees to pay Consultant for any and all additional costs and expenses (including additional wages, penalties & interest) incurred by Consultant and further agrees, to the extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from all damages, liabilities or costs, including reasonable attorneys' fees and costs, arising from or related to the Client's determinations regarding the application of or payment of prevailing wages.
13. If the scope of services contained in this agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees, to the extent permitted by law, to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.
14. If the scope of work of Consultant includes the rendition of professional services for a project which is a common interest development subject to the provisions of Civil Code section 1375, Client agrees to reimburse Consultant for all costs associated with Consultant's participation in the pre-litigation process described in Civil Code section 1375. Further, Client agrees to pay Consultant's fees for time incurred participating in the pre-litigation process. These fees and costs shall be paid as extra services in accordance with paragraph 22. Such extra services shall be paid at Consultant's normal hourly rates in effect at the time Consultant participates in the pre-litigation process. For purposes of this paragraph, a "common interest development" shall be a common interest development as defined in Civil Code section 1375.

Client agrees, to the extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from all damages, liabilities or costs, including reasonable attorney fees and costs, arising from or related to Consultant's participation in the pre-litigation process pursuant to Civil Code section 1375.

Client agrees that if Client receives a Notice of Commencement of Legal Proceedings pursuant to Civil Code section 1375, Client will notify Consultant within 10 days of Client's receipt of the Notice of Commencement of Legal Proceedings, provided the Notice of Commencement of Legal Proceedings either identifies Consultant as a potentially responsible party or the face of the Notice contains information which identifies Consultant's potential responsibility. If Client does not timely notify Consultant, then Client agrees, to the extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from all damages, liabilities or costs, including reasonable attorney fees and costs, arising from or related to Client's failure to timely notify Consultant.

15. If Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing, Consultant shall be entitled to continue suspension of the performance of any and all of its obligations pursuant to this agreement where the Client is in default and was in default prior to the filing of the bankruptcy petition. If, upon filing a voluntary petition or an involuntary petition

Client Initials	Consultant Initials
-----------------	---------------------

in the United States Bankruptcy Court, Client seeks to have Consultant continue to provide services pursuant to this agreement, Client agrees to comply with applicable provisions of the United States Bankruptcy Code to ensure payment for any continuing or reinstated services.

16. Client agrees to provide to Consultant the present name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice. Client will not object to any lawful filing of any lien by Consultant.
17. The Consultant shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the judgment of the Consultant, increase the Consultant's contractual or legal obligations or risk, or adversely affect the availability or cost of its professional or general liability insurance. Nor shall Consultant be required to sign any documents, requested by any party, including Client, that would result in the Consultant's having to certify, guarantee, warrant or state the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any money due to the Consultant, in any way contingent upon the Consultant's signing any such certification, guarantee, warranty or statement.
18. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated in the judgment of the Consultant. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension or termination costs or expenses and Client waives any and all damage claims resulting from any delay or disruption after the suspension or termination..
19. Client agrees that all billings from Consultant to Client are correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing.
20. Client agrees to pay a monthly late payment fee and not an interest charge, which will be the lesser of one and one-half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing.
21. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees due to the terms of any labor agreement, or increase in the cost of living, during the lifetime of this agreement, a percentage increase shall be applied to all remaining fees and charges to reflect the increased costs.
22. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this agreement.
23. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by Client as extra services in accordance with paragraph 22.
24. Consultant is not responsible for delay caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, power failures, accidents or equipment malfunctions, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or instruments of service promptly, faulty performance by Client or other

Client Initials	Consultant Initials
-----------------	---------------------

contractors or governmental agencies. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause Consultant to perform extra services, such services shall be paid for by Client as extra services in accordance with paragraph 22.

25. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof. Consultant is not responsible for the failure of any public agency to approve Consultant's work product.
26. If the scope of services requires Consultant to estimate quantities, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate. If the scope of services requires Consultant to provide its opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions of probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.
27. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.
28. Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
29. In the event (1) Client agrees to, authorizes, or permits changes in the plans, specifications, documents, or electronic files prepared by Consultant, which changes are not consented to in writing by Consultant, or (2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications, documents, or electronic files prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees, to the extent permitted by law, to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from the unauthorized changes.
30. Client agrees that in the event Consultant institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which Consultant's place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
31. (a) Except as provided in subdivisions (b) and (c), in an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, Client and Consultant agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

Client and Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Client Initials	Consultant Initials
-----------------	---------------------

(b) Subdivision (a) shall not preclude or limit Consultant's right to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) shall not preclude or limit Consultant's right to record, perfect or enforce applicable mechanic's lien or stop notice remedies.

32. Client agrees to limit the liability of Consultant, its principals, employees and subconsultants, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract, or strict liability, including attorney and expert fees, to the sum of \$45,000 or Consultant's fee, whichever is greater. Client and Consultant acknowledge that this provision and this entire agreement was expressly negotiated and agreed upon between the parties.
33. Notwithstanding any other provision of this Agreement, and to the extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect, punitive or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect or consequential damage that either party may have incurred from any cause or action.

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above.

Client: _____ Consultant: _____

By: _____ By:  _____

Name: _____ Name: _____

Title: _____ Title: _____

Date Signed: _____ Date Signed: _____

Client should mail completed contract to the address shown for Consultant.



EXHIBIT 'A'

November 4, 2022

Malaga County Water District
3580 S. Frank Avenue
Fresno, CA 93725

Attn: Moises Ortiz, General Manager

RE: Civil Engineering Services Proposal
Malaga Wastewater Treatment Plant Nitrogen Reduction Project - CDBG #21451

Dear Moises,

We are pleased to submit this proposal to provide civil engineering services for the subject project for the Malaga County District ("District"). Our understanding is that the District has received \$500,000 in Community Development Block Grant (CDBG) funding through Fresno County's CDBG program. The project intent is to reduce the effluent nitrogen content to conform to regulatory requirements of the Regional Water Quality Control Board and the project scope includes converting the existing dissolved air floatation basin into an anoxic basin, installing recirculation pumps in the aeration basins, modifying air piping and installing a new blower, sludge digester overflow pipe and valve. The project will also design the influent EC meter and sludge flow meters as an additive alternative to be implemented upon the availability of the CDBG funding and bid results.

As CDBG Engineer for the District, Yamabe and Horn Engineering ("Y&H") will serve as the Engineer of Record overseeing the preparation of the plans, specifications and estimate (PS&E) for the project and will assist the District with bidding the project, managing construction and administering the CDBG funding. Y&H acknowledges that the project is a public work and, as such, Y&H will make a determination as to the appropriate prevailing wages, will assist the District with registering the project with the Department of Industrial Relations, will provide assistance with associated documentation and will ensure that the contract documents include all required prevailing wage regulations & statutes.

Y&H proposes to use the services of Provost & Pritchard Consulting Group ("P&P") for PS&E preparation, preparation of the Report of Waste Discharge and construction inspection due to their past experience with the District and familiarity with the WWTP and its operation and needs. P&P will perform their services under a subconsultant contract with Y&H and Y&H will enter into an engineering services contract with the District.

The anticipated scope of services is proposed as follows:

Design Engineering Phase

1. Prepare 90% PS&E
2. Prepare 100% PS&E
3. Prepare Report of Waste Discharge to document the process change to the Regional Water Quality Control Board

Bidding Phase

1. Prepare public noticing as required and coordinate bid document circulation
2. Respond to Bidder Requests for Information (RFIs)
3. Prepare addenda as necessary to clarify or update bid documents based on RFIs
4. Review submitted bids and make recommendation of award

Construction Engineering/Management Phase

1. Conduct pre-construction meeting
2. Respond to Contractor RFIs
3. Review and approve submittals and shop drawings
4. Review progress payment requests and make recommendations for payment
5. Review contract change order proposals and make recommendations for approval as necessary.
6. Provide construction inspection services (assumed at 20 days of inspection)
7. Provide final inspection, prepare punchlist and make recommendation for final acceptance

Funding Administration

1. Prepare all funding-related front end specification documents for inclusion in the bid package and submit for County review and approval prior to advertisement and prior to contract award
2. Prepare reimbursement request packages for District submission to Fresno County
3. Coordinate with Fresno County on labor compliance efforts as required
4. Prepare Project Outcome Measurement Report, collect final Statement of Workforce Needs and all other funding closeout documents.

Assumptions

- Electrical design and telemetry/SCADA/integration will be coordinated between District Staff and the design engineering team.
- CEQA Environmental documentation and clearance will be provided by Fresno County under the CDBG Agreement with the District. Any mitigation measures,

conditions or requirements included in the County's environmental assessments will be integrated into the project design and administration.

- Geotechnical investigations are not required.
- Permit fees are excluded from the engineering budget.
- Storm Water Pollution and Dust Control Plans are not required.
- Traffic Control Plans are not required.
- Publication costs associated with bid advertisement will be paid directly by the District.

We propose that all services provided by Y&H be billed on a Time and Material Basis, with invoicing to occur monthly in accordance with the attached fee schedule (Exhibit A-1). We propose that all services provided to Y&H by P&P will be billed to the District as actual cost plus 10%. The total engineering budget for the project is estimated at \$156,200. This estimated fee will not be exceeded without prior written notification to the District, accompanied by an updated budget. Work will not be continued beyond the initial budget without additional authorization from the District. The total estimated project budget including construction and construction contingency is included in this proposal as Exhibit A-2.

We sincerely thank you for the opportunity to submit this proposal and we look forward to continuing working with you.

Sincerely,



Joshua Rogers
Vice President
Yamabe & Horn Engineering, Inc.

EXHIBIT A-1

Y&H 2022 Fee Schedule

YAMABE & HORN ENGINEERING, INC.

CIVIL ENGINEERS – LAND SURVEYORS

2985 N Burl Avenue, Suite 101, Fresno, CA 93727

(559) 244-3123, FAX (559) 244-3120

2022 FEE SCHEDULE

PRINCIPAL ENGINEER	\$ 205 per hour
EXPERT WITNESS	\$ 275 per hour
CIVIL ENGINEER V	\$ 200 per hour
CIVIL ENGINEER IV	\$ 180 per hour
CIVIL ENGINEER III	\$ 170 per hour
CIVIL ENGINEER II	\$ 160 per hour
CIVIL ENGINEER I	\$ 150 per hour
PROJECT MANAGER II	\$ 155 per hour
PROJECT MANAGER I	\$ 145 per hour
ASSISTANT ENGINEER III	\$ 130 per hour
ASSISTANT ENGINEER II	\$ 125 per hour
ASSISTANT ENGINEER I	\$ 115 per hour
LAND SURVEYOR II	\$ 160 per hour
LAND SURVEYOR I	\$ 140 per hour
ASSISTANT SURVEYOR II	\$ 135 per hour
ASSISTANT SURVEYOR I	\$ 120 per hour
GIS ANALYST	\$ 125 per hour
GIS TECHNICIAN	\$ 115 per hour
CONSTRUCTION MANAGER II	\$ 155 per hour
CONSTRUCTION MANAGER I	\$ 140 per hour
PROJECT SERVICES ADMINISTRATOR	\$ 90 per hour
INSPECTOR II	\$ 160 per hour
INSPECTOR I	\$ 150 per hour
CAD MANAGER	\$ 125 per hour
CAD DRAFTER II	\$ 110 per hour
CAD DRAFTER I	\$ 100 per hour
CLERICAL	\$ 85 per hour
2-PERSON SURVEY CREW	\$ 215 per hour
2-PERSON SURVEY CREW PREVAILING WAGE	\$ 265 per hour
1-PERSON SURVEY CREW	\$ 170 per hour
1-PERSON SURVEY CREW PREVAILING WAGE	\$ 210 per hour
TRAVEL	\$ 0.58 per mile
PRINTING	Cost plus 10%

Fee schedule is effective through December 31, 2022 and will be adjusted each year after at a rate of 2 to 5%.

Note: Prevailing wage rates are shown for Fresno County. The Prevailing Wage rates will vary depending on the County where the work is performed.

EXHIBIT A-2

ESTIMATED PROJECT BUDGET	
Design Engineering	\$ 78,700
Bidding	\$ 3,000
Construction Engineering/Management	\$ 74,500
TOTAL	\$ 156,200
Construction (Base Bid)	\$ 266,000
Contingency (15%)	\$ 39,900
CONSTRUCTION (TOTAL)	\$ 305,900
BASE BID PROJECT	\$ 462,100
AVAILABLE FUNDS	\$ 500,000
Projected SURPLUS/(DEFICIT) with Base Bid	\$ 37,900
ADDITIVE ALTERNATE NO. 1 ESTIMATE	\$ 80,200
Projected SURPLUS/(DEFICIT) with Add Alt 1	\$ (42,300)

KYA Services LLC
1800 E. McFadden Ave.
Santa Ana, CA 92705

Invoice

Date	Invoice #
10/31/2022	1-4-13401

Bill To
Malaga County Water District 3601 S Maple Ave. Fresno, CA 93722

Job Site
Malaga Community Center 3582 S Winery Ave. Fresno, CA 93725

P.O. Number	Terms	Project
Signed Proposal	Net 30	1-4-23326A

Description	Quantity	U/M	Rate	Amount
Malaga CC - Path Around Entire Property / Resurface with Concrete Provide all Materials and Labor for Resurfacing of Pathway Around Property at Malaga CC	1.00	EA	59,582.19	59,582.19
Bonding Fee	1.00	EA	816.28	816.28
			Total	\$ 60,398.47
			Payments/Credits	\$ 0.00
			Balance Due	\$ 60,398.47

Questions - Please call Kellie Baker at (714) 646-4380 or email
at Kellie.baker@thekeyagroup.com

COMMUNITY

TREE PLANTING

Time & Date

10:00 AM

22 NOVEMBER 2022

MALAGA COMMUNITY REC. CENTER

3582 S WINERY AVE.
FRESNO, CA 93725

USE QR CODE TO REGISTER



item 10.b.

NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES OF
COSTANZO & ASSOCIATES
A PROFESSIONAL CORPORATION
575 E. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 02891-001

November 14, 2022

Clay Bishop, Supervising Air
Quality Specialist
San Joaquin Valley
Air Pollution Control District
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244

Re: Notice of Violation and Proposed Settlement
Case Number: C22-0467
NOV Number: 51212
Permit Number: C-2875-C-2875-1-0

Dear Mr. Bishop:

I represent Malaga County Water District. You issued the above Notice of Violation (NOV) on October 31, 2022. The Notice of Violation is not a citation, or any other administrative action that requires or even allows for Malaga County Water District to respond to the purported violation. It is, instead, and specifically a "offer of settlement". The NOV vaguely identifies the purported violation as a "engine" being operated under "non-emergency" circumstances with air contaminant discharged for more than three minutes in one hour greater than 20% "opacity". You characterize this as a violation of an identified permit. You further state that the event resulted in a violation of a District rule relating to "visible emissions". The District cannot determine whether there was any observation of any operation of any "engine" that created "visible emissions", or whether the operation of what appears to be an emergency diesel operated generator at one of the District wells was a violation because it was operated during non-emergency circumstances, which you could have determined from log books and other materials relating to that device.

Needless to say, a public entity, like Malaga County Water District, that provides water service that needs to continue to operate during emergency shut-offs of electrical power, which are common, has to intermittently test its emergency equipment to make sure that it is operating. Any permit you issued for an emergency generator does not prohibit routine testing of the engine to determine if it is operational, or to provide other maintenance for the device. Accordingly, because we cannot tell from your Notice of Violation whether this is an violation of some standard enforced by your District, the

Malaga County Water District must decline your settlement offer. You implicitly threaten the issuance of an actual citation for this purported violation. Since we have only operated the diesel generator during an emergency or when that is necessary to routine maintenance and ensuring the availability of the emergency generator, we do not believe that you have any basis for alleging a violation of any rule or regulation enforced by the San Joaquin Valley Air Quality Control District.

Very truly yours,

COSTANZO & ASSOCIATES



Neal E. Costanzo

NEC/js

C/C Moises Ortiz