

*SANTA YNEZ COMMUNITY SERVICES DISTRICT*

**MEMORANDUM**

**TO:** Board of Directors  
**FROM:** Jose Acosta, General Manager  
**DATE:** July 22, 2020  
**SUBJECT:** Consulting Agreement J. D'Ornellas

**Recommendation**

Approve consulting agreement with John D'Ornellas.

**Policy Implications**

The Interim General Manager's employment agreement essentially ended with the hiring of a permanent full-time General Manager.

**Fiscal Implications**

The hourly wage is the same under both agreements. Standard mileage IRS rate and work expenses would be reimbursed as is standard for consulting agreements.

**Alternatives Considered**

Do not approve the consulting agreement.

**Discussion**

The Interim General Manager was classified as an employee of the District under an employment agreement. The agreement did not have any required hours but he averaged 45 paid hours per a two-week pay period and worked a minimum of an eight-hour day whenever he was at the office and responded to phone calls/emails from staff at any time / day as a regular manager would.

Your Board has expressed an interest in retaining the former Interim General Manager under contract to consult in any administrative items or projects that may come up in the near future. To facilitate this a consulting agreement is proposed that changes the relationship from Employer/Employee to District/Consultant with standard provisions of other consultants. Your legal counsel has reviewed and approved the attached agreement.

John D'Ornellas as the Consultant would be used by the General Manager as needed for projects as outlined in the Agreement. There are no set hours in the agreement but it's expected there will be minimal work on projects and administrative items that will diminish as time progresses.

Attachment: J. D'Ornellas Consulting Agreement

**SANTA YNEZ COMMUNITY SERVICES DISTRICT  
CONSULTANT AGREEMENT**

THIS AGREEMENT is made on July 22, 2020, between the Santa Ynez Community Services District, a public agency ("District"), and John D'Ornellas ("Consultant"), who agree as follows:

**1. Scope of Work.** Consultant shall perform the work or render the services described in Exhibit A, attached hereto and incorporated herein (the "Work"). Consultant shall (a) provide all labor, equipment, materials and supplies required or necessary to properly, competently and completely perform the Work, (b) determine the method, details and means of doing the Work, and (c) perform the Work in a manner commensurate with high professional standards of qualified and experienced personnel in Consultant's field.

**2. Payment.** In exchange for the Work, District shall pay to Consultant a fee based on Consultant's actual time and materials necessarily and actually expended on the Work, including reimbursement for travel incidental to the Work at the IRS published mileage rate. The fee for the Work shall be one hundred dollars (\$100.00) per hour plus reimbursable expenses including reimbursement for travel incidental to the Work at the IRS published mileage rate . This fee shall include all of Consultant's costs and expenses related to the Work. At the end of each month, Consultant shall submit to District an invoice for the Work performed. If the Work is satisfactorily completed and the invoice is accurately computed, District shall pay the invoice within 30 days of its receipt. There shall be no compensation for extra or additional work or services by Consultant unless approved in advance in writing by District. Consultant shall keep and maintain books and records of its charges for services and, if applicable, reimbursable costs during the term of this Agreement and for three years thereafter. District may inspect and audit such books and records, including source documents, to verify all charges, payments and reimbursable costs under this Agreement.

**3. Payment of Taxes.** Consultant agrees to make all required estimated payments of federal and state income taxes and FICA. Each party hereto consents and acknowledges that the only duty in relation to tax reporting that shall inure to District is the furnishing of a statement for recipients of non-employee compensation as set forth in the Form 1099-MISC of the Internal Revenue Service, or any successor form thereto. Consultant agrees to indemnify, defend and hold harmless District from any and all tax claims relating to Consultant's failure to pay required taxes, whether valid or not, and shall pay to District all costs and fees, including reasonable attorneys' fees, incurred as a result of said claims. The term "costs" shall specifically include, but shall not be limited to, any and all deficiency assessments by taxing authorities.

**4. Term.**

4.1. This Agreement shall take effect on the above date and shall continue in effect until completion of the Work, unless sooner terminated as provided below. Consultant shall perform the Work diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress of the Work.

4.2. Time is of the essence in this Agreement.

4.3. This Agreement may be terminated at any time by District or Consultant upon seven (7)

days advance written notice to the other party. In the event of such termination, Consultant shall be compensated for all Work performed to the effective date of termination based on the above payment provisions. Compensation under this subsection shall not include any cancellation or demobilization charges or lost profit associated with the expected completion of the Work or other such similar payments relating to Consultant's claimed benefit of the bargain.

**5. Ownership of Documents.** Every document prepared by Consultant under this Agreement and provided to District shall be the exclusive property of District. By this Agreement, Consultant transfers all of its right, title and interest in such documents to District. To the extent any document provided to District constitutes a copyrightable work, the work under this Agreement shall be considered a work for hire and by this Agreement Consultant shall be deemed to transfer all rights, title and interest in the copyrightable work to District, including the exclusive copyright. Documents prepared by Consultant under this Agreement shall not be provided by Consultant to any other person without District's prior written approval.

**6. Compliance with Laws.** Consultant shall perform the Work in compliance with all applicable federal, state and local laws and regulations, including applicable State Department of Industrial Relations regulations. Consultant also shall possess and maintain all permits, licenses and certificates that may be required for it to perform the Work.

**7. Indemnification.** Consultant shall indemnify, defend, protect, and hold harmless District, and its officers, directors, employees, volunteers and agents from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of Consultant's performance of the Work and caused by any negligent act or omission, willful misconduct or violation of law of or by Consultant or its employees, agents or subcontractors, except to the extent caused by the active negligence, sole negligence or willful misconduct of District or as otherwise provided or limited by law. Consultant's obligations under this indemnification provision shall survive the termination of, or completion of Work under, this Agreement.

**8. Insurance.** If Consultant employs employees or agents to assist Consultant with the Work, Consultant shall, at Consultant's own expense, provide Worker's Compensation insurance for Consultant's employees and agents in an amount at least sufficient to satisfy any and all requirements of local, state and federal law. Consultant shall file certificates evidencing such insurance with District before performing any Work under this Agreement.

**9. Entire Agreement.** This writing represents the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract between the parties concerning the work, and supersedes all prior oral and/or written negotiations, representations or contracts. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.

**10. Independent Contractor.** Consultant's relationship to District is that of an independent contractor. All persons hired by Consultant and performing the Work shall be Consultant's employees or agents. Except for the fees and expense reimbursements payable to Consultant hereunder, District shall not be responsible in any way for any payment or liability arising out of workers' compensation, unemployment, or employee wages or benefits to or for Consultant or Consultant's employees or agents. This Agreement shall in no way limit or restrict the ability of Consultant to provide services for other persons or entities, for compensation or otherwise, during the term hereof.

**11. Successors and Assignment.** This Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties; however, except for employees or agents employed by Consultant to assist with the Work, Consultant shall not subcontract, assign or transfer this Agreement or any part of it without the prior written consent of District.

**12. No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by District to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

**13. Severability.** If any part of this Agreement is held to be void, invalid or unenforceable, then the remaining parts will nevertheless continue in full force and effect.

**14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

**15. Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and (i) served personally, (ii) sent by prepaid, first class U.S. mail addressed to District or Consultant, as applicable, at the address of the undersigned, or (iii) sent by electronic mail using the email addresses set forth below.

Any party may change its address by notifying the other party of the change in the manner provided above.

DISTRICT

CONSULTANT

By: \_\_\_\_\_  
Jose Acosta, General Manager  
Santa Ynez Community Services District  
P.O. Box 667  
1070 Faraday Street  
Santa Ynez, CA 93460  
Email: [jose@sycsd.com](mailto:jose@sycsd.com)

By: \_\_\_\_\_  
John D'Ornellas  
433 Eric Lane  
Templeton, CA 93465  
Email: [jcdorn@charter.net](mailto:jcdorn@charter.net)

## Exhibit A

### Management Consultant Santa Ynez Community Services District Scope of Work

As requested by District's General Manager:

- Provide assistance to District's General Manager in any District management functions including financial, operations, personnel, and capital projects.
- Provide support and assistance to District's General Manager in the Horizon Drive mainline extension project.
- Analyzes alternatives and makes recommendations to District's General Manager regarding any special district administrative items.

