

September 9, 2021

Agenda item #3

Ben Beitzel  
Mtn Locations  
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P.O. Box 2334, Crestline, CA 92325

#### Agenda points

##### Contemplating CSD Properties Use for Filming

- Works Completed in Area / A Brief History and Overview
- Safety (Insurance, Fire, Wildlife)
- Community & Economic Impact, and Property Benefits
- What to Expect?
- Parameters for Quick Approval via Representative



**AGREEMENT FOR SERVICES  
BETWEEN  
CRESTLINE SANITATION DISTRICT  
AND  
MTNLOCATIONS**

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2021 (hereinafter referred to as the “Effective Date”), by and between the CRESTLINE SANITATION DISTRICT, a public agency organized and operating pursuant to California Health and Safety Code Section 4700 et seq. (hereinafter referred to as the “DISTRICT”), and MTNLOCATIONS, a \_\_\_\_\_ (hereinafter referred to as “CONSULTANT”). DISTRICT and CONSULTANT may individually be referred to as “Party” or collectively as “Parties” in this Agreement.

**RECITALS**

WHEREAS, the DISTRICT desires to contract with CONSULTANT to provide site representation consulting services for the temporary use of DISTRICT property for film/media location purposes (hereinafter referred to as “Project”); and

WHEREAS, CONSULTANT is willing to contract with the DISTRICT to provide such services for the Project; and

WHEREAS, CONSULTANT holds itself as duly licensed, qualified, and capable of performing said services for the Project, and that CONSULTANT is customarily engaged in an independently established trade, occupation, and/or business of the same nature as the work to be performed herein; and

WHEREAS, this Agreement establishes the terms and conditions for the DISTRICT to retain CONSULTANT to provide the services described herein for the Project.

**COVENANTS**

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth herein, the Parties hereto agree as follows:

**ARTICLE I  
ENGAGEMENT OF CONSULTANT  
AND AUTHORIZATION TO PROCEED**

1.1 ENGAGEMENT: The DISTRICT hereby engages CONSULTANT, and CONSULTANT hereby accepts the engagement, to perform the Project services described in Section 2.1 of this Agreement for the contract price set forth in Section 4.1 of this Agreement for the term set forth in Section 5.1 of this Agreement.

1.2 AUTHORIZATION TO PROCEED: Authorization for CONSULTANT to proceed with all or a portion of the Project services described in Section 2.1 of this Agreement will be granted in writing by the DISTRICT as soon as both Parties sign the Agreement and all applicable insurance and other security documents required pursuant to Section 6.3 of this Agreement are received and approved by the DISTRICT. CONSULTANT shall not proceed with said Project services until so authorized by the DISTRICT, and shall commence work immediately upon receipt of the Notice to Proceed.

1.3 NO EMPLOYEE RELATIONSHIP: The Project services to be provided by CONSULTANT are outside the usual course of the DISTRICT's business. CONSULTANT shall perform the Project services provided for herein as an independent contractor, and not as an employee of the DISTRICT. CONSULTANT is not to be considered an agent or employee of the DISTRICT for any purpose, and shall not be entitled to participate in any pension plans, insurance coverage, bonus, stock, or similar benefits that the DISTRICT provides for its employees. CONSULTANT shall indemnify the DISTRICT for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which the DISTRICT may be required to make on behalf of CONSULTANT or any agent or employee of CONSULTANT for work performed under this Agreement.

## **ARTICLE II SERVICES OF CONSULTANT**

2.1 SCOPE OF SERVICES: The Project services to be performed by the CONSULTANT under this Agreement are described in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by this reference (hereinafter referred to as the "Scope of Work"), and shall, where not specifically addressed, include all related services ordinarily provided by the CONSULTANT under same or similar circumstances and/or otherwise necessary to satisfy the requirements of Section 3.3 of this Agreement. In case of conflict between the terms of this Agreement and the provisions of the Scope of Work, this Agreement shall govern.

2.2 PREVAILING WAGES: In accordance with the provisions of the California Labor Code, CONSULTANT shall secure the payment of compensation to employees. To the extent required by the California Labor Code, CONSULTANT shall pay not less than the prevailing rate of per diem wages as determined by the Director, Department of Industrial Relations, State of California. Copies of such prevailing rate of per diem wages are on file at the DISTRICT's office, which copies will be made available to any interested party upon request. CONSULTANT shall post a copy of such determination at each job site. If applicable, CONSULTANT shall forfeit to the DISTRICT the amount of the penalty set forth in California Labor Code Section 1777.7(b), or any subsequent amendments thereto, for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by CONSULTANT or by any subcontractor.

2.3 HOURS AND WORKING CONDITIONS: The DISTRICT is a public entity in the State of California and is subject to the provisions of the Government Code and the Labor

Code of the State. It is stipulated and agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein and will be complied with by CONSULTANT. CONSULTANT shall comply with all applicable provisions of the California Labor Code relating to working hours and the employment of apprentices on public works projects. CONSULTANT shall, as a penalty to the DISTRICT, forfeit \$25.00 for each worker employed in the execution of this Agreement by CONSULTANT or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker received compensation for all hours worked in excess of 8 hours at not less than 1½ times the basic rate of pay.

### **ARTICLE III RESPONSIBILITIES OF THE DISTRICT AND OF CONSULTANT**

3.1 DUTIES OF THE DISTRICT: The DISTRICT, without cost to CONSULTANT, will provide all pertinent information necessary for CONSULTANT's performance of its obligations under this Agreement that is reasonably available to the DISTRICT unless otherwise specified in the Scope of Work, in which case the CONSULTANT is to acquire such information. The DISTRICT does not guarantee or ensure the accuracy of any reports, information, and/or data so provided. To the extent that any reports, information, and/or other data so provided was supplied to the DISTRICT by persons who are not employees of the DISTRICT, any liability resulting from inaccuracies and/or omissions contained in said information shall be limited to liability on behalf of the party who prepared the information for the DISTRICT.

3.2 REPRESENTATIVE OF DISTRICT: The DISTRICT designates Rick Dever as the person to act as the DISTRICT's representative with respect to the work to be performed under this Agreement. Such person will have complete authority to receive information and interpret and define the DISTRICT's policies pertinent to the work, although such person will not control or direct CONSULTANT's work. In the event the DISTRICT wishes to make a change in the DISTRICT's representative, the DISTRICT shall notify the CONSULTANT of the change in writing.

3.3 DUTIES OF CONSULTANT: CONSULTANT shall perform the Project work in such a manner as to fully comply with all applicable professional standards of care, including professional quality, technical accuracy, timely completion, and other services furnished and/or work undertaken by CONSULTANT pursuant to this Agreement. The CONSULTANT shall cause all work and deliverables to conform to all applicable federal, state, and local laws and regulations.

3.4 APPROVAL OF WORK: The DISTRICT's approval of work or materials furnished hereunder shall not in any way relieve CONSULTANT of responsibility for the technical adequacy of its work. Neither the DISTRICT's review, approval or acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. Where approval by the DISTRICT is indicated in this Agreement, it is understood to be conceptual

approval only and does not relieve the CONSULTANT of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the CONSULTANT or its subcontractors. CONSULTANT's obligation to defend, indemnify, and hold harmless the DISTRICT, and its directors, officers, employees and agents as set forth in Section 6.9 of this Agreement also applies to the actions or omissions of the CONSULTANT or its subcontractors as set forth above in this paragraph.

#### **ARTICLE IV PAYMENTS TO CONSULTANT**

4.1 **PAYMENT:** During the Term of this Agreement, the DISTRICT will pay CONSULTANT for services performed in accordance with the rates and estimated hours and costs set forth in the Scope of Work. The amounts set forth in the Scope of Work constitute the maximum compensation to which CONSULTANT may be entitled for the performance of services for the Project, unless this Agreement and/or the Scope of Work are changed in writing by the DISTRICT in advance of the services to be performed hereunder. Adjustments in the payment amount shall only be allowed pursuant to Section 6.4 of this Agreement.

4.2 **PAYMENT TO CONSULTANT:** Payment will be made by the DISTRICT within thirty (30) calendar days after receipt of an invoice from CONSULTANT, provided that all invoices are complete and CONSULTANT's work product and services are provided and performed in compliance with the terms and conditions of this Agreement. CONSULTANT shall invoice DISTRICT monthly for services performed under this Agreement. In the event that a payment dispute arises between the Parties, CONSULTANT shall provide to the DISTRICT full and complete access to CONSULTANT's labor cost records and other direct cost data, and copies thereof if requested by the DISTRICT.

4.3 **COST FOR REWORK:** CONSULTANT shall, at no cost to the DISTRICT, prepare any necessary rework occasioned by CONSULTANT's negligent act or omission or otherwise due substantially to CONSULTANT's fault.

#### **ARTICLE V COMPLETION SCHEDULE**

5.1 **TERM:** The Term of this Agreement shall begin on the Effective Date, and shall continue until \_\_\_\_\_, unless this Agreement is earlier terminated pursuant to the provisions of Section 6.7 below. Notwithstanding the above, the provisions of Sections 1.3, 2.2, 2.3, 3.3 and 3.4 and Articles IV, V, and VI herein shall survive the expiration and/or termination of this Agreement.

5.2 **TIME OF ESSENCE:** CONSULTANT shall perform all services required by this Agreement in a prompt, timely, and professional manner. Time is of the essence in this Agreement.



**ARTICLE VI  
GENERAL PROVISIONS**

6.1 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: CONSULTANT shall at all times observe all applicable provisions of Federal, State, and Local laws and regulations including, but not limited to, those related to Equal Opportunity Employment.

6.2 SUBCONTRACTORS AND OUTSIDE CONSULTANTS: No subcontract shall be awarded by CONSULTANT unless prior written approval thereof is obtained from the DISTRICT. CONSULTANT shall be responsible for payment to subcontractors used by them to perform the services under this Agreement. If CONSULTANT subcontracts any of the work to be performed, CONSULTANT shall be as fully responsible to the DISTRICT for the performance of the work, including errors and omissions of CONSULTANT's subcontractors and of the persons employed by the subcontractor, as CONSULTANT is for the acts and omissions of persons directly employed by the CONSULTANT. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor of CONSULTANT and the DISTRICT. CONSULTANT shall bind every subcontractor and every subcontractor of a subcontractor to the terms of this Agreement that are applicable to CONSULTANT's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the DISTRICT.

6.3 INSURANCE: CONSULTANT shall secure and maintain in full force and effect, until the satisfactory completion and acceptance of the Project by DISTRICT, such insurance as will protect it and the DISTRICT in such a manner and in such amounts as set forth below. The premiums for said insurance coverage shall be paid by the CONSULTANT. The failure to comply with these insurance requirements may constitute a material breach of this Agreement, at the sole discretion of the DISTRICT.

- (a) Certificates of Insurance: Prior to commencing services under this Agreement, and in any event no later than ten (10) calendar days after execution of this Agreement, CONSULTANT shall furnish DISTRICT with Certificates of Insurance and endorsements verifying the insurance coverage required by this Agreement is in full force and effect. The DISTRICT reserves the right to require complete and accurate copies of all insurance policies required under this Agreement.
- (b) Required Provisions: The insurance policies required by this Agreement shall include the following provisions or have them incorporated by endorsement(s):
  - (1) Primary Coverage: The insurance policies provided by CONSULTANT shall be primary insurance and any self-insured retention and/or insurance carried by or available to the DISTRICT or its employees shall be excess and non-contributory coverage so that any self-insured retention and/or insurance carried by or available to the DISTRICT shall not contribute to any loss or expense under CONSULTANT's insurance.
  - (2) Additional Insured: The policies of insurance provided by CONSULTANT, except Workers' Compensation and Professional Liability, shall include as additional insureds: the DISTRICT, its

directors, officers, employees, and agents when acting in their capacity as such in conjunction with the performance of this Agreement. Such policies shall contain a "severability of interests" provision, also known as "Cross liability" or "separation of insured".

- (3) Cancellation: Each certificate of insurance and insurance policy shall provide that the policy may not be non-renewed, canceled (for reasons other than non-payment of premium) or materially changed without first giving thirty (30) days advance written notice to the DISTRICT, or ten (10) days advance written notice in the event of cancellation due to non-payment of premium.
  - (4) Waiver of Subrogation: The insurance policies provided by CONSULTANT shall contain a waiver of subrogation against DISTRICT, its directors, officers, employees and agents for any claims arising out of the services performed under this Agreement by CONSULTANT.
  - (5) Claim Reporting: CONSULTANT shall not fail to comply with the claim reporting provisions or cause any breach of a policy condition or warranty of the insurance policies required by this Agreement that would affect the coverage afforded under the policies to the DISTRICT.
  - (6) Deductible/Retention: If the insurance policies provided by CONSULTANT contain deductibles or self-insured retentions, any such deductible or self-insured retention shall not be applicable with respect to the coverage provided to DISTRICT under such policies. CONSULTANT shall be solely responsible for any such deductible or self-insured retention and the DISTRICT, in its sole discretion, may require CONSULTANT to secure the payment of any such deductible or self-insured retention by a surety bond or an irrevocable and unconditional letter of credit.
  - (7) Sub-Contractors: CONSULTANT shall include all sub-contractors as additional insureds under the insurance policies required by this Agreement to the same extent as the DISTRICT or shall furnish separate certificates of insurance and policy endorsements for each sub-contractor verifying that the insurance for each sub-contractor complies with the same insurance requirements applicable to CONSULTANT under this Agreement.
- (c) Insurance Company Requirements: CONSULTANT shall provide insurance coverage through insurers that have at least an "A" Financial Strength Rating and a "VII" Financial Size Category in accordance with the current ratings by the A. M. Best Company, Inc. as published in *Best's Key Rating Guide* or on said company's web site. In addition, any and all insurers must be admitted and authorized to conduct business in the State of California and be a participant in the California Insurance Guaranty Association, as evidenced by a listing in the appropriate publication of the California Department of Insurance.
- (d) Policy Requirements: The insurance required under this Agreement shall meet or exceed the minimum requirements as set forth below:
- (1) Workers' Compensation: CONSULTANT shall maintain Workers' Compensation insurance as required by law in the State of California to



cover CONSULTANT's obligations as imposed by federal and state law having jurisdiction over CONSULTANT's employees and Employers' Liability insurance, including disease coverage, of not less than \$1,000,000.

- (2) General Liability: CONSULTANT shall maintain Comprehensive General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$1,000,000 aggregate. The policy shall include, but not be limited to, coverage for bodily injury, property damage, personal injury, products, completed operations and blanket contractual to cover, but not be limited to, the liability assumed under the indemnification provisions of this Agreement. In the event the Comprehensive General Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years after the satisfactory completion and acceptance of the Project by DISTRICT.
- (3) Automobile Liability: CONSULTANT shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence for any owned, hired, or non-owned vehicles.
- (4) Professional Liability: CONSULTANT shall maintain Professional Liability insurance covering errors and omissions arising out of the services performed by the CONSULTANT or any person employed by him, with a limit of not less than \$1,000,000 per occurrence or claim and \$1,000,000 aggregate. In the event the insurance policy is written on a "Claims made" basis, coverage shall extend for two years after the satisfactory completion and acceptance of the Project by DISTRICT.
- (5) Property Coverage – Valuable Papers: Property coverage on an all-risk, replacement cost form with Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, plans or other similar data, whether in hard copy or electronic form, relating to the services provided by CONSULTANT under this Agreement.

6.4 CHANGES: If the DISTRICT requests a change in the Scope of Work, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. CONSULTANT must assert any claim for adjustment under this clause in writing within thirty (30) calendar days from the date of receipt from CONSULTANT of the notification of change unless the DISTRICT grants a further period of time before the date of final payment under this Agreement.

6.5 NOTICES: All notices to either Party by the other shall be made in writing and delivered or mailed to such Party at their respective addresses as follows, or to other such address as either Party may designate, and said notices shall be deemed to have been made when delivered or, if mailed, five (5) days after mailing.

To DISTRICT: Crestline Sanitation District  
24516 Lake Drive  
Post Office Box 3395  
Crestline, CA 92325-3395  
Attn: General Manager

To CONSULTANT: MtnLocations  
Post Office Box 2334  
Crestline, CA 92325  
Tel: (818) 856-0886  
Attn: Ben Beitzel

6.6 CONSULTANT'S ASSIGNED PERSONNEL: CONSULTANT designates Ben Beitzel to have immediate responsibility for the performance of the work for the Project and for all matters relating to performance under this Agreement. Substitution of any assigned personnel shall require the prior written approval of the DISTRICT. If the DISTRICT determines that a proposed substitution is not acceptable, then, at the request of the DISTRICT, CONSULTANT shall substitute with a person acceptable to the DISTRICT.

6.7 TERMINATION:

- (a) The DISTRICT may terminate this Agreement or abandon any portion of the Project, with or without cause, upon written notice thereof to CONSULTANT. CONSULTANT may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days written notice only in the event of substantial failure by the DISTRICT to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT.
- (b) In the event of termination of this Agreement, or abandonment of any portion of the Project by the DISTRICT, the DISTRICT shall be immediately given title to all original drawings and other documents developed for the Project, and the sole right and remedy of CONSULTANT shall be to receive payment for all amounts due and not previously paid to CONSULTANT for services completed or in progress in accordance with the Agreement prior to such date of termination. If termination occurs prior to completion of any task for which payment has not been made, the fee for services performed during such task shall be based on an amount mutually agreed to by the DISTRICT and CONSULTANT. Such payments available to the CONSULTANT under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of this Agreement.

6.8 ATTORNEYS' FEES: In the event that either the DISTRICT or CONSULTANT brings an action or proceeding for damages for an alleged breach of any provision of this Agreement, to interpret this Agreement or determine the rights of and duties of either Party in relation thereto, the prevailing Party shall be entitled to recover as part of such action or proceeding all litigation, arbitration, mediation and collection expenses, including witness fees, court costs, and reasonable attorneys' fees. Such fees shall be determined by the Court in such

litigation or in a separate action brought for that purpose. Mediation will be attempted if both Parties mutually agree before, during, or after any such action or proceeding has begun.

6.9 INDEMNITY:

- (a) CONSULTANT shall defend, indemnify and hold DISTRICT, including its directors, officers, employees and agents, harmless from and against any and all claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, with respect to or arising out of the work to be performed under this Agreement, including without limitation, any and all such claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, arising by reason of death or bodily injury to one or more persons, including the employees of CONSULTANT; injury to property of any kind, including loss of use; or economic damages of any kind, caused by, or arising out of, any alleged or actual act or omission, regardless of whether such act or omission is active or passive, by CONSULTANT, any of CONSULTANT's subcontractors or DISTRICT, including their respective directors, officers, employees, agents and assigns, excepting only such matters arising from the sole negligence or willful misconduct of the DISTRICT.
- (b) CONSULTANT shall defend, indemnify and hold DISTRICT, including its directors, officers, employees and agents, harmless from and against any and all claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, with respect to or arising out of any infringement or alleged infringement of any patent, copyright or trademark and arising out of the use of any equipment or materials furnished under this Agreement by the CONSULTANT or CONSULTANT's subcontractors, including their respective directors, officers, employees, agents and assigns, or out of the processes or actions employed by, or on behalf of, the CONSULTANT or CONSULTANT's subcontractors, including their respective directors, officers, employees, agents and assigns, in connection with the performance of services under this Agreement. CONSULTANT shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing equipment, materials or processes, or to modify at its expense such infringing equipment, materials, and processes so they become non-infringing, provided that such substituted and modified equipment, materials, and processes shall meet all the requirements and be subject to all the provisions of this Agreement.
- (c) CONSULTANT shall defend, indemnify and hold DISTRICT, including its directors, officers, employees and agents, harmless from and against any and all claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, with respect to or arising out of any breach by CONSULTANT or CONSULTANT's subcontractors, including their respective directors, officers, employees, agents and assigns, of the aforesaid

obligations and covenants, and any other provision or covenant of this Agreement.

- (d) It is the intent of the Parties to this Agreement that the defense, indemnity and hold harmless obligation of CONSULTANT under this Agreement shall be as broad and inclusive as may be allowed under *California Civil Code* §§ 2778 through 2784.5, or other similar state or federal law.

6.10 SAFETY: CONSULTANT shall perform the work in full compliance with applicable State and Federal safety requirements including, but not limited to, Occupational Safety and Health Administration requirements.

- (a) CONSULTANT shall take all precautions necessary for the safety of, and prevention of damage to, property on or adjacent to the Project site, and for the safety of, and prevention of injury to, persons, including DISTRICT's employees, CONSULTANT's employees, and third persons. All work shall be performed entirely at CONSULTANT's risk. CONSULTANT shall comply with the insurance requirements set forth in Section 6.3 of this Agreement.
- (b) CONSULTANT shall also furnish the DISTRICT with a copy of any injury prevention program established for the CONSULTANT's employees pursuant to California Labor Code Section 6401.7, including any necessary documentation regarding implementation of the program. CONSULTANT hereby certifies that its employees have been trained in the program, and procedures are in place to train employees whenever new substances, processes, procedures, or equipment are introduced. CONSULTANT shall demonstrate compliance with California Labor Code Section 6401.7 by maintaining a copy of its Injury and Illness Prevention Plan at the Project site and making it available to the DISTRICT.

6.11 EXAMINATION OF RECORDS: All original drawings, specifications, reports, calculations, and other documents or electronic data developed by CONSULTANT for the Project shall be furnished to and become the property of the DISTRICT. CONSULTANT agrees that the DISTRICT will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all of the transactions relating to this Agreement.

6.12 OWNERSHIP OF SOFTWARE:

- (a) Subject to payment of all compensation due under this Agreement and all other terms and conditions herein, CONSULTANT hereby grants DISTRICT a nonexclusive, transferable, royalty-free license to use the Software furnished to DISTRICT by CONSULTANT under this Agreement. The license granted herein shall authorize DISTRICT to:
  - (1) Install the Software on computer systems owned, leased or otherwise controlled by DISTRICT;
  - (2) Utilize the Software for its internal data-processing purposes; and
  - (3) Copy the Software and distribute as desired to exercise the rights granted herein.
- (b) CONSULTANT retains its entire right, title and interest in the Software developed under this Agreement. DISTRICT acknowledges that CONSULTANT owns or holds a license to use and sublicense various pre-existing development

tools, routines, subroutines and other programs, data and materials that CONSULTANT may include in the Software developed under this Agreement. This material shall be referred to hereafter as "Background Technology."

- (c) DISTRICT agrees that CONSULTANT shall retain any and all rights CONSULTANT may have in the Background Technology. CONSULTANT grants DISTRICT an unrestricted, nonexclusive, perpetual, fully paid-up worldwide license to use the Background Technology in the Software developed and delivered to DISTRICT under this Agreement, and all updates and revisions thereto. However, DISTRICT shall make no other commercial use of the Background Technology without CONSULTANT's written consent.

6.13 INTEGRATION AND AMENDMENT: This Agreement contains the entire understanding between the DISTRICT and CONSULTANT as to those matters contained herein. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting those matters, which are not specifically incorporated herein, may be deemed in any way to exist or to bind any of the Parties hereto. Each Party acknowledges that it has not executed this Agreement in reliance on any promise, representation or warranty not set forth herein. This Agreement may not be amended except by a writing signed by all Parties hereto.

6.14 ASSIGNMENT: Neither Party shall assign or transfer its interest in this Agreement without written consent of the other Party. All terms, conditions, and provisions of this Agreement shall inure to and shall bind each of the Parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

6.15 GOVERNING LAW: This Agreement shall be construed as if it was jointly prepared by both Parties hereto, and any uncertainty or ambiguity contained herein shall not be interpreted against the Party drafting same. In the event of a conflict between the provisions of this Agreement and the Scope of Work, the provisions of this Agreement shall control. This Agreement shall be enforced and governed by the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of San Bernardino, State of California, or in a federal court with jurisdiction in the County of San Bernardino, State of California.

6.16 HEADINGS: Article and Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

6.17 PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

6.18 EFFECT OF DISTRICT'S WAIVER: Any failure by the DISTRICT to enforce any provision of this Agreement, or any waiver thereof by the DISTRICT, shall not constitute a

waiver of its right to enforce subsequent violations of the same or any other terms or conditions herein.

6.19 AUTHORITY: The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to sign this Agreement on behalf of and to so bind their respective legal entities.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CONSULTANT

DISTRICT

By: \_\_\_\_\_  
Ben Beitzel, *[Title]*  
MtnLocations

By: \_\_\_\_\_  
Chairperson, Board of Directors  
Crestline Sanitation District



**EXHIBIT A**

**SCOPE OF WORK**

