



June 20, 2019

Board of Directors  
Ventura Regional Sanitation District  
Ventura, California

## **APPROVE, AND AUTHORIZE THE BOARD CHAIR TO SIGN, PROPOSED CONTRACT NO. 19-027 WITH FRUIT GROWERS LABORATORY, INC. FOR ANALYTICAL LABORATORY SERVICES**

### **RECOMMENDATION**

Approve, and authorize the Board Chair to sign, proposed Contract No. 19-027 with Fruit Growers Laboratory, Inc. for analytical environmental laboratory services in an amount not to exceed \$100,000 in FY 2019-20.

### **FISCAL IMPACT**

The funding for this contract is included in the adopted FY2019-20 District budget under account codes 25-210-52155-[various] (\$95,000) and 25-401-52155-400301 (\$5,000). This service is a pass-through cost to the District's wastewater clients.

### **BACKGROUND/ANALYSIS**

Fruit Growers Laboratory, Inc. (FGL) provides sampling and testing services for VRSD and several of its wastewater clients. Due to short hold times on some samples, FGL's location makes them the only option for VRSD to maintain compliance with state and federal regulations. FGL is recommended for their ability to provide quality work for an appropriate price and for their willingness to respond to emergency situations.

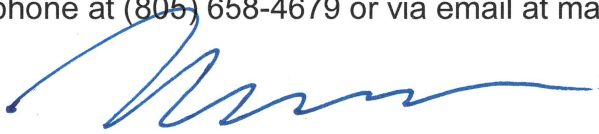
Due to its experience in the water quality field in the region and its extensive experience with the District, staff followed Part III, Section 302 (Supplies, Equipment, and Purchasing Procedure; Negotiated Procurement) of VRSD Resolution 89-13 to procure these services.

### **PROPOSAL**

The District desires to streamline contract processing in the future. To this end, staff has written the contract to minimize administrative burden and cost to achieve this goal. Going forward, staff would request additional funding annually by including the associated costs within each fiscal year's proposed budget. Additionally, the contract contains language indicating extension is contingent upon approval of future year funding. This leaves the

fiscal control in the hands of the VRSD Board but at the same time minimizes the administrative burden and cost to VRSD to extend the contract.

This letter and the associated contract have been reviewed by Legal Counsel as to form. If you should have any questions or need additional information, please contact me by phone at (805) 658-4679 or via email at mattbaumgardner@vrsd.com.



MATT BAUMGARDNER, DIRECTOR OF OPERATIONS

APPROVED FOR BUDGET IMPACT:

  
\_\_\_\_\_  
Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA:

  
\_\_\_\_\_  
Chris Theisen, General Manager

Attachments: VRSD Contract No. 19-027

**VENTURA REGIONAL SANITATION DISTRICT  
CONTRACT NO. 19-027**

**AGREEMENT FOR  
LABORATORY ANALYSIS SERVICES  
BETWEEN  
VENTURA REGIONAL SANITATION DISTRICT  
AND  
FRUIT GROWERS LABORATORY, INC.**

THIS AGREEMENT is made and entered into this 20<sup>th</sup> day of June 2019, by and between the VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq. ("DISTRICT") and FRUIT GROWERS LABORATORY, INC., a California Corporation ("CONTRACTOR"). Together, DISTRICT and CONTRACTOR shall be referred to herein as Parties.

**RECITALS**

A. DISTRICT has a need for laboratory analysis services in support of its water, wastewater, and solid waste operations.

B. CONTRACTOR represents that it has the expertise and experience to provide laboratory analysis services to the DISTRICT.

C. DISTRICT has selected CONTRACTOR, based upon the above representations and in conformance with the DISTRICT's Purchasing Resolution No. 89-13, to provide laboratory analysis services.

D. Parties agree to enter into this Agreement based upon the valuable and mutual consideration set forth below and the recitals above and to abide by its terms and conditions as set forth herein.

**AGREEMENT**

**ARTICLE 1: WORK STATEMENT/SCOPE OF SERVICES**

A. CONTRACTOR shall provide the laboratory analysis services to the DISTRICT as described in the STATEMENT OF WORK & RATE SHEET which is attached as Exhibit "A" to this Agreement and incorporated herein by reference.

B. CONTRACTOR shall use its best professional efforts and best industry practices in providing laboratory analysis services to DISTRICT and shall cooperate fully with DISTRICT and provide DISTRICT with all available information and assistance in relation to Exhibit A.

C. The Parties acknowledge and agree that CONTRACTOR owes the DISTRICT a fiduciary duty to conduct all affairs of the DISTRICT in accordance with all applicable federal and state laws and the highest standards of good faith, trust, confidence and candor, and to endeavor, to the best of CONTRACTOR'S ability, to promote and protect the best interests of the DISTRICT.

D. CONTRACTOR shall not, at any time during the term of this Agreement, directly or indirectly, act as a partner, officer, director, CONTRACTOR or employee, or provide laboratory analysis services to any other business enterprise or governmental agency that conflicts with the DISTRICT's mission and business operations or CONTRACTOR's duty of loyalty or fiduciary duty to the DISTRICT.

E. CONTRACTOR shall begin work, as needed, immediately after the Agreement is signed by both parties. PARTIES agree that any and all work shall be done in a diligent and professional manner to DISTRICT's satisfaction.

## **ARTICLE 2: TERM OF CONTRACT**

A. Unless otherwise earlier terminated, this Agreement shall continue in force until the services specified herein have been fully performed. Upon execution of this Agreement by both Parties, CONTRACTOR shall diligently pursue work to assure completion on a timely basis. Unless otherwise extended in writing by both Parties, this contract shall automatically terminate on June 30, 2024.

B. This Agreement may be extended annually, no more than four (4) times, by mutual agreement of the Parties. The DISTRICT General Manager, on behalf of the DISTRICT Board of Directors ("BOARD") shall prepare in a form approved by the DISTRICT Legal Counsel.

C. The Parties acknowledge and agree that this Agreement for laboratory analysis services is dependent upon the availability of District funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the District Board of Directors, or is not allocated or allotted to this Agreement by the District Board of Directors for periodic payment in the current or any future fiscal period, then the obligations of the District to make payments after the effective date of such non-allocation or non-funding will cease and terminate.

D. If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the District Board of Directors for this Agreement, or is not allocated or allotted in full by the District Board of Directors for this Agreement for periodic payment in the current or any future fiscal period, then the Contractor shall either accept the delayed or reduced payment obligations of District or agree that District has the right to terminate the Agreement as provided in Article 6. If such funding is reduced, District in its sole discretion shall determine which aspects or tasks of the Agreement shall proceed and which work or tasks shall be performed, with corresponding Contractor's Charges for such Services and associated Deliverables. In these situations, District agrees to pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Exhibits A and B to the Agreement. Any obligation to pay by District will not extend beyond the end of District's then-current funding period, except as otherwise provided herein.

E. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, District in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

## **ARTICLE 3: INDEPENDENT CONTRACTOR RELATIONSHIP**

A. It is expressly understood between the Parties that no employee/employer relationship is intended, the relationship of CONTRACTOR to DISTRICT being that of an independent contractor. DISTRICT shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to CONTRACTOR.

B. CONTRACTOR is solely responsible for selecting the means, methods and procedures for performing its services hereunder as assigned by DISTRICT and for coordinating all portions of the work

so the result will be satisfactory to the DISTRICT. CONTRACTOR will supply all tools and instrumentalities required to perform its services under this Agreement.

C. CONTRACTOR, pursuant to this Agreement, is rendering professional services only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in the performance of services.

#### **ARTICLE 4: CONFIDENTIAL RELATIONSHIP and OWNERSHIP OF DOCUMENTS**

A. CONTRACTOR agrees that all dealings of the Parties under this Agreement shall be confidential and no report, data, information or communication developed, prepared or assembled by CONTRACTOR under this Agreement, or any information made available to CONTRACTOR by DISTRICT, shall be revealed, disseminated or made available by CONTRACTOR to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, drawings and other documents developed, prepared, completed or acquired by CONTRACTOR during the performance of its services hereunder shall be given or turned over to DISTRICT upon termination of this Agreement.

B. CONTRACTOR shall provide copies of original source electronic files (i.e., Microsoft Word or Excel files, digital photos, etc.) of all work completed as part of this Contract. Such files shall not be protected, encrypted or otherwise have their access restricted.

C. Any and all documents, reports, surveys, data compilation, interview results or records produced pursuant to this Agreement by the CONTRACTOR shall be the property of the DISTRICT and under the ownership of the DISTRICT.

#### **ARTICLE 5: PAYMENT TO CONTRACTOR**

A. In consideration of CONTRACTOR's performance of services as described herein, DISTRICT shall pay CONTRACTOR fees for its services according to the schedule of rates set forth in Exhibit "A" attached and incorporated by reference herein. On or prior to the tenth (10<sup>th</sup>) day of each calendar month after actual work is started, CONTRACTOR shall submit an invoice in sufficient detail to show the total amount of work done to the last day of the month preceding the one in which the invoice is submitted. DISTRICT shall review and approve CONTRACTOR's invoice for accuracy and agree with CONTRACTOR on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONTRACTOR for all approved work and materials within thirty (30) days of agreement on the amount of the invoice. In the event of disagreement with CONTRACTOR on adjustments or disallowances, said amounts and disputes shall be withheld until resolved. Upon resolution of the disagreements, payment of the approved amount shall be made within thirty (30) days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees or compensation to be paid by DISTRICT to CONTRACTOR for CONTRACTOR's services described herein shall not exceed \$100,000 without a mutually acceptable, written amendment hereto.

#### **ARTICLE 6: TERMINATION OF CONTRACT**

CONTRACTOR specifically acknowledges and agrees that DISTRICT may terminate CONTRACTOR's services at any time with or without cause, regardless of whether CONTRACTOR's services or the Project are completed. Any termination or any special instructions hereunder from DISTRICT shall be made in writing. In the event of such termination, CONTRACTOR shall have the right to expend additional time (not to exceed 10% of the total fees payable under this Agreement) to assemble the work in progress for the purpose of proper filing and closing the job. Such additional time shall not increase CONTRACTOR's total compensation beyond the maximum stated in Article 5.

## **ARTICLE 7: INDEMNIFICATION AND HOLD HARMLESS**

CONTRACTOR agrees to defend, indemnify and hold harmless DISTRICT and its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses, however caused, resulting directly or indirectly from or connected with CONTRACTOR's negligent performance of this Agreement (including, but not limited to such liability, cost, damage, loss, claim or expense arising from the death of or injury to, or damage to property of CONTRACTOR, DISTRICT, or their respective employees or agents), except to the extent that such liability, damages, costs, losses, claims or expenses are caused by the negligent or wrongful acts or omissions of DISTRICT or any of its agents or employees.

## **ARTICLE 8: INSURANCE**

CONTRACTOR shall provide and keep in effect during the term of this Agreement insurance as follows:

A. Workers' Compensation and Employer's Liability policies in accordance with and as required by applicable laws.

B. Commercial General Liability policies with combined single limit coverage of at least \$1,000,000 for any personal injury, death, or property damage.

C. Comprehensive Automobile Liability policies with combined single limit coverage of at least \$1,000,000 for personal injury, death, or property damage.

CONTRACTOR shall provide certificates of such insurance to DISTRICT prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in Items B and C above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONTRACTOR's insurance shall be primary for the coverage in Items B and C above; and (3) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set forth in this Agreement.

## **ARTICLE 9: SUBCONTRACTORS**

This Agreement is a personal service contract and the consulting work hereunder shall not be delegated or assigned by CONTRACTOR to any person or entity without the prior written consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

## **ARTICLE 10: AUTHORITY TO EXECUTE AGREEMENT**

Both DISTRICT and CONTRACTOR do covenant that each individual executing this Agreement on behalf of each Party is a person duly authorized and empowered to execute Agreements for such Party.

## **ARTICLE 11: NO WAIVER**

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONTRACTOR shall operate as a waiver of the default, of any subsequent or other default by CONTRACTOR, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

## **ARTICLE 12: 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.

### **ARTICLE 13: TERMS**

No alteration or amendment of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties.

### **ARTICLE 14: CALIFORNIA LAW**

This Agreement shall be interpreted and construed pursuant to the laws of the State of California. This Agreement shall be governed by the Uniform Commercial Code of the State of California, as amended. The Parties agree that should litigation arising from this Agreement be commenced within California, such litigation shall occur within a court of competent jurisdiction within the County of Ventura.

### **ARTICLE 15: COMPLIANCE WITH LAWS**

CONTRACTOR shall be solely responsible for giving all notices and complying with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to CONTRACTOR's work, the safety of the persons or property involved, and their protection from damage or injury. CONTRACTOR shall defend, indemnify and hold DISTRICT harmless from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and costs, brought or recovered against DISTRICT, for or on account of any liability under said laws, ordinances, rules, regulations and orders which may be incurred by reason of any work to be performed by CONTRACTOR with this Agreement.

### **ARTICLE 16: FORCE MAJEURE**

Neither CONTRACTOR nor DISTRICT shall be liable or deemed to be in default for any delay or failure in performance under this Agreement due to interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of CONTRACTOR or DISTRICT.

### **ARTICLE 17: DISPUTE RESOLUTION**

In the event that CONTRACTOR and DISTRICT have a dispute concerning the payment of sums pursuant to their Contract, the Parties agree to be governed by Public Contracts Code Section 20104, et seq. In the event of such dispute, CONTRACTOR shall file a written claim with DISTRICT. DISTRICT shall respond in writing within forty-five (45) days or, within thirty (30) days request additional documentation and respond within fifteen (15) days after said request.

### **ARTICLE 18: MODIFICATION or AMENDMENT**

This Agreement, in whole or in part, may not be amended, modified, or altered in any way unless it is first put in writing and then mutually agreed to by authorized representatives of the Parties.

### **ARTICLE 19: NOTICES**

All notices or other official correspondence relating to contractual matters between the Parties shall be made by depositing the same as first-class, postage-paid mail addressed as follows:

To CONTRACTOR: Glenn Olsen

FRUIT GROWERS LABORATORY, INC.  
853 Corporation Street  
Santa Paula, CA 93060

To DISTRICT: Finance & Administration  
VENTURA REGIONAL SANITATION DISTRICT  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003-0704

or to such other address as either Party may designate hereinafter in writing delivered to the other Party.  
All notices shall be deemed to have been received three (3) days after mailing.

**ARTICLE 20: EXECUTION IN COUNTERPARTS**

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement, as may be amended from time to time. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or other electronic means shall have the same impact and effect as original counterparts and shall be valid, enforceable and binding.

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IN WITNESS WHEREOF, the Parties hereto have executed this agreement the day and year first above written.

VENTURA REGIONAL  
SANITATION DISTRICT

FRUIT GROWERS LABORATORY, INC.

By \_\_\_\_\_  
KEVIN KILDEE  
Chairman of the Board

By  \_\_\_\_\_  
GLENN OLSEN  
Marketing Director

APPROVED AS TO FORM:

ARNOLD, LAROCHELLE,  
MATHEWS, VANCONAS & ZIRBEL, LLP

By \_\_\_\_\_  
ROBERT N. KWONG  
Legal Counsel for District

ATTEST:

By \_\_\_\_\_  
JULIET RODRIGUEZ  
Clerk of the Board

## EXHIBIT A

### STATEMENT OF WORK

This Statement of Work details the tasks to be performed by CONTRACTOR for the DISTRICT under Ventura Regional Sanitation District Contract No. 19-027. CONTRACTOR shall:

1. Use test methods that are based on regulatory matrix monitoring/reporting requirements (e.g., 40CFR Part 136 & 141; SW 846, Title 22 CCR). Methods used shall conform to reporting and accreditation conditions of the California Environmental Laboratory Accreditation Program (Title 22, CCR, Division 4, Chapter 19, Article 6 *Required Test Methods*).
2. Maintain State of California, Environmental Laboratory Accreditation Program certification throughout term of contract. FGL Environmental currently operates under certificate no. 1573.
3. Perform work as directed within the *FGL Quality Manual*, approved in its most recent revision.
4. Supply lab method standard Quality Control (QC) level reports.
5. Provide routine flag notations in result reporting.
6. Provide courier service which will include issuance of laboratory specific sample bottles of known quality, transport coolers and appropriate packing materials.
7. Specify that courier receipt of samples places short holding time responsibility to CONTRACTOR, provided the scheduled courier pickup was pre-notified/pre-scheduled with proper identification of test methods, sample dates/times on the chain-of custody.
8. Report to DISTRICT as to the sample acceptability upon the laboratory determination of exception within 2 hours of receipt.
9. Specify that base responsibility for re-analysis costs will be based on Quality Control procedures, the analytical request, holding time, breakage/loss, and reasonable and appropriate costs on a case-by-case basis as mutually agreed upon.
10. Provide additional analytical raw data at no additional cost if deemed necessary, on an infrequent basis, for project or analytical troubleshooting of results.
11. Include a Laboratory Project Manager as the primary contact for multiple DISTRICT monitoring projects.
12. Utilize Turn Around Times (TATs) as the period from date of receipt and sample acceptance (after resolution of any Chain of Custody discrepancies or questions), to submitted reportables (transmitted by email, electronic file or hardcopy).
13. Ensure that normal turnaround times are 10 days and a maximum of 15 business days. If a 15-day TAT is **not achieved**, a 1% penalty per working day will apply up to a maximum of 5% of the invoice value for methods performed by CONTRACTOR. Penalty charges will automatically apply as a discount to invoices if the 15-day maximum TAT is **not achieved**.
14. Submit hardcopy Drinking Water reports, when applicable, as printouts from (Write-On) which conveys successful Department of Public Health transmittals (electronic data transmittals, or EDTs) by SUPPLIER.
15. Complete and payable hardcopy/with electronic invoices are payable with web available pdf/xls monitoring data deliverables.
16. Forward all final data as Electronic Data Deliverables (EDDs). A complete reporting deliverable to the DISTRICT will include 1 Excel file (csv/xls) and 1 Adobe (pdf) containing supplier LIMS information. If required to subcontract, laboratories will provide CONTRACTOR with a compatible EDD format for forwarding as a deliverable to the DISTRICT.
17. Ensure sub-contracting laboratories are audited/qualified to report on specific method results under the Department of Public Health – Environmental Laboratory Accreditation Program.
18. Provide internet access to project status/data for multiple-users from the DISTRICT – probable exemptions would be sub-contract lab submittals (pdf only).

**EXHIBIT B - SCHEDULE OF RATES**

<b>Constituent</b>	<b>Analytical Method</b>	<b>Price Per Sample (\$)</b>
<b>Routine Analyses</b>		
Biochemical Oxygen Demand (BOD5)	SM5210B	39.00
Total Suspended Solids (TSS)	SM2540D	24.00
Settleable Solids (SS)	SM2540F	22.00
pH	SM4500-H B	20.00
Chloride (Cl)	EPA 300.0	24.00
Nitrate (NO3 or NO3-N)	EPA 300.0/SM4500	24.00
Nitrite (NO2 or NO2-N)	EPA 300.0/SM4500	24.00
Organic Nitrogen (TKN - NH3-N)	SM4500-NHorg	64.00
Ammonia (NH3-N) - included in Organic Nitrogen	SM4500-NH3 H	32.00
Sulfate (SO4)	EPA 300.0	24.00
MBAS (Surfactants)	SM5540C	48.00
Metals - Sample Prep (Wastewater / Solids)	EPA 3010A	20.00
Individual Metals Including: B;Ca;Mg;Na	EPA 200.7/EPA 200.8	22.00
Total Solids (TS) (Percent Moisture)	SM2540B	24.00
Electrical Conductivity (EC)	SM2510B	25.00Feng

<b>Constituent</b>	<b>Analytical Method</b>	<b>Price Per Sample (\$)</b>
<b>Bacteriology</b>		
Total & Fecal Coliform - LTB-MTF - 10 tube	SM9221B,E	32.00
Total & Fecal Coliform - LTB-MTF - 15 tube	SM9221B,E	34.00
Total & Fecal Coliform - LTB-MTF - 35 tube	SM9221B,E	60.00
HPC Standard Plate Count	SM9215B	34.00
Enterococcus – Enterolert – QT 2000	Enterolert SM9230	29.00

<b>Service</b>		<b>Price Per Sample (\$)</b>
<b>Field Services</b>		
Sampling Fee - Weekly Scheduled		42.00
Pick-Up Fee (If FGL Does Not Conduct Sampling)		25.00
Sampling Fee – Saturday (If Needed)		150.00

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