

**SOUTH SANTA CLARA VALLEY
MEMORIAL DISTRICT**

AGENDA REPORT

Date: November 21, 2022

To: South Santa Clara Valley Memorial District Board of Directors

From: Christine West, Executive Director

Subject: Authorize the Executive Director to Renew Professional Services Agreement with James Gargiulo of Spectrum Business Services for Accounting Services

RECOMMENDATION

Authorize the Executive Director to Renew Professional Services Agreement with James Gargiulo of Spectrum Business Services for Accounting Services

DISCUSSION

James Gargiulo's proposed rates for 2023 with the 2022 rates and changes in italics.

Payroll processing - 2023 rate: \$48 per bi-weekly pay period for up to three employees plus \$7 per pay period per additional employee above three.

- *2022 rate: \$44 per bi-weekly pay period for up to three employees plus \$6 per pay period per additional employee above three.*

Payroll delivery - 2023 rate: Additional \$15 charge per bi-weekly pay period if at least one employee requires a printed payroll check to be hand-delivered to the Client. This fee does not apply if the Client accepts email delivery of a PDF file for printing at the Client's office.

- *No change except for adding the second sentence above for clarity*

Accounts payable online payments for garnishments if necessary - 2023 rate: \$10 per bi-weekly pay period

- *No change*

General management consulting - 2023 rate: \$135 per hour.

- *No change*

James also suggests changes section 6.D. of the contract to remove the option that confidentiality expires after five years. Instead, that section would read as follows: *Time Periods: The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Company's duty to hold Confidential Information in confidence shall remain in effect unless (a) the Confidential Information no longer qualifies as a trade secret; or (b) the Client sends the Company written notice releasing the Company from this Agreement.*



BUSINESS SERVICES AGREEMENT

The following confirms the agreement (the "Agreement") between Spectrum Small Business Advisors, LLC (hereinafter called "Company") and South Santa Clara Valley Memorial District (hereinafter called the "Client") with respect to the provision of consulting services to the Client.

1. **Term of Agreement:** This Agreement is effective as of January 1, 2023, and it will end on December 31, 2023. Either party may cancel this agreement, with or without cause, on thirty (30) days' notice to the other party in writing, by certified mail, email, or personal delivery. There is no penalty or cancellation fee for either party.

2. **Services/Ownership:** The Company shall provide the services described in any Work Statement to which this Agreement relates (the "Services"). "Work Product" shall mean all deliverables, recommendations, reports, designs, diagrams, specifications, and writings of any nature in the course of or arising out of any Services. All Work Product shall be disclosed promptly to the Client and will be the exclusive property of the Client.

A Work Statement may only be changed in writing, signed by both parties. The parties understand and agree that the Company will have the sole discretion to determine the method, means, and location of performing the Services, and that the Client has no right to, and will not, control or determine the method, means, or place of the performance of the Services.

3. **Warranties:** The Company warrants that the Client has the right to make any use of the Work Product, and any materials, concepts, processes, or information contained therein as the Client may determine, without violation of any right of any third party. The Company warrants that it is in the business of providing to other companies services similar to those provided to the Client under this Agreement and will do so in a professional manner conforming to generally accepted industry standards and practices.

4. **Indemnity and Liability:** The Client agrees to indemnify and hold harmless the Company, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the Client, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs as a result of service performed under this Agreement. This indemnification will survive the termination of this Agreement. In the event the Company is found liable by arbitration or a court of law for any act or omission, the Client further agrees that damages will be limited to direct damages only not to exceed the cost of fees paid to the Company for services.

The Client shall hold harmless and indemnify the Company from any damage which may be caused to the Client's computer network system.

The Company shall hold harmless, indemnify and defend the Client, its elective and appointive boards, commissions, officers, agents, servants, volunteers, and employees from and against any and all claims, costs, damages, liability, losses, or suits (including court costs and attorney fees) for personal injury (including death), property damage and any other damages of any sort whatsoever, arising out of, or alleged to have arisen out of, the willful or negligent acts, errors, or omissions of the Company or the Company's contractors, subcontractors, agents, or employees in the performance of this Agreement. This indemnity shall not apply to a) claims brought by the Company for default of this Agreement, or for claims brought by the Client or any third party where the underlying injury or damage is finally determined by a court of competent jurisdiction to arise solely from the negligent or willful misconduct of the Client.

5. **Compensation:** The Company shall be paid as specified on each individual Work Statement. The Company shall submit to the Client invoices for all services rendered and, assuming timely and satisfactory completion of the project(s), the Client agrees to adhere to the payment schedule as agreed

upon in each Work Statement. The foregoing fees are the Company's sole compensation for rendering Services to the Client. The parties agree that the Company will supply all tools and equipment necessary to perform the services, and the Client is not responsible to reimburse any costs or expenses incurred by the Company in performing the services unless otherwise agreed to in a Work Statement.

6. Confidential Information: The Company understands that the Client possesses Confidential Information which is important to the Client's business and that this Agreement creates a relationship of confidence and trust between the Company and the Client with regard to Confidential Information. A. Definition of Confidential Information: For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which the Client is engaged. If Confidential Information is in written form, the Client shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Client shall promptly provide in writing indicating that such oral communication constituted Confidential Information.

B. Exclusions from Confidential Information: The Company's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Company; (b) discovered or created by the Company before disclosure by the Client; (c) learned by the Company through legitimate means other than from the Client or Client's representatives; or (d) is disclosed by the Company with the Client's prior written approval.

C. Obligations of the Company: The Company shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Client. The Company shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. The Company shall not, without prior written approval of the Client, use for the Company's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Client, any Confidential Information. The Company shall return to the Client any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Client requests it in writing.

D. Time Periods: The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Company's duty to hold Confidential Information in confidence shall remain in effect unless (a) the Confidential Information no longer qualifies as a trade secret; or (b) the Client sends the Company written notice releasing the Company from this Agreement.

E. Bidirectional: This Agreement is bidirectional, and the Client agrees to all the same terms in this Section 6 for any Confidential Information it receives from the Company.

F. The Company will save email correspondence to/from the Client for two years from the date of the email regardless of the time period of this agreement. It is the Client's responsibility to retain this information if the Client wishes to keep the emails for a longer time period in accordance with their own retention policy.

7. Enforceability of Agreement and Severability: The Client agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of California. The Client further agrees that if one or more provisions of this Agreement are held to be unenforceable under applicable California law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

8. Assignment: This Agreement shall not be assignable by either the Company or the Client without the express written consent of the other party.

9. Arbitration: Any controversy between the parties hereto involving the construction or application of any terms, covenants or conditions of this Agreement or any claim arising out of or relating to this Agreement will be submitted to and be settled by final and binding arbitration in Santa Clara County, California, in accordance with the rules of the American Arbitration Association then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

10. **Notices:** All notices required or given herewith shall be addressed to the Company and the Client respectively at the designated addresses shown below by registered mail, special delivery or by certified courier service:

Spectrum Small Business Advisors, LLC
P.O. Box 1913
Gilroy, CA 95021
James@SpectrumSBA.com
(949) 351-1538

South Santa Clara Valley Memorial District
Gilroy Veterans Memorial Hall
74 W. 6th Street, Suite A
Gilroy, CA 95020
SSCVMD@gmail.com
(408) 842-3838

11. **Attorney's Fees:** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the party may be entitled.

12. **Time of the Essence:** Time is of the essence of this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

13. **Waiver:** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

14. **Modification of Agreement:** Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing and signed by each Party or an authorized representative of each Party.

15. **Counterparts:** This agreement may be executed in counterparts, each of which will be deemed to be an original copy of this agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement.

16. **Entire Understanding:** This Agreement contains the entire understanding of the parties regarding its subject matter and can only be modified by a subsequent written agreement executed by the Company and an authorized Client Representative. This Agreement between the Client and the Company shall also be considered confidential information not to be disclosed by either party to a third party in accordance with Section 6.

17. **Signatures:**

**Spectrum Small Business
Advisors, LLC Authorized Client
Representative** Signature:

Print Name: James Gargiulo
Title: Principal

Dated:

Signature:

Print Name: Christine West
Title: Executive
Director

Dated: