

**CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
CONSULTANT SERVICES AGREEMENT
WITH GIGANTIC IDEA STUDIO FOR DIVERSIONS NEWSLETTER**

THIS AGREEMENT is entered into by and between the Central Contra Costa Solid Waste Authority ("CCCSWA") and Gigantic Idea Studio ("Consultant"), effective July 1, 2010 through June 30, 2013.

RECITALS

A. The CCCSWA desires to contract for the provision of professional services for the development, production, and shipment of four quarterly CCCSWA residential *Diversions* newsletters per year to be distributed with Allied Waste Services' (AWS') quarterly residential bills (August/September, November/December, February/March and May/June).

B. Consultant desires to perform such professional services for the CCCSWA.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the CCCSWA and Consultant agree as follows:

AGREEMENTS

1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the following professional services: Develop, produce and ship to AWS four quarterly *Diversions* residential newsletters, to be inserted with the AWS bills, to promote recycling, reuse, waste prevention, and to clarify policies of the collection companies providing service to the residents. Consultant is responsible for all content under direction of CCCSWA staff, and will create and provide original graphics, illustrations and photography, as stated in their submitted scope of work' as well as fact checking, design, layout, prepress, printing, folding, packing and boxing services. Newsletters will be four-colored, on recycled content paper, double-sided, folded for bill insertion, and in accordance with the specifications provided by AWS' billing service. Consultant will keep abreast of all AWS-required deadlines for bill inserts and any and all changes to the format (including size and paper stock) if required by AWS' billing vendor and will be responsible for notifying CCCSWA of such changes. If these requirements increase Consultant's costs, then Consultant will notify CCCSWA of these cost changes and receive additional compensation, if the resulting payment is within the "not-to-exceed" amount of this agreement. Similarly, if these requirements decrease Consultant's costs, then Consultant will notify CCCSWA of these cost changes and pass this savings on to the CCCSWA. Services to be performed by Consultant are more specifically described in Attachment A (Scope of Work and Program Budget), which is incorporated herein by reference.

2. Payment.

a. Payment for Professional Services. Consultant shall invoice the CCCSWA a total cost not-to-exceed **\$69,473.28**, as shown in Attachment 1: Budget. Consultant will invoice the CCCSWA in three payments per issue: after receiving draft of proposed articles, after approval of the initial formatted version, and then after each issue's shipping.

b. Reimbursement of Expenses. The contract total amount includes all expenses ordinarily and directly related to creation, production and delivery of the newsletters, such as photography, photocopying, telephone, mileage, shipping and postal charges.

c. Additional Services. Any additional services required beyond those set forth in this Agreement shall be performed only if mutually agreed to in writing by the CCCSWA and Consultant.

d. The CCCSWA's failure to discover or object to any unsatisfactory work or billing prior to payment shall not constitute a waiver of CCCSWA's right to request Consultant to correct such work or billings or seek any other legal remedy.

3. Responsible Personnel. The professional services described in this agreement shall be performed in part and supervised by Lisa Duba. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that the CCCSWA, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice thereof from the CCCSWA.

4. Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

5. Facilities and Equipment. Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement.

6. Independent Contractor. Both parties understand that Consultant, its agents, employees and independent contractors are and shall at all times remain as to the CCCSWA wholly independent contractors. Neither the CCCSWA nor any of its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents shall have any control over the manner by which the Consultant performs this Agreement and shall only dictate the results of the performance. Consultant shall not represent that Consultant or its agents, employees or independent contractors are agents or employees of the CCCSWA. Except as the CCCSWA may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the CCCSWA in any capacity whatsoever as an agent. Consultant shall have no authority, expressed or implied, pursuant to this Agreement, to bind the CCCSWA to any obligation whatsoever.

7. Termination. The CCCSWA may terminate this Agreement at any time without cause immediately upon giving Consultant written notice of such termination. Upon receipt of such notice and if requested to do so by the CCCSWA, Consultant shall stop work at the stage directed by CCCSWA and shall deliver all drawings, specifications, and documentation developed as of said stage within one week of said notice. Consultant shall accept as full payment upon termination of the contract a mutually agreed upon pro rata share of the total contract payment for services rendered to the date of termination based on the portion of work actually performed. If the CCCSWA has made any payment for services that have not been performed, then the Consultant shall promptly repay to the CCCSWA that amount.

The Consultant may terminate this Agreement at any time without cause upon giving CCCSWA one hundred (100) days notice.

8. Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the CCCSWA and its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, arising out of, or in any way connected with, the negligent or non-performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. This indemnification shall extend to claims, losses, damages, injury or liability occurring after completion of scope of work, arising from Consultant's work. Such obligations to indemnify, defend, and hold harmless any Indemnitee shall not apply to the extent that such liabilities are caused by the active negligence or willful misconduct of such Indemnitee.

9. Copyright. The CCCSWA does not authorize the impermissible use of any patent or the reproduction of any copyrighted material by Consultant that exceeds "fair use" in the performance of this Agreement. Consultant is solely responsible for any such infringement.

Consultant shall indemnify the CCCSWA and its Board, each Member Agency and its City or Town Council or its Board, and their officers, employees and agents("Indemnitees") against and save it harmless from any and all losses, damage, costs, expenses, and attorneys' fees suffered or incurred as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, copyright, or trade secret, and arising out of the use of the equipment or materials utilized to perform under this Agreement or specified by or procured by Consultant, or out of the processes or actions employed by, or on behalf of, Consultant in connection with the performance of this Agreement.

10. Insurance. Consultant shall procure and maintain at its sole cost for the duration of this agreement the following insurance:

a. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1) Insurance Services Office form number GL0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). Any such policy shall include coverage for libel and slander.

2) Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

b. Minimum Limits of Insurance.

Consultant shall maintain policy limits of no less than:

1) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general

aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3) Worker's Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code and Employers Liability limits of \$1,000,000 per accident.

c. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the CCCSWA. At the option of the CCCSWA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions.

The policies shall contain, or be endorsed to contain, the following provisions:

1) General Liability and Automobile Liability Coverages.

(a) The CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents.

(b) Consultant's insurance coverage shall be primary insurance as respects the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents. Any insurance or self-insurance maintained by the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents shall be excess of Consultant's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents.

(d) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2) Worker's Compensation and Employer's Liability Coverage

Worker's Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code and Employers Liability limits of \$1,000,000 per accident.

The insurer shall agree to waive all rights of subrogation against the CCCSWA, its Board, each Member Agency and its City or Town Council or its Board and their officers, employees and agents for losses arising from work performed by Consultant for the CCCSWA.

3) All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CCCSWA.

e. Acceptability of Insurers.

Insurance is to be placed with insurers with a Best's rating of no less than A:VII

f. Verification of Coverage.

Consultant shall furnish the CCCSWA with certificates of insurance and with original endorsements evidencing the insurance required. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the CCCSWA before work commences. All policies shall require the insurer to provide notice of cancellation to CCCSWA thirty (30) days prior to cancellation. In addition, Consultant shall provide evidence of any policy renewal no later than thirty (30) days prior to the expiration of the policy. The CCCSWA reserves the right to require complete certified copies of all required insurance policies, at any time.

11. Safety and Accidents. Consultant shall comply with all laws and industrial safety standards. 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, and shall assume sole and complete responsibility during the course of completion of the assignment for safety of Consultant's employees and subcontractor's employees. Nothing in this Article requires Consultant to be responsible for safety of the CCCSWA's property or the CCCSWA's personnel or the property or personnel of any third parties over which Consultant has no authority or control. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Consultant shall immediately notify the CCCSWA's Executive Director by telephone.

12. Ownership of Images. All documents, logos, icons, titles, art work, illustrations, photographs, mascots, themes, mottos, slogans, designs, campaign messages appearing in the CCCSWA newsletter may be used by the CCCSWA in the future. Consultant will supply these at no cost to the CCCSWA with the exception of software conversion, transmittal, or postage costs.

For other clients, Consultant shall not use any material appearing in a CCCSWA newsletter that is identified with CCCSWA, such as the CCCSWA logo, the "Diversions" and "Re-Developments" publication names and accompanying tag lines, and regular column names such as "Recycling, Reduce, & Reuse Matters" and "Ask the Authority."

All images including, but not limited to, documents, logos, icons, titles, artwork, illustrations, photographs, mascots, themes, mottos, slogans, campaign messages of any type used by Consultant in the performance of this Agreement shall be deemed to be the joint property of the CCCSWA and Consultant. Any final tangible expressions of such images, created for reproduction, shall be retained by Consultant for five years, at which time Consultant may destroy them if CCCSWA does not want to claim them.

13. Authority and Notice. The CCCSWA's Executive Director will have complete authority to transmit instructions, receive information, and interpret and define the CCCSWA's policies and decisions pertinent to

the work. In the event the CCCSWA wishes to make a change in the CCCSWA's representative, the CCCSWA will notify the Consultant of the change in writing. Any notice to be given under this Agreement shall be given by enclosing the same in a sealed envelope, first-class postage prepaid, and depositing the same in the United States mail addressed to the party at the following address:

CCCSWA:

Paul Morsen
Executive Director
1111 Civic Drive, Suite 275
Walnut Creek, CA 94596

CONSULTANT:

Lisa Duba
Gigantic Idea Studio
580 Second Street, Suite 230
Oakland, CA 94607

14. Assignment. This Agreement contemplates the personal services of Consultant and its employees and it is understood by both parties that a substantial inducement to CCCSWA for entering into this Agreement was, and is, the professional reputation and competence of Consultant. Neither Consultant nor CCCSWA shall assign or otherwise transfer this Agreement or the rights or obligations hereunder.

15. Qualifications. Consultant represents that it and its employees are fully qualified to perform the services under this Agreement. Consultant represents and warrants to the CCCSWA that Consultant has, and at all times, during the performance of this Agreement shall maintain all licenses, permits, qualifications and approvals of any nature which are required for Consultant to practice Consultant's profession.

16. Time of the Essence. Time is of the essence in the performance of the services under this Agreement and all time deadlines shall be strictly construed.

17. Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices his profession. All products that Consultant delivers to CCCSWA pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in Consultant's profession. The CCCSWA shall be the sole judge as to whether the product of the Consultant is satisfactory.

The CCCSWA's review of systems, drawings, designs, workshops, reports, opinions, recommendations and incidental consulting work or materials furnished hereunder will not in any way relieve Consultant of responsibility for the professional and/or technical adequacy of its work. Neither the CCCSWA's review, acceptance of, nor payment for, any of the services will 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.

18. Consultant's Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the CCCSWA under this Agreement for a minimum of three (3)

years, or for any longer period required by law, from the date of final payment to the Consultant pursuant to this Agreement.

19. Inspection and Audit of Records. Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the CCCSWA. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of the CCCSWA or as part of any audit of the CCCSWA, for a period of three (3) years after final payment under the Agreement.

20. No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

The Consultant will provide the CCCSWA a “color key” of the newsletter to guarantee quality. The Executive Director will approve the “color key” prior to printing. The Executive Director will have the option to visit the printer and review the final product prior to the print run. The Executive Director understands that time is of the essence. Consultant shall, at no cost to the CCCSWA, prepare any necessary rework including reprinting of the product occasioned by Consultant’s failure to provide the exact product approved by the CCCSWA due to any act or omission attributable to Consultant, or its agents, including subcontractors.

The Consultant shall be excused from performing its obligations hereunder in the event it or its subcontractors are prevented from so performing by reason of floods, earthquakes, other “acts of God”, war, civil insurrection, riots, acts of any government and other similar catastrophic events, and labor actions conducted by subcontractor’s employees which are beyond the control of, and not the fault of, the Consultant claiming excuse from performance hereunder.

21. Examination of Records. Consultant agrees that the CCCSWA will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all the transactions relating to this Agreement at any time after the inception of the Agreement upon reasonable notice.

22. Prohibited Interests. No officer or employee of the CCCSWA shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the CCCSWA if this provision is violated.

Consultant covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any present interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its Services hereunder.

23. Remedies. In the event that either the CCCSWA or Consultant brings an action or proceedings for damages for an alleged breach of any provision of this Agreement, the prevailing party will be entitled to recover as part of such action or proceeding, all litigation and collection expenses, including witness fees, court costs, and reasonable attorneys’ fees. Arbitration shall be attempted if both parties mutually agree before, during, or after litigation has begun.

24. Governing Law. California law shall govern this Agreement. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Contra Costa County, California.

25. Entire Agreement. This Agreement is the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by written agreement signed by both parties.

CCCSWA:

Executive Director

Date

PROVIDER:

BY: _____

TITLE: _____

DATE: _____

Attachment:

- A. Scope of Work and Program Budget

