



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by: [Signature] Date: 5/17/19
General Manager

DATE: May 17, 2019
TO: Board of Directors
FROM: Human Resources Manager
SUBJECT: New Temporary Staffing Services Contract

RECOMMENDATION: That the Board authorize the General Manager to execute a service contract with Staffing Solutions, Inc. DBA Balance Staffing for temporary staffing services.

BACKGROUND & DISCUSSION

The District has historically used the services of staffing agencies for temporary placement of workers to fill in for District employees on leave of absence, project work, and to supplement District staffing levels for limited durations of time as business needs arise. The need for this type of service increased with MRF 2.0, as the new operation requires more consistent and constant staffing levels than the former operation and does not allow flexibility for staffing gaps without negatively impacting operations. The District currently partners with Select Staffing Services and the Mattox Group, Inc. for this type of service and, for the most part, the two agencies have been able to meet the District's temporary labor needs. However, during the Summer months when the local agriculture industry is in full operations, the District is challenged to compete for reliable temporary labor and we find it necessary to add an additional option.

District Management has negotiated a new Labor and Services Contract with the Staffing Solutions, Inc. DBA Balance Staffing, with similar terms as the other two contracts that provide the same services. Having a third option for the placement of temporary staff will ensure the District is able to maintain continuity of operations in a cost-effective manner when District staff is unavailable to work for any reason or business needs require supplemental staffing levels.

The District Counsel has reviewed the Labor & Services Contract and provided input relative to contract language and insurance recommendations (Attachment A).

FISCAL IMPACT

Temporary placement services costs are included in the FY budget. The cost of not having the ability to flex staffing levels as business needs dictate could potentially result loss of revenue.

CONCLUSION

The Board's authorization is requested to execute the Labor & Services Contract (Attachment A), as written, to ensure appropriate staffing for the continuity of operations and District services.

[Signature]
Berta R. Torres

Labor and Services Contract

Between

Staffing Solutions, Inc DBA Balance Staffing

1550 Constitution Blvd. Salinas, CA 93905

and

Monterey Regional Waste Management District

14201 Del Monte Boulevard, Marina, CA 93933

This Agreement is made on the _____ day of May, 2019 ("Effective Date"), by and between Staffing Solutions, Inc DBA Balance Staffing, a temporary staffing agency, hereinafter known as "BALANCE," and the Monterey Regional Waste Management District, a Special District located in the County of Monterey, hereinafter known as the "District."

BALANCE agrees to provide, and District hereby agrees to subscribe for staff augmentation and other ancillary services provided by BALANCE as outlined herein including but not limited to temporary staffing placement at the District.

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, BALANCE and the District agree upon the following terms and conditions.

A. BALANCE's Duties and Responsibilities:

At the District's request, BALANCE will recruit, screen, employ, hire, and assign qualified BALANCE personnel ("Associates") (the "Staffing Services") to perform work at District's place of business in accordance with the job requirements and job descriptions provided by the District on an as-needed basis.

1. BALANCE warrants that the Associates BALANCE recruits and assigns to the District will have the skills, qualifications, and experience requested by District to perform the job duties and job requirements required by the District.
2. BALANCE will perform or obtain legally-permissible drug testing (5 panel) of prospective Associates prior to assignment at the District.
3. BALANCE will ensure that its Associates are duly authorized to be employed in the United States and will ensure that the Employment Eligibility Verification form (I-9)

is completed for each Associate assigned to perform work for the District. BALANCE will retain these forms in accordance with the law.

4. BALANCE will maintain all personnel files and payroll records for its Associates.
5. BALANCE has sole responsibility to determine and set the level of fringe benefits of its Associates. BALANCE shall be solely responsible to provide, alter, change, or increase the benefits of BALANCE's Associates.
6. Associates assigned to the District are employees of BALANCE. BALANCE shall comply with all applicable federal, state, and local laws, rules, and regulations, including those relating to employment. BALANCE will not allow any Associate to accrue in excess of a total of 800 hours per fiscal year (July 1 to June 30) for work under assignment to the District.
7. BALANCE and its Associates shall comply with all applicable provided and/or conspicuously posted District policies, rules, and procedures.
8. BALANCE shall timely pay BALANCE Associates for work performed for and approved by the District, withhold and report all required local, state, and federal payroll taxes, and issue Associate W-2 forms at the end of each year with respect to each of its Associates provided to District, as required by law. District acknowledges that BALANCE's standard practice is to pay Associates on minute-to-minute timekeeping. If District requests that Associates' time be calculated on any other basis or with use of rounding, District accepts responsibility for any loss or liability arising from such practice. If District uses or intends to use any biometric data of Associates, District shall so notify BALANCE and will comply with all applicable biometric privacy laws.
9. BALANCE shall provide and maintain unemployment insurance, commercial general liability insurance coverage in the amount of \$1,000,000 per incident, and workers' compensation benefits and insurance as required by the State of California Labor Code, in full force and effect throughout the term of this Agreement, against claims by BALANCE Associates, which may arise from or in connection with the performance of the work hereunder for the District, its agents, representatives or

employees. BALANCE shall handle unemployment and workers' compensation claims involving BALANCE Associates. BALANCE's liability under this Agreement shall not be limited to insurance coverage limits. BALANCE's commercial general liability insurance shall include an endorsement naming the District as an additional insured.

B. District's Duties and Responsibilities

1. District will provide BALANCE with description(s) specifying job duties and scope of temporary assignment for each position in need of temporary staffing placement to be assigned to a BALANCE Associate. District will not direct a BALANCE associate to perform any duties substantially different from those that are called for in the District job description assigned to the Associate. District will promptly notify BALANCE in the event there is any material change in the terms and conditions of an Associate's temporary placement with District, prior to such a change being made. BALANCE management will be given the opportunity to reject the material change before it is implemented.
2. At the end of the work week (Monday through Saturday), District will provide signed written authorization of Associates' hours worked to BALANCE by 12:00 PM on the following work day (generally Mondays) for the previous workweek. Authorization shall be provided on Associate timecards or any electronic median that both parties deem as appropriate and acceptable. District's approval of employee timecards authorizes BALANCE to pay the Associate and bill District for all hours indicated.
3. District acknowledges and will comply with all applicable state and federal meal and rest break laws related to BALANCE Associates providing services at District's designated location(s), including, but not limited to, informing BALANCE Associates of their rights under the meal and rest beak laws, that record keeping requirements are complied with, that alternative workweek schedules, if applicable, are in compliance with state or federal law, and by not permitting BALANCE associates to work hours in excess of the hours reported to BALANCE for payment. To the extent District violates this paragraph, District will accept full responsibility for any loss or liability caused or incurred.

4. District will exercise good judgment and management relating to the day-to-day supervision of BALANCE's Associates. District will provide appropriate supervision and training, specifically tailored to the job requirements of BALANCE's Associates assigned to District's worksite, including all safety and hazardous materials training.
5. District acknowledges and will comply with all applicable health and safety laws and regulations. BALANCE agrees that its Associates shall use personal protective equipment and clothing, as required by law, or as deemed necessary by the job description for the nature of work assigned to the BALANCE Associate. BALANCE Associates must wear steel-toe/metal sole safety shoes, or equivalent, as is required by law. The costs of the required safety shoes shall not be passed on to the District.
6. District will promptly notify BALANCE in the event of a work-related injury to a BALANCE Associate. District will promptly notify the BALANCE Salinas Branch Office Representative(s), in the event of a discrimination or sexual harassment complaint involving a BALANCE Associate. District will consult with the BALANCE Human Resources Department before any investigation or corrective action is undertaken.
7. District will promptly notify BALANCE if District decides, at its sole and exclusive discretion, that it no longer wishes to accept the services of any particular BALANCE Associate for any reason that is not prohibited by law. BALANCE will be responsible for promptly notifying the Associate and terminating the assignment of the Associate with the District by the next business day.

C. Independent Contractor

BALANCE Associates assigned to provide temporary services at the District will not be considered employees or joint or co-employees of the District for any purpose. BALANCE, as the employer of each and every individual Associate staffed, placed, or otherwise assigned by BALANCE to perform the services under this contract, retains the sole and exclusive right on all employment decisions with regard to BALANCE's staff and/or subcontractors placed or assigned with District, including but not limited to hiring, firing, discipline, and other personnel matters.

1. This Agreement is not intended to create, nor shall it be construed to create any relationship between BALANCE and the District other than that of an independent entity contracting for the purpose of effecting the provisions of the Agreement. Neither party nor any of their respective representatives shall be construed to be the agent, employer, employee, or representative of the other party.
2. BALANCE is solely and fully responsible for employing or engaging all Associates necessary to perform the services called upon in this agreement. All BALANCE Associates will be qualified with the requested skills and experience to perform their assigned tasks.
3. District's measures to ensure quality control and safety shall not be construed as an exercise of control over the conditions of employment or manner of carrying out duties, including but not limited to oversight of safety measures and compliance with federal, state, and local law. District has the right to require that BALANCE's Associates meets performance expectations and achieve the desired results in a safe and legal manner.
4. District and BALANCE do not intend to, nor does the entering into of this contract, create a joint employment relationship of BALANCE's employees, Associates, agents, representatives, or subcontractors, in any way. District is a non-employer of any individual staffed, placed, or otherwise assigned by BALANCE to perform the services under this contract.
5. The District shall not provide employee benefits to BALANCE Associates in connection with the performance of this contract. Except for the fees paid to BALANCE as provided in this agreement, District shall not pay salaries, wages, or other compensation to BALANCE for performing services hereunder for District.
6. District shall not be liable for workers compensation claims of Associates for injury or sickness arising out of the performance of services hereunder. In addition to the indemnification provisions of Section K, BALANCE shall indemnify, defend, and hold District harmless from workers compensation claims or liability or from any claims by or on behalf of any BALANCE Associates for any District employee benefits

including, but not limited to, pension, health benefits, holiday, vacations, and the like.

D. Other Terms and Conditions

BALANCE and District agree to the following additional terms and conditions:

1. District acknowledges that BALANCE does not furnish insurance to cover damage or physical loss caused by the operation of any vehicle or machinery operated by BALANCE Associates for District's benefit or at the request of District. District agrees to accept full responsibility for any claim arising from a BALANCE Associate being asked by District Management, or one of its Supervisory Associates, to operate machinery or equipment, or drive a vehicle, whether owned or rented by either District or BALANCE Associate. District is prohibited from placing Associates as forklift operators without executing the BALANCE Forklift Operation Agreement. BALANCE Associates are prohibited from operating a forklift or driving a vehicle during any part of their assignment to District.
2. District agrees to assume sole and complete responsibility, and indemnify and hold BALANCE harmless, for any losses or claims that result from a BALANCE Associate having been assigned by District the responsibility for handling or possession any cash, securities, or other valuables. Similarly, District agrees to assume complete responsibility, and hold BALANCE harmless for any losses or claims that result from BALANCE Associates having been entrusted by District with any unattended property or premises.
3. District acknowledges that BALANCE does not maintain errors and omissions or professional liability insurance on Associates that it provides to District. District agrees to review and approve all work performed by such Associates prior to accepting the work. District agrees that it will assume sole and complete responsibility, and indemnify and hold BALANCE harmless, for any and all losses or claims that result from BALANCE Associate having rendered a professional opinion or committed any other alleged error or omission in the performance of his/her duties for District.

4. District agrees not to allow BALANCE Associates to work offshore, on or above water, in or under the ground, or outside of the State without BALANCE's express written consent.
5. It is understood and agreed that District has granted BALANCE permission to use District's name and logo in BALANCE recruitment and advertising and other recruiting efforts and activities for the exclusive purpose of effecting the provisions of this contract for temporary staffing services and solely after approval by the District.
6. BALANCE will not subcontract any portion of the services performed under this Agreement without prior written approval of the District. If BALANCE subcontracts any portion of the services performed under this Agreement, BALANCE will be fully responsible and shall defend, indemnify and hold District harmless for the acts, errors, and omissions of BALANCE's subcontractors. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of BALANCE and the District. BALANCE will be solely responsible for payment of its subcontractors.
7. District and BALANCE understand and agree that BALANCE's service rate shall be adjusted according to federal and state overtime laws, where applicable, in the event overtime pay, time-and-a-half, double-time, including holiday pay, is paid to an Associate. BALANCE service rates shall be adjusted only to the extent necessary to comply with the law. It is further understood and agreed that BALANCE reserves the right to adjust service rates to the extent to comply with mandatory adjustments to FICA, SUI, Workers' Compensation and any federal or state mandated programs or benefits provided by BALANCE to its Associates.
8. Service rates may be adjusted at any time upon mutual written consent of BALANCE and the District.

E. Terms and Conditions of Payment

Billing Terms

1. District shall pay BALANCE for the staffing services provided in accordance with the fee rates set forth in **Appendix A** attached to this Agreement.
2. BALANCE shall submit an itemized invoice to the District via email to HR@mrwmd.org on a weekly basis for the staffing services provided under this agreement. Invoices will be based on the hours shown on Associate time cards as approved by the District representative.
3. Undisputed invoices are **DUE AND PAYABLE THIRTY (30) DAYS AFTER INVOICE DATE**. If any portion of any invoice is disputed, District will pay the undisputed portion.
4. District's signature of the work time submitted for Associates certifies that the documented hours are correct and authorizes BALANCE to bill the District for those hours. Invoices that are undisputed by District for more than **fifteen (15)** days after the invoice date will be presumed correct.
5. The payments made by District to BALANCE pursuant to this agreement will be the full and complete compensation to which BALANCE is entitled. District will not make any federal or state tax withholdings on behalf of BALANCE or its agents, employees, or subcontractors. District is not liable for and will not pay any workers' compensation insurance, retirement contributions, or unemployment contributions on behalf of BALANCE or its employees or subcontractors. Any delay or dispute in payment under this provision shall not relieve or excuse BALANCE from its obligations under the law to pay BALANCE Associates.

F. Past Due Accounts

If any account becomes past due the entire undisputed unpaid balance of the invoice becomes immediately due and payable. BALANCE shall have the right to litigate in Civil Court in Monterey County, California, all debt-collection matters and seek all monies due and any additional sums, including but not limited to, collection costs, interest at the rate of 12% per annum, or the maximum allowed by state law, whichever is greater, and attorney's fees.

G. Conversion to Regular Full-Time Status

District may convert a BALANCE Associate currently on assignment with District, or who has been provided by BALANCE within the past six months, to its payroll by paying a conversion fee of \$500. Once the Associate has worked for District for a minimum of 400 hours, the conversion fee is waived. Conversion charges are due and payable at the time of conversion. No Associate may be converted if District's account balance is past due.

H. Guarantees

1. If BALANCE is notified during the first four (4) hours of an Associate's assignment that District is not satisfied with the quality of work of the Associate, BALANCE will use commercially reasonable efforts to provide District with a replacement Associate and will not charge District for the first four (4) hours worked by the Associate.
2. If BALANCE sends a specified number of Associates pursuant to District's request, and District turns away some or all Associates without providing Associates with work, BALANCE will bill District four (4) hours for each requested Associate turned away by District.

I. Representations and Qualifications

1. This Agreement and any attachments specifically referenced herein constitute the entire Agreement and neither the Agreement nor any amendment shall be valid or enforceable unless in writing and signed by authorized representatives of both parties. This Agreement expressly replaces any prior agreements between District and BALANCE with regard to this subject matter.
2. All notices or other communications required or permitted to be given under this Agreement shall be directed to BALANCE at 1550 Constitution Blvd. Salinas, CA 93905 and to the District at P.O. Box 1670, Marina, CA 93933. A copy of all Legal notices to BALANCE shall also be provided to: BALANCE Staffing, 2750 North Cherryland Avenue, Stockton, CA 95215 Attn: Legal Department.
1. District acknowledges that BALANCE is an equal employment opportunity employer and District will comply with all applicable California and federal laws that prohibit

harassment, discrimination, and retaliation against any BALANCE Associate on the basis of race, religion, national origin, age, sex, disability, marital status or any other category protected law. District represents that it has in place policies prohibiting harassment in the workplace (including sexual harassment). District further agrees not to engage in, nor permit any agent of District, vendor, contractor or other third-party at District's worksite to engage in, any practice that constitutes sexual harassment or other illegal harassment of BALANCE Associates.

J. Termination of Services

This Agreement may be terminated by either party upon 30 days written notice to the other party. District may also terminate this Agreement immediately upon written notice if BALANCE fails to maintain any insurance or licenses required to perform services set forth in this contract or fails to comply with applicable federal or state laws, rules, or regulations.

K. Indemnification and Limitations of Liability

BALANCE shall indemnify, defend, and will hold harmless the District, and its directors, officers, agents, board, volunteers and employees, representatives, attorneys, successors and assigns (collectively referred to in this section as "District Indemnitees") from and against any and all liabilities, claims, demands, causes of action, costs, losses, damages, obligations, and suits and judgments, or liability to the extent resulting from BALANCE's negligence in performance of the Staffing Services under this Agreement or from the gross negligence or willful misconduct in the performance of work at the District by Associates.

BALANCE expressly acknowledges its duty to defend is immediate upon tender. District shall indemnify and will hold harmless BALANCE and its respective directors, officers, agents, board, volunteers, employees, representatives, attorneys, successors and assigns (collectively referred to in this section as "BALANCE Indemnitees") from and against any and all liabilities, claims, demands, causes of action, costs, losses, damages, obligations, and suits and judgments to Balance found to be caused by the willful misconduct, gross negligence, or sole negligence of the District.

L. Confidentiality

BALANCE shall keep and shall instruct all BALANCE employees, Associates and representatives to keep all confidential information of District in confidence and shall not cause any item of confidential information to be published, disclosed or otherwise made available, directly or indirectly, without the prior written consent of the District

M. Assignment

BALANCE and the District may not assign, transfer, or delegate its rights or obligations under this Agreement without the prior written consent of the other party. Any agreement to assign or delegate any rights or obligations of either party under this Agreement without prior written consent by the other party, shall be void. All terms and provisions of this Agreement will be binding upon and inure to the benefit of the Parties, their successors, affiliates, heirs, and permitted assigns.

N. Waiver

Failure by either party at any time to require the performance of the other party or to claim a breach of any provision of this Agreement will not be considered a waiver of any subsequent breach or failure to perform under the terms of this Agreement.

O. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Monterey County, California.

P. Partial Invalidity

Should any provision of this Agreement be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and shall stand as if the unenforceable provision did not exist.

Q. Entirety

This writing and any attached exhibits specifically referenced herein shall constitute the entire Agreement between the parties and supersedes all other understandings, oral or written. This Agreement may not be altered or modified except by the express written consent of both BALANCE and the District. Each party acknowledges there are no other

provisions or representations that have not been incorporated into this Agreement. The District acknowledges that changes to any provision of this Agreement can only be made by action of the Board of Directors of the Monterey Regional Waste Management District.

R. Conflict Mediation

1. Prior to commencing any legal proceeding each party to this Agreement will jointly participate in good faith informal dispute resolution measures via discussions between an executive of each party hereto.

IN WITNESS WHEREOF, BALANCE and District have caused this Agreement to be executed on the date written above written above and effective on the "date" set forth below:

ACCEPTED District

By _____

District Authorized Representative

Print Name: Timothy S. Flanagan

Title: General Manager

Date _____

Accepted BALANCE

By _____

BALANCE Authorized Representative

Print Name:

Title:

Date _____

Appendix A

MRWMD Rates and Payment Terms

Product Line / Positions

Bill Rate

Sorter I	Hourly Pay Rate of \$13.00 x 1.45
Site & Facilities Assistant I	Hourly Pay Rate of \$13.00 x 1.45
Sales Clerk I	Hourly Pay Rate of \$13.00 x 1.45

NOTE: Above 1.45% rate is an introductory rate and will apply to the first five (5) BALANCE employees placed at District facility only. All subsequent placements will be at a rate of 1.50.

Conversion Options:

After completing 400 hours on assignment with **Monterey Regional Waste Management District**, temporary Associates can be converted to District's payroll *at no cost*. District may convert a Temporary Associate at any time prior to completing 400 hours at a \$500 flat fee.

Rates include these value-added services:

- California Compliant employment screening, to include 5 panel drug screens.
- General Safety Orientation and Testing in accordance with CalOSHA Standard T8 CCR.
- Customized Safety Orientation, which includes review of District Safety Plans, Policies.
- Employee Coaching and Counseling
- Payroll processing, including worker's compensation, unemployment insurance, and applicable local, state, and federal payroll taxes.
- Employee Benefits: Medical and Dental insurance, Short Term Disability, and Term Life Insurance.
- **Terms:** BALANCE bills the District on a standard weekly cycle. Payment terms are Net 30 Days from the invoice date. All timecards must have both the employee and supervisor signature for approval, or an electronic equivalent.

Balance reserves the right to adjust the rates noted above, consistent with the provisions set forth in Section D of this Agreement, if there is an increase in (either state or federal) minimum wage or insurance costs, associated with providing temporary help-services to District. Balance will give District at least fifteen (15) days' notice before making any such adjustment only to the extent necessary to comply with the law.

This Rate Sheet is the property of Balance and it is intended for use by authorized employees of District. Circulation of this Rate Sheet to outside parties is strictly prohibited. The terms of this Rate Sheet are Confidential Information of Balance. District agrees to hold this Confidential Information received from Balance in strict confidence. District agrees it will not disclose such Confidential Information to others, except as may be required by law, will not copy or reproduce any records containing Confidential Information or divulge such records to others, and will return to Balance within thirty (30) days of its request, all Confidential Information and any other records containing Confidential Information.