



**RAINBOW MUNICIPAL WATER DISTRICT**

**REQUEST FOR PROPOSALS**

**January 15, 2019**

**TO PROVIDE PROFESSIONAL SERVICES:**

**Programmatic Environmental Impact Report  
for  
Operations & Maintenance Activities**

**PROPOSALS DUE BEFORE 4:00 P.M.**

**ON**

**February 27, 2019**

**Rainbow Municipal Water District  
Engineering Department  
3707 Old Highway 395  
Fallbrook, CA 92028  
(760) 728-1178**

## **I. INTRODUCTION**

The Rainbow Municipal Water District (“DISTRICT”) was formed by combining several old “mutual water companies” including Canonita, Rainbow and others. The District “inherited” existing facilities from these entities. The water and sewer utility systems within the District were installed decades ago, beginning in the 1940’s, with the majority of the “backbone” system installed in the 1950’s. Many of these facilities are expected to require maintenance, repair, and replacement in the coming years.

The District is requesting sealed proposals from interested Environmental Engineering Consultants (“Consultant”) to prepare a system-wide, District Programmatic EIR (PEIR). The District intends to enter into a contract with one consulting firm. This PEIR is for the operations and maintenance (O&M) of the District’s sewer and water utility programs. Please review the RFP fully, complete all response sections, and submit the proposal in accordance with the Submittal Requirements sections of this RFP.

The District reserves the right to cancel this RFP at any time and for any reason without any liability to any proponent or to waive irregularities at its own discretion. The District reserves the right to accept or reject any or all bids.

## **II. PROJECT DESCRIPTION**

This project will allow the District to assess the condition of the water and sewer utility system, perform routine maintenance on the facilities in this system, identify existing pipeline damage and deficiencies, project future demands, and identify needed improvements to accommodate future growth.

The District water and sewer utility systems consist of the following facilities:

- Approximately 2,200 sewer connections
- Approximately 8,150 water connections
- Approximately 330 miles of potable water mains
- Approximately 58 miles of gravity sewers and forcemains
- 14 lift stations
- 7 pump stations
- 4 lift stations

The objective of this sewer and water utility program is to facilitate an orderly and planned expansion of the collection system to accommodate future development, allow for routine maintenance of the facilities in the system, and alleviate any existing system deficiencies.

## **III. PROJECT SCOPE OF SERVICES**

The District is looking for a Consultant to perform high-level professional environmental services. The ideal Consultant must excel at customer service, possess a high degree of technical expertise, and have a strong background in successfully obtaining permit authorization from resource agencies and navigating the California Environmental Quality Act (CEQA) process. The District will issue Assignment Letters as-needed for specific services outlined in the proposed scope of services described below:

1. Attend meetings and coordination with District staff and resource agencies.
2. Prepare Technical Reports for the following disciplines:
  - a. Biological Resources
  - b. Cultural Resources

- c. Air Quality
  - d. Noise
  - e. Hydrology
  - f. Water Quality
3. Perform appropriate surveys as necessary to support the technical reports listed above for District sewer and water facility projects.
  4. Perform updates to the District's GIS mapping as directed by the District.
  5. Prepare legal descriptions and exhibits as directed by the District.
  6. Perform research and document review as directed by the District.
  7. All service shall be performed in accordance with current applicable local, State, Federal, and District regulations and ordinances, including, but not limited to, the Subdivision Map Act and the Professional Land Surveyors Act.
  8. Must be responsive and proactive in management of client accounts.
  9. Furnish all equipment, labor and materials necessary to provide these services.

#### **IV. DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT**

The Consultant shall prepare a Notice of Preparation and Draft PEIR for the District's water and sewer utility programs. The Program EIR shall be prepared in accordance with CEQA Guidelines Section 15168 as well as the CEQA Significance Determination Thresholds described in the Guidelines.

The report at a minimum shall include the following elements: Introduction, Environmental Setting, Project Description, Environmental Analysis, Significant Effects, Alternatives, Cumulative, and Mitigation Framework.

Issues to be analyzed in the report include:

Land Use, Aesthetics, Air Quality, Greenhouse Gases, Biological Resources, Cultural Resources, Hazards, Hydrology, Water Quality, Geology/Soils, Noise, Transportation, Energy, Public Services, Public Utilities, Alternatives, and Cumulative Impacts.

Each section and issue area of the PEIR shall provide a descriptive analysis of the existing setting or baseline conditions associated with each issue area; followed by a comprehensive evaluation. The PEIR shall also include sufficient graphics and tables, which in conjunction with the relevant narrative discussions, provide a complete and meaningful description of all major project features, the environmental impacts of the project, as well as cumulative impacts, mitigation of significant impacts, and alternatives to the project.

The PEIR will address and evaluate the potential components of the District's water and sewer program at a general programmatic level.

##### **1. Preliminary Internal Draft PEIR**

The preliminary internal Draft PEIR shall be submitted to the District and shall be a complete document. The internal draft report is expected no later than 120 days following NTP. The preliminary Draft PEIR shall include the following elements:

###### **a. Introduction**

Introduce the proposed project with a brief discussion on the intended use and purpose of the PEIR. Summarize the discretionary District actions associated with the sewer and water program projects and other local or state approvals or reviews anticipated to occur, with the more detailed description of required approvals to be in the Project Description. This section should also describe the basis for how this PEIR will be used for subsequent environmental review of projects implemented in accordance with the Program and/or additional required approvals (if applicable).

#### b. Environmental Setting

The Draft PEIR should (i) describe the location of the District's sewer and water facilities and present it on a detailed topographic map and regional map; (ii) provide a local and regional description of the environmental setting, as well as adjacent land uses, area topography, and vegetation; and (iii) include any applicable land use plans/overly zones that affect the project sites, including any Preserve or Conservation Planning areas, environmentally sensitive lands such as steep hillsides, wetlands, and the Federal Emergency Management Agency (FEMA) 100 year floodplains or floodways that intersect with the program components.

#### c. Project Description

The Draft PEIR shall include a statement of the objectives of the proposed project, including a description of the underlying purpose of the project. A clearly written statement of the project objectives will assist in defining a reasonable range of alternatives to include in the Draft PEIR, which would avoid or substantially reduce potentially significant impacts.

#### d. Environmental Analysis

The potential for significant environmental impacts must be analyzed and mitigation measures identified that would avoid or substantially lessen any such significant impacts. The PEIR must represent the independent analysis of the District as Lead Agency; therefore, all impact analyses must be based on the CEQA - Significance Determination Thresholds.

Future projects implemented by the District have the potential to impact sensitive resources, and therefore the PEIR Project Description should include a discussion of the analytical framework proposed for addressing the potential environmental impacts of the program, recognizing that the PEIR will provide a general evaluation of the impacts associated with the overall Program, while the specific impacts particular to certain sewer or water facility may be further evaluated when subsequent projects are proposed. Mitigation identified in the PEIR will take the form of a Mitigation Framework, which will lay the foundation for how future projects are reviewed to assure compliance with the program framework documented in the subsequent environmental review process.

Considerations to be addressed in the Mitigation Framework shall include, but not be limited to:

- The District's sewer and water projects extend over a relatively large and diverse geographic area, and the PEIR's description of existing conditions that may be impacted by the projects will draw from a variety of existing data sources considered suitable and appropriate for both a program and project level analysis where applicable.
- In cases where the specifics of a mitigation measure is not possible to define at the project level, the mitigation discussion will include a clear description of the necessary outcome of the mitigation (i.e., establish a specific performance standard for mitigation) and identify the basic elements of, and/or options for, measures that

can be implemented to achieve that outcome with the details of those measures to be defined in future environmental reviews. Each issue will be summarized along with a summary of whether or not future projects under the UUP are required to analyze the issue further during subsequent project-level CEQA review.

- The PEIR will address a reasonable range of alternatives for the program. Subsequent project-level reviews of individual sewer or water facilities may include an evaluation of alternatives to the specific design and location of the individual facility, it is not anticipated that alternatives to the overall Program will be revisited in subsequent environmental reviews.

Discussion of each issue area should include an explanation of the existing conditions, impact analysis, significance determination, and appropriate mitigation. The impact analysis should address potential direct, indirect, and cumulative impacts that could be created through implementation of the proposed Program and its alternatives. Each issue shall be summarized along with a summary of whether or not future projects under the Program are required to analyze the issue further during subsequent project-level CEQA review.

e. Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented

This section shall describe the significant unavoidable impacts of the Program, including those significant impacts that can be mitigated but not reduced to below a level of significance.

f. Significant Irreversible Environmental Changes

In accordance with CEQA Section 15126.2(c), the PEIR must include a discussion of any significant irreversible environmental changes which would be caused by the proposed action should it be implemented. The PEIR should also address the use of nonrenewable resources associated with Program implementation. See CEQA Section 15127 for limitations on the requirements for this discussion.

g. Growth Inducement

The PEIR should address the potential for growth inducement through implementation of the Program. The PEIR should discuss ways in which the Program could foster economic or population growth, or construction of additional housing either directly or indirectly. This section need not conclude that growth-inducing impacts, if any, are significant unless the project would induce substantial growth or concentration of population.

h. Cumulative Impacts

When the sewer and water utility program is considered with other past, present, and reasonably foreseeable projects in the project area, implementation could result in significant environmental changes which are individually limited but cumulatively considerable. Therefore, in accordance with Section 15130 of the CEQA Guidelines, potential cumulative impacts should be discussed in a separate section of the PEIR.

i. Effects Found Not to Be Significant

A separate section of the PEIR should include a brief discussion of issues areas that were not considered to be potentially significant. If these or other potentially significant issue area arises during detailed environmental investigation of the project, however, consultation is recommended to determine if these other issue areas need to be addressed in the PEIR. Additionally, as supplementary information is submitted, the PEIR may need to be expanded to

include additional issue areas. The District will consult with the Planning Department to determine if subsequent issue area discussions need to be added to the PEIR. The justification for these findings shall be summarized in the PEIR.

j. Alternatives

The PEIR should analyze reasonable alternatives that can avoid or substantially reduce the program's significant environmental impacts. These alternatives should be identified and discussed in detail, and should address all significant impacts associated with the program. The alternative's analysis should be conducted in sufficient graphic and narrative detail to clearly assess the relative level of impacts and feasibility. Preceding the detailed alternatives analysis should be a section entitled "Alternatives Considered but Rejected." This section should include a discussion of preliminary alternatives that were considered but not analyzed in detail. The reason for rejection should also be explained. Additional information shall be provided by the District to clarify the description and level of analysis expected for each alternative.

If through the environmental analysis process, other alternatives become apparent that would mitigate potentially significant impacts such alternatives must be reviewed and discussed with environmental staff prior to including them in the PEIR.

k. Mitigation Framework- Mitigation, Monitoring, and Reporting Program (MMRP)

A Mitigation Framework should be developed in consultation with District Staff which clearly identifies the requirements for review of subsequent projects implemented in accordance with the sewer and water utility program. Specifically, the archaeological and tribal cultural resources mitigation framework to be implemented for subsequent projects must include applicable/appropriate mitigation options (e.g., data recovery, ethnography, reanalysis of old collections, etc.) demonstrating how the measure reduces and/or mitigates direct impacts to below a level of significance. The PEIR should describe the significant impact(s) addressed by each measure and the anticipated effectiveness and outcome of the measure as addressed in the PEIR. The Mitigation Framework will be the basis for which future projects implemented in accordance with the Program are evaluated or designed to assure compliance with goals, objective and policies contained within the planning documents to be amended. At a minimum, the Mitigation Framework should identify for each mitigation measure: 1) the District department or other entity responsible for implementing the program or monitoring its affects; 2) the monitoring and reporting schedule, and 3) the completion requirements. The MMRP shall be presented as a separate chapter at the back of the PEIR. Formatting of this section will be developed in consultation with the Planning environmental analyst.

2. Revised Internal Draft PEIR

The revised internal Draft PEIR shall be submitted to the District and shall be a complete document with all requested revisions and outstanding issues addressed. The revised internal draft report is expected no later than 21 calendar days following receipt of comments of preliminary internal draft version.

3. First "Screencheck" Draft PEIR

The first screencheck Draft PEIR shall be submitted to the District no more than 14 calendar days following receipt of District comments on the revised internal version.

4. Second "Screencheck" Draft PEIR

The second screencheck Draft EIR shall be submitted to the District no more than 7 calendar days following receipt of District comments on the first screencheck version. The second screencheck shall address all issues raised during the first screencheck review by the District.

#### 5. Third "Screencheck" Draft PEIR

The third screencheck Draft PEIR shall be submitted to District no more than 7 calendar days following receipt of District comments on the second screencheck version. The third draft submittal version shall address all issues raised during the second draft submittal review by the District. It is expected that a quality report, free of errors and mistakes that adequately address issues will be submitted that eliminates the need for additional draft submittal.

#### 6. Draft PEIR

The Consultant shall prepare and produce the Draft PEIR. This document shall be prepared and submitted as required by District guidelines and will be due no later than 7 calendar days following the clearance of the third screencheck report. This version shall be released for public comment as the official Draft PEIR.

The Draft PEIR shall include sections for references, individuals and agencies consulted, as well as a certification page. Appendices shall be included in the Table of Contents, but are bound under separate cover and/or will be included on a CD attached to the back page of the Draft PEIR. In addition, other specific direction regarding formatting, content, and processing of the PEIR will be provided by environmental staff prior to submittal of the first screencheck Draft PEIR for internal staff review.

### **V. FINAL PEIR**

The Consultant shall prepare the Final PEIR for the sewer and water utility program. The PEIR shall be prepared in accordance with CEQA Guidelines Section 15168 as well as the CEQA Significance Determination Thresholds described in the Guidelines. The Final PEIR shall consist of the revised Draft PEIR and Response to Comments.

#### 1. Response to Comments

The Consultant shall provide written responses to comments received during the public scoping period. The response to comments shall be submitted to the District no more than 45 days following the end of the public commenting period. The formal "Response to Comment" is the responsibility of the District, however Consultant comments shall be provided to them and preparation with the responses is requested.

#### 2. Deliverables

The Consultant shall be responsible for submitting all reports to the sewer and water utility program Project Manager (Steve Strapac, PE District Engineer). The Project Manager will forward these reports to other District Departments and any other appropriate agencies. The Consultant shall not send the reports to any other appropriate agency directly unless directed to do so by the District.

Deliverable timelines are described in the text above and summarized in the table below.

#### 3. Electronic Files

Copies of each report shall be submitted to the Project Manager in MS Word and PDF formats as requested.

## **VI. GIS Data**

All GIS data from technical studies and the environmental document shall be provided to District Staff. GIS data may be requested at any stage or version of the PEIR.

## **VII. QUALIFICATIONS**

The Consultant shall be qualified to perform this task. All staff, consultants, and sub consultants shall demonstrate they are qualified for the technical analysis and preparation of the CEQA document and must adhere to the District's requirements.

## **VIII. ADDITIONAL SERVICES**

Additional Service expenses are professional services beyond the Scope of Services that may include the cost of providing/printing additional documents, reports, photographic and photocopying processes, mailing, delivery, shipping, etc. as requested by the District and will be paid if required and approved by the District. Compensation for additional services due to changes in the scope of services will be in accordance with the contract Fee Schedule.

## **IX. PROJECT SCHEDULE**

The Consultant is expected to meet target dates specified for all submittals to the District. Time frames described are in calendar days.

## **X. PROJECT FILES**

All project files including, books, documents, reports, meeting minutes, papers, accounting, emails, and other evidence pertaining to the sewer and utility program PEIR environmental document shall be retained and made available at any time. The District shall have access to these records and copies thereof shall be furnished if requested.

## **XI. MANAGEMENT APPROACH**

1. The Consultant shall work as a District Consultant, and as such, will be perceived by the public as a District agent; therefore, the Consultant's staff must reflect the professionalism and courtesy of a public employee when dealing with the public.
2. The Consultant shall provide copies of all correspondence records and reports to the Engineering Department.
3. The Consultant shall invoice the Engineering Department for services rendered in a manner consistent with District regulations.
4. The District will collect all fees in connection with the Consultant performing the work set forth in this proposal and under no condition will such fees be collected by the Consultant.
5. Consistent with the authority contained in the law, the Consultant shall have the decision authority consistent with and necessary for the timely and proper enforcement of the laws and ordinances assigned to the Consultant for enforcement, and such decisions shall be consistent with the wording of the regulations.
6. The Consultant shall provide its own office space and clerical support at its sole cost and expense. Specific accommodations to the Consultant by the District may be permitted on a case-by-case basis, if such accommodations are of no cost to the District.

## **XII. PROPOSAL REQUIREMENTS**

The proposal shall not exceed 25 pages excluding resumes, dividers, front and back covers. Responses to this RFP shall be in the following order and shall include:

### **1. Executive Summary**

Summarize the contents of your firm's proposal in a clear and concise cover letter. The letter must be signed by an individual authorized to bind the Consultant to all terms, conditions, and commitments made in the proposal. Provide a table of contents that clearly defines sections and includes page numbering.

### **2. Project Description**

- i. Explain the objective of the project and how you propose to accomplish the recognized goals.
- ii. Provide a detailed description of the Scope of Services contained in this document, including timelines and deliverables.
- iii. Include a statement on what makes your firm uniquely qualified.

### **3. Identification of Prime/Sub-Consultants**

- i. Legal name and address of the company.
- ii. Legal form of company (partnership, corporation).
- iii. If company is wholly owned subsidiary of a "parent company," identify the "parent company."
- iv. Name, title, telephone number and email address of the individual authorized to represent the Consultant on all matters relating to this RFP.
- v. Organization size, location of the offices, years in business, organization chart.
- vi. Number of staff and the discipline/job title of each.
- vii. Information of any associations, which the Consultant and its staff are members.

#### **Identification of Sub-Consultants**

- viii. Legal name and address of the company.
- ix. Name, title, address and telephone number of prime contact
- x. Number of staff and the discipline/job title of each.

4. Project Organization and Experience

- i. Describe proposed project organization, including identification and responsibilities of key personnel, including sub-consultants. Include only one-page resumes.
- ii. Describe the qualifications of staff proposed for the assignment, their position in the firm, and types and amount of experience.
- iii. Describe project management and overall supervision approach to the work effort, locations where work will be done, responsibilities for coordination with the District, lines of communication necessary to maintain on schedule.
- iv. Describe the Firm's capacity to perform the work within the time limitations.

5. Experience and Past Performance

- i. Include a summary of the past experience on similar projects. Include the following information:
  - (1) Owner, contact name and phone number.
  - (2) Description of services.
- ii. Describe the firm's past experience and performance on similar projects. Emphasis should be placed on California clients and local government clients.

6. Proposed Total Professional Fee and Fee Schedules Submitted Under Separate Sealed Cover

Include a fee proposal, with a statement of cost breakdown associated with the tasks outlined in the scope of services, to include hourly billing rates and reimbursable expenses charged for staking services, field surveys, computer mapping, exhibit and legal description preparation, research, and document review.

7. Exceptions to this RFP

The Consultant shall certify that it takes no exceptions to this RFP including, but not limited, to the Professional Services Agreement (Exhibit "A"). The District will require a professional liability insurance verification for coverage of not less than \$1,000,000.00. If the Consultant does take exception(s) to any portion of the RFP, the specific portion of the RFP to which exception is taken shall be identified and explained.

**XIII. EVALUATION CRITERIA**

The District will review proposals and determine those that are responsive. The District will select a Consultant who in its sole judgment, best suits the needs of the District. In accordance with the California "Mini" Brooks Act, price is not a selection criteria, but may be negotiated with the top firm(s). The evaluation criteria and the respective weights that will be given to each criterion are as follows:

- 1. Executive Summary ..... 10%
- 2. Project Description ..... 25%
- 3. Identification of Consultant ..... 10%
- 4. Project Organization ..... 25%
- 5. Experience and Past Performance ..... 30%

#### XIV. SELECTION PROCESS

The District will enter into negotiations with the top ranked firm. At this time, the District contemplates the use of a Time and Material Not to Exceed contract for the services requested. Negotiations will cover: scope of services, contract terms and conditions, office arrangements, attendance requirements and appropriateness of the proposed fee.

After negotiating a proposed agreement that is fair and reasonable the General Manager will present the contract to the District's Board for authorization to execute a contract with the most responsive firm.

The District may, at any time and in its sole discretion, reject any or all proposals submitted in response to this solicitation. The District shall not be liable for any cost incurred by a contractor in connection with preparation and submittal of any proposal. The District reserves the right to waive inconsequential disparities in a submitted proposal.

#### XV. SELECTION SCHEDULE

The District anticipates that the process for selection of firm and awarding of the contract will be according to the following tentative schedule:

RFP Published	January 15, 2019
<b>Proposal Due Date</b>	<b>February 27 by 4:00 p.m.</b>
Anticipated Award by Board of Directors	April 2019

#### XVI. SPECIAL CONDITIONS / ATTACHMENTS

An example of the District's Professional Services Agreement contract is provided as Exhibit 'A'.

#### XVII. SUBMITTAL REQUIREMENTS

1. One (1) executed original marked "ORIGINAL" in red ink and three (2) copies of the Proposal shall be submitted. One single sealed Proposed Fee Estimate marked "FEE ESTIMATE" in red ink shall be submitted separate from the proposal. Emailed proposals will not be accepted. Submit one USB thumb drive with an electronic copy of the proposal in PDF format. The Response Proposal shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Firm.
2. The Response Proposal must be received no later than **4:00 p.m.** local time, on or before **February 27, 2019** at the office of:

**Rainbow Municipal Water District  
Engineering Department  
3707 Old Highway 395  
Fallbrook, CA 92028**

**Attn: Delia Rubio**

Failure to comply with the requirements of this RFP may result in disqualification. Questions regarding this RFP shall be submitted in writing to [drubio@rainbowmwd.com](mailto:drubio@rainbowmwd.com). **The deadline for questions is February 18, 2019.** Any questions received by the District that affect the RFP process will be issued as an addendum.

# EXHIBIT 'A'



**RAINBOW MUNICIPAL WATER DISTRICT  
3707 S HIGHWAY 395  
FALLBROOK CA 92028  
(760) 728-1178**

## **PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: TITLE**  
**Project No. 000000, Contract No. 18-00**

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of **Month, 2018** by and between the **RAINBOW MUNICIPAL WATER DISTRICT**, a municipal water district, hereinafter designated as "**DISTRICT**", and \_\_\_\_\_, a **California corporation [or other type of organization]**, hereinafter designated as "**CONSULTANT**."

### **RECITALS**

- A.** DISTRICT desires to obtain Professional Consulting Services from an independent contractor for the above named Project.
- B.** CONSULTANT has submitted a proposal to provide professional services for DISTRICT in accordance with the terms set forth in this Agreement.
- C.** DISTRICT desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to DISTRICT as an independent contractor.
- D.** CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

### **1. PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.**

- 1.1** The professional services to be performed by CONSULTANT shall consist of the following: **Engineering services to \_\_\_\_\_**. The scope of services is more particularly defined in Exhibit "A", attached and made a part hereof. Any additional engineering services will be requested in writing as set forth in Section 19.
- 1.2** In performing the services set forth in Exhibit "A", CONSULTANT shall work closely with DISTRICT'S General Manager and staff in performing services in accordance with this

Agreement in order to receive clarification as to the result that DISTRICT expects to be accomplished by CONSULTANT. The General Manager, shall be DISTRICT'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement.

1.3 CONSULTANT represents that its employees have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of DISTRICT. This means CONSULTANT is able to fulfill the requirements of this Agreement. Failure to perform all services required under this Agreement constitutes a material breach of the Agreement.

**2. TERM AND TIMING REQUIREMENTS.**

2.1 This Agreement will become effective on the date stated above, and will continue in effect until the earlier of the completion of services provided for in this Agreement or until terminated as provided under Section 14 of this Agreement.

2.2 CONSULTANT'S performance of services under this Agreement shall be in accordance with the schedule outlined below unless otherwise modified in writing as set forth in Section 19. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by DISTRICT.

Task	Due Date
Notice to Proceed	Month, Day, Year
Progress Report	Month, Day, Year
Final Submittal	Month, Day, Year

2.3 CONSULTANT shall submit all requests for extensions of time for performance in writing to the General Manager no later than two (2) business days after the commencement of the cause of any unforeseeable delay beyond CONSULTANT'S control and in all cases prior the date on which performance is due if possible. The General Manager shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.

2.4 For all time periods not specifically set forth herein, CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, e-mail or mail.

**3. STUDY CRITERIA AND STANDARDS.**

3.1 All services shall be performed in accordance with applicable DISTRICT, county, state and federal Codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants performing the same or similar work under similar conditions.

**4. INDEPENDENT CONTRACTOR.**

- 4.1 CONSULTANT'S relationship to DISTRICT shall be that of an independent contractor in performing all services hereunder. DISTRICT shall not exercise any control or direction over the methods by which CONSULTANT shall perform its services and functions. DISTRICT'S sole interest and responsibility is to ensure that the services covered in this Agreement are performed in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of CONSULTANT or its employee(s) pursuant to this Agreement shall be construed to make CONSULTANT or its employee(s) the agent, employee or servant of DISTRICT. CONSULTANT and its employee(s) are not entitled to receive from DISTRICT vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.
- 4.2 CONSULTANT shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment requirements with respect to CONSULTANT or its employee(s). CONSULTANT agrees to indemnify, defend and hold DISTRICT harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) DISTRICT suffers as a result of CONSULTANT'S failure comply with the foregoing.
- 4.3 CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT represents and warrants that CONSULTANT customarily engages in the independently established trade and business of the same nature as the work to be performed under this Agreement.
- 4.4 CONSULTANT shall have no authority, express or implied, to act on behalf of as an agent, or to bind DISTRICT to any obligation whatsoever, unless specifically authorized in writing by the General Manager. If CONSULTANT'S services relate to an existing or future DISTRICT construction contract, CONSULTANT shall not communicate directly with, nor in any way direct the actions of, any bidder for that construction contract without the prior written authorization by the General Manager.

**5. WORKERS' COMPENSATION INSURANCE.**

- 5.1 By CONSULTANT'S signature hereunder, CONSULTANT certifies that CONSULTANT is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and CONSULTANT will comply with such provisions before commencing the performance of the services of this Agreement.

**6. INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.**

- 6.1 All officers, agents, employees and subcontractors, and their agents, who are employed by CONSULTANT to perform services under this Agreement, shall be deemed officers, agents and employees of CONSULTANT. To the extent and in any manner permitted by law, CONSULTANT shall defend, indemnify, and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from

any claims, demands, liability from loss, damage, or injury to property or persons, including wrongful death, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, including CONSULTANT'S officers, employees and agents, in connection with the services required by this Agreement, including without limitation, the payment of reasonable attorneys' fees and costs. In no event shall the cost to defend charged to the CONSULTAN exceed the CONSULTANT'S proportionate percentage of fault, as determined by a court of law. The foregoing indemnity, hold harmless and defense obligation of CONSULTANT shall apply except to the extent the loss, damage or injury is caused by the sole negligence or willful misconduct of an indemnified party.

- 6.2 To the extent and in any matter permitted by law, CONSULTANT shall defend, indemnify and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from and against any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, related to or incident to a breach of any governmental law or regulations, compliance with which is the responsibility of CONSULTANT, except any violation of law due to the DISTRICT'S negligence or willful misconduct.
- 6.3 CONSULTANT shall defend, at CONSULTANT'S own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT or DISTRICT'S directors, officers, employees, authorized volunteers and agents, and each of them. DISTRICT shall be consulted regarding and approve of the selection of defense counsel.
- 6.4 CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, authorized volunteers and agents, and each of them, in any and all such aforesaid claims, suits, action or other legal proceeding. CONSULTANT shall not agree without DISTRICT'S prior written consent, to any settlement which would require DISTRICT to pay any money or perform some affirmative act, including in the case of intellectual property infringement any payment of money or performance of some affirmative act to continue using CONSULTANT Products.
- 6.5 CONSULTANT'S indemnification, hold harmless and defense obligation shall survive the termination or expiration of this Agreement.

**7. LAWS, REGULATIONS AND PERMITS.**

- 7.1 CONSULTANT shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the services required by this Agreement. CONSULTANT shall be liable for, and bear all costs resulting from, any violations of the law in connection with services furnished by CONSULTANT, except any violation of the law due to the DISTRICT'S negligence or willful misconduct.
- 7.2 CONSULTANT shall comply with all of the following requirements with respect to any services as a Building/Construction Inspector, Field Soils and Material Tester, or Land Surveyor, as those trades are defined by the California Department of Industrial Relations ("DIR").

- a) CONSULTANT agrees to comply with and require its subcontractors to comply with the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.*, and California Code of Regulations, title 8, section 16000 *et seq.* (collectively, "Prevailing Wage Laws") and any additional applicable California Labor Code provisions related to such work including, without limitation, payroll recordkeeping requirements. CONSULTANT and its subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the DIR for all services described in this Section 7.2 of the Agreement and as required by law. The general prevailing wage determinations can be found on the DIR website at: [www://dir.ca.gov/dslr](http://www.dir.ca.gov/dslr). Copies of the prevailing rate of per diem wages may be accessed at the DISTRICT'S administrative office, and shall be made available upon request. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services described in this Section 7.2 of the Agreement available to interested parties upon request, and shall post and maintain copies at CONSULTANT'S principal place of business and at all site(s) where services are performed. Penalties for violation of Prevailing Wage Laws may be assessed in accordance with such laws. For example, CONSULTANT shall forfeit, as a penalty to the DISTRICT, Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each workman paid less than stipulated prevailing rates for services performed under this Agreement by CONSULTANT, or any subcontractor under CONSULTANT, in violation of Prevailing Wage Laws.
- b) CONSULTANT and each of its subcontractors shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by CONSULTANT or subcontractor in connection with the services performed pursuant to this Agreement. Each payroll shall be certified, available for inspection, and copies thereof furnished as prescribed in California Labor Code sections 1771.4(a)(3)(A) and 1776, including any required redactions. CONSULTANT shall keep the DISTRICT informed as to the location of the records and shall be responsible for the compliance with these requirements by all subcontractors. CONSULTANT shall inform the DISTRICT of the location of the payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address. Penalties for noncompliance include a forfeiture of One Hundred Dollars (\$100) per calendar day, or portion thereof, for each worker until strict compliance is effectuated, which may be deducted from any moneys due to CONSULTANT.
- c) Eight (8) hours of work shall constitute a legal day's work. CONSULTANT and any subcontractors shall forfeit, as a penalty to the DISTRICT, Twenty-Five Dollars (\$25) for each worker employed in the execution of services pursuant to this Agreement by CONSULTANT or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any calendar week in violation of the provisions of the California Labor Code, in particular, sections 1810 to 1815, thereof, inclusive, except services performed by employees of CONSULTANT and its subcontractors in excess of eight (8)

hours per day at not less than the rates published by the California Department of Industrial Relations.

- d) CONSULTANT'S attention is directed to the provisions of California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning employment of apprentices by CONSULTANT or any of its subcontractors. If applicable to the services performed under the Agreement, CONSULTANT shall comply with such apprenticeship requirements and submit apprentice information to the DISTRICT. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the DIR or the Division of Apprenticeship Standards. Knowing violations of section 1777.5 will result in forfeiture not to exceed One Hundred Dollars (\$100) or Three Hundred Dollars (\$300), depending on the circumstances, for each calendar day of non-compliance pursuant to section 1777.7.
- e) CONSULTANT shall require any subcontractors performing services described in this Section 7.2 of the Agreement to comply with all the above.
- f) CONSULTANT must be, and must require all subcontractors performing services described in this Section 7.2 to be, registered with and have paid the annual fee to the DIR prior to execution of this Agreement pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. The performance of services described in this Section 7.2 is subject to compliance monitoring and enforcement by the DIR

## **8. SAFETY.**

In carrying out CONSULTANT'S services, CONSULTANT shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the services and the conditions under which the services are to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include instructions in accident prevention for all employees such as safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching & shoring, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries.

## **9. INSURANCE.**

### **9.1 INSURANCE COVERAGE AND LIMITS.**

CONSULTANT shall provide and maintain at all times during the performance of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by

CONSULTANT, its agents, representatives, employees or subcontractors. Claims made policies shall not satisfy these insurance requirements unless CONSULTANT notifies DISTRICT and obtains DISTRICT'S prior written consent to the use of such claims made policies.

**Coverage** – CONSULTANT shall maintain coverage at least as broad as the following:

- a) Coverage for Professional Liability appropriate to CONSULTANT'S profession covering CONSULTANT'S wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
- b) Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- c) Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).
- d) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

**Limits** - CONSULTANT shall maintain limits no less than the following:

- a) Professional Liability - One million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate.
- b) General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- d) Workers' Compensation insurance with statutory limits as required by California law and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

**9.2 REQUIRED PROVISIONS.** The insurance policies are to contain, or be endorsed to contain the following provisions:

- a) DISTRICT, its directors, officers, or employees are to be covered as insureds on the CGL and auto policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by on or behalf of CONSULTANT; and with respect to liability arising out of services or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such services

or operations. General liability coverage can be provided in the form of an endorsement to CONSULTANT'S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. The Project Name shall also be included.

- b) For any claims related to the services provided hereunder, CONSULTANT'S insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, and authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, or employees shall not contribute to it.
- c) Each insurance policy specified above are to state or be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice (ten (10) days for non-payment of premium) by U.S. mail has been provided to DISTRICT.
- d) In the event any change is made in the insurance carrier, scope of coverage or retroactive date of professional liability coverage required under this Agreement (if applicable), CONSULTANT shall notify DISTRICT prior to any changes.

**9.3 WAIVER OF SUBROGATION.** CONSULTANT hereby agrees to waive rights of subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of DISTRICT for all services performed by CONSULTANT, its employees, agents and subcontractors.

**9.4 DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductible or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retention.

**9.5 ACCEPTABILITY OF INSURERS.** Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise acceptable to DISTRICT.

**9.6 EVIDENCES OF INSURANCE.** Prior to execution of this Agreement, CONSULTANT shall furnish DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by DISTRICT before services commence. However, failure to obtain the required documents prior the services beginning shall not waive CONSULTANT'S obligation to provide them.

CONSULTANT shall, upon demand of DISTRICT at any time, deliver to DISTRICT complete, certified copies or all required insurance policies, including endorsements, required by this Agreement.

**9.7 SUBCONTRACTORS.** In the event that CONSULTANT employs subcontractors as part of the services covered by this Agreement, it shall be the CONSULTANT'S responsibility to require and verify that each subcontractor meets the minimum insurance requirements specified in this Agreement.

**10. NO CONFLICT OF INTEREST.**

If CONSULTANT is providing services related to a DISTRICT project, CONSULTANT shall not be financially interested in any other contract necessary for the undertaking of the project. For the limited purposes of interpreting this section, CONSULTANT shall be deemed a "district officer or employee", and this section shall be interpreted in accordance with California Government Code Section 1090. In the event that CONSULTANT becomes financially interested in any other contract necessary for the undertaking of the project, this Agreement shall be null and void and DISTRICT shall be relieved of any responsibility whatsoever to provide compensation under the terms and conditions of any such contract for those services performed by CONSULTANT.

**11. OWNERSHIP OF DOCUMENTS.**

All documents and specifications, including details, computations, and other documents, prepared or provided by CONSULTANT under this Agreement shall be the property of DISTRICT. DISTRICT agrees to hold CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the documents and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computations, and other documents, prepared or provided by CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this Project.

**12. CONFIDENTIAL INFORMATION.**

Any written, printed, graphic, or electronically or magnetically recorded information furnished by DISTRICT for CONSULTANT'S use are the sole property of DISTRICT. CONSULTANT and its employee(s) shall keep this information in the strictest confidence, and will not disclose it by any means to any person except with DISTRICT'S prior written approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONSULTANT'S employees, agents and subcontractors. On termination or expiration of this Agreement, CONSULTANT shall promptly return any such confidential information in its possession to DISTRICT.

**13. COMPENSATION.**

**13.1** For services performed by CONSULTANT in accordance with this Agreement, DISTRICT shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. . This is a time and materials contract. Overtime work must be authorized by the DISTRICT. No hourly rate changes shall be made during the term of this Agreement. **CONSULTANT'S compensation for all services performed in accordance with this Agreement shall not exceed the total contract price of \$\_\_\_\_\_.** No services shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the General Manager. CONSULTANT shall obtain approval from the

General Manager prior to performing any services that result in incidental expenses to the DISTRICT.

**13.2** CONSULTANT shall maintain accounting records including the following information:

- a) Names and titles of employees or agents, types of services performed, and times and dates of all services performed in connection with Agreement that is billed on an hourly basis.
- b) All incidental expenses including reproductions, computer printing, postage, mileage billed at current Internal Revenue Service ("IRS") Rate, and subsistence.

**13.3** CONSULTANT'S accounting records shall be made available to DISTRICT Accounting Manager, for verification of billings, within a reasonable time of the Accounting Manager's request for inspection.

**13.4** CONSULTANT shall submit monthly invoices to DISTRICT. DISTRICT shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the General Manager. ***Each application for partial payment shall be accompanied with a Progress Report summarizing the status of the services performed.***

**13.5** CONSULTANT shall ensure that any report generated under this Agreement shall comply with Government Code Section 7550.

**14. TERMINATION OF AGREEMENT.**

**14.1** If DISTRICT ("demanding party") has a good faith belief that CONSULTANT is not complying with the terms of this Agreement, DISTRICT shall give written notice of the default (with reasonable specificity) to CONSULTANT and demand the default to be cured within ten (10) calendar days of the notice.

**14.2** If CONSULTANT fails to cure the default within ten (10) calendar days of the notice, or if more than ten (10) calendar days are reasonably required to cure the default, and CONSULTANT fails to give adequate assurance and due performance within ten (10) calendar days of the notice, DISTRICT may terminate this Agreement upon written notice to CONSULTANT.

**14.3** In the event of a material breach of any representation or term of this Agreement by CONSULTANT that is not curable or results in a threat to health or safety, DISTRICT may immediately terminate this Agreement by providing written notice and without a cure period.

**14.4** Upon termination, DISTRICT shall pay CONSULTANT for any services completed up to and including the date of termination of this Agreement, in accordance with the compensation Section 13. DISTRICT shall be required to compensate CONSULTANT only for services performed in accordance with the Agreement up to and including the date of termination.

**15. ASSIGNMENT AND DELEGATION.**

- 15.1** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated or subcontracted, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment shall not be deemed to be consent to any subsequent assignment.
- 15.2** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**16. AUDIT DISCLOSURE.**

Pursuant to Government Code section 8546.7, if the Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment under the Agreement. CONSULTANT shall cooperate with any such examination or audit at no cost to DISTRICT.

**17. ENTIRE AGREEMENT.**

This Agreement, and the attached Exhibit "A", comprise the entire integrated understanding between DISTRICT and CONSULTANT concerning the services to be performed pursuant to this Agreement and supersedes all prior negotiations, representations, or agreements whether express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms herein. In the event of any conflict between the provisions of the Agreement and the Exhibit(s), the terms of the Agreement shall prevail.

**18. INTERPRETATION OF THE AGREEMENT.**

- 18.1** The interpretation, validity, and enforcement (including, without limitation, provisions concerning limitations of actions) of the Agreement shall be governed by and construed under the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule requiring construction against the draftsman. The Agreement does not limit any other rights or remedies available to DISTRICT.
- 18.2** CONSULTANT shall be responsible for complying with all applicable local, state, and federal laws whether or not said laws are expressly stated or referred to herein.
- 18.3** Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.
- 18.4** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake of otherwise any such

provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion.

**19. AGREEMENT MODIFICATION.**

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

**20. DISPUTE RESOLUTION.**

Upon the written demand of either party, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be first submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 *et seq.* if applicable, and prior the commencement of any legal action or other proceeding. Any mediation shall take place in the State of California, County of San Diego, and shall be concluded within sixty (60) days of the written demand, unless such time is extended by mutual written consent of the parties. Nothing herein waives or excuses compliance with the California Government Claims Act.

In the event that mediation has not been successfully concluded within the time allowed, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). The use of arbitration shall allow full discovery by all parties associated with the dispute or claim. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court.

**21. JURISDICTION, FORUM AND VENUE.**

Except as otherwise required by Section 20 of this Agreement concerning dispute resolution, the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, northern district of the County of San Diego. DISTRICT and CONSULTANT agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. DISTRICT and CONSULTANT hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or

proceeding to enforce this Agreement whether on grounds of inconvenient forum or otherwise.

**22. MAILING ADDRESSES.**

Notices given pursuant to this Agreement shall be deemed communicated as of the earlier of the day of receipt or the fifth (5<sup>th</sup>) calendar day after deposit in the United States mail, postage prepaid, and addressed to the following:

**DISTRICT:**                   **Rainbow Municipal Water District**  
**3707 Old Hwy 395**  
**Fallbrook, CA 92028**  
**Phone: (760) 728-1178**

**CONSULTANT:**               \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Notices delivered personally will be deemed communicated as of actual receipt.

**23. SIGNATURES.**

Each party represents that the individual executing this Agreement on its behalf has the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of such party.

**24. COUNTERPARTS.**

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

**25. ATTORNEY'S FEES.**

In the event of a dispute arising under terms of this Agreement, it is agreed that the prevailing party may be awarded reasonable attorneys' fees and actual costs.

**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed.

**CONSULTANT** \_\_\_\_\_

**RAINBOW MUNICIPAL WATER DISTRICT** \_\_\_\_\_

By \_\_\_\_\_  
**CONSULTANT**

By \_\_\_\_\_  
**GENERAL MANAGER**

\_\_\_\_\_  
PRINT NAME

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**Attest: Executive Secretary**

\_\_\_\_\_  
**Federal Employee ID #**

\_\_\_\_\_  
**Approved as to Form:  
General Counsel**

**NOTARY ACKNOWLEDGEMENT OF CONSULTANT MUST ACCOMPANY THIS DOCUMENT**