



# Request for Proposal

## Compensation and Benefits Study

**Amended 1/23/2017**

All changes are noted in blue.

### **HUMAN RESOURCES**

Contact:

Karleen Harp, Human Resources Manager

[kharp@rainbowmwd.com](mailto:kharp@rainbowmwd.com)

760-728-1178 ext. 138

**RAINBOW MUNICIPAL WATER DISTRICT  
REQUEST FOR PROPOSAL**

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## CLASSIFICATION AND COMPENSATION STUDY REQUEST FOR PROPOSALS

### **INSTRUCTIONS**

Rainbow Municipal Water District is requesting proposals from qualified consultants/firms to conduct a classification and compensation study.

All proposals shall be submitted by **January 31, 2017**.

Hard copy proposals should be delivered to:

Rainbow Municipal Water District  
Karleen Harp, Human Resources Manager  
3707 Old Highway 395, Fallbrook, CA 92028.

PDF proposals should be delivered to [kharp@rainbowmwd.com](mailto:kharp@rainbowmwd.com).

Questions should be directed to Karleen Harp at (760) 728-1178 ext. 138 or [kharp@rainbowmwd.com](mailto:kharp@rainbowmwd.com)

### **SELECTION PROCESS**

Upon receipt, the proposals will be reviewed for responsiveness to this RFP including, but not limited to: understanding of the work, proposed project approach, detailed scope of services, project team experience and qualifications, proposed fee and references. Interviews, if conducted, will be with those firm members named in the proposal as having direct project involvement.

The fee quoted in the proposal shall be considered to be the proposed contract amount and shall be used as the basis for contract negotiation. The consultant/firm selected will be invited to meet with District staff to negotiate a final contract and scope of work.

The successful consultant/firm shall be required to execute a Consulting Services Agreement, which includes a confidentiality clause (copy attached). The proposal shall specifically list any exceptions to the Agreement. Any exceptions listed may preclude further contract negotiations with the successful consultant/firm.

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## **BACKGROUND AND PROJECT DESCRIPTION**

Rainbow Municipal Water District is a special District that provides water distribution and wastewater collection services over approximately 82 square miles of the Northernmost area of San Diego County, including the community of Rainbow and portions of the cities of Fallbrook, Vista, and Oceanside. The District serves an existing population of approximately 20,000 customers and anticipates significant growth over the next five years. The District is governed by a five-member elected Board of Directors.

The FY 16/17 budget reflects 51 FTEs. The District negotiates with three bargaining units, Rainbow Employees Association (REA), Rainbow Association of Supervisory and Confidential Employees (RASCE), and the Exempt Employee Group. Each employee association has MOUs in place through June 30, 2017.

It is the District's policy to maintain a competitive program of compensation that will attract, motivate, and retain the best qualified employees. The compensation plan is designed to be internally equitable as well as representative of the external market for both talent acquisition and retention.

The survey is to be representative of the recruiting talent pool and overall labor market. The District is located in a sparsely populated area, so most employees commute between 30-90 minutes daily. When considering the geographic competition for talent, the District considers the commute radius from where the employees live, rather than the location of the District office. The current agencies identified include 20 local agencies made up of 15 water districts and 5 cities. Thirteen (13) of these agencies have job specifications and salary data available on the District's subscription to NEOGOV, and raw data may be downloaded into Excel. The selected consultant/firm may make recommendations to the list of benchmarks.

Some positions may also be benchmarked against the private sector labor market, where comparable positions exist in the private sector and qualified applicants are likely to be sourced from a private sector talent pool. There are a total of 30 job classes, which includes 15 series classes, for a total of 45 unique classifications; 36 have incumbents in place.

## PURPOSE

The purpose of this study is to review overall classification structure and ensure that the District remains market competitive with other employers in the labor market. The consultant/firm is expected to review the overall classification structure and make recommendations for improvement, and collect, analyze, report, and explain salary data for benchmark classifications using a custom survey for a defined labor market.

- Conduct a comprehensive salary **and benefits** survey to compare current compensation and benefits practices to the labor market
  - Define the District's current compensation market position, overall, and by position, by comparing the District's current practice line to the labor market
  - Provide an analysis of internal salary relationships and make recommendations for necessary adjustments **with special attention to identifying and comparing positions that perform substantially similar work when viewed as a composite of skill, effort, and responsibility to ensure compliance with the California Equal Pay Act.**
  - Present results of survey to management and required staff
  - Be able to discuss and defend all challenges to the survey
  - Assist in the development of an implementation strategy
  - Presentation of final compensation **and benefits** report to the Board of Directors
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## **PROPOSAL REQUIREMENTS**

The proposal must be authored by either the team member proposed to have the most hourly involvement in the project or by the team leader, and include the following sections for easy reference. Additional sections that are deemed necessary for a complete proposal may be added.

- Understanding of the Project
- Qualifications and Experience
- Project Fees and Fee Structure
- Conflicts of Interest Statement

### **UNDERSTANDING OF THE PROJECT:**

The proposal shall contain a detailed explanation of the project as viewed by the proposal author. Do not reiterate the contents of the RFP. The information offered should be a compendium of the author's knowledge of the area, the author's understanding of the technical needs, and of the political climate.

If recommendations are in order to provide guidance to District staff, the recommendations should be offered within this section.

1. **Project Approach:** The proposal shall contain a description of the management approach and logistics necessary to accomplish the work described in the detailed scope of work, including sub-consultants, and meetings.
2. **Detailed Scope of Work:** The proposal shall be responsive to the needs of the Scope of Services and contain adequate detail to demonstrate the work can be accomplished in an efficient and timely manner.
  - a. Describe the work activities (tasks) to be performed showing timelines, milestones, or benchmarks for major reports/products.
  - b. A description of the information and support required of District staff. (Timeline, payment schedule, and deliverables)
  - c. The name of the principal or project manager in the firm who will serve as Project Manager and have direct and continued responsibility for the project.
  - d. Project Schedule: The proposal shall contain elements of work corresponding to the Detailed Scope of Work and proposed completion dates.

### **QUALIFICATIONS AND EXPERIENCE:**

1. **Firm Overview:** A resume and description of the consultant firm, organization structure, location of principal offices, number of professional personnel and other pertinent information including the names and experience of all staff members who will work on the project.
2. **Project Team:** The project team shall include the Project Manager and any other individual or sub-consultant having more than five percent hourly involvement, excluding typographical/reproduction activities. Provide a description of the Project Manager and other key members of the project team and sub-consultants involvement, including the level of responsibility, their scope of work and relevant experience.

3. **Government Experience:** Outline your qualifications and project experience in working with Special Districts, Cities, Counties, and other Local Government Agencies. Similar projects and expertise with governmental agencies and related projects will be weighed heavily, although other projects requiring similar skills and expertise will also be considered.
4. **References:** Provide at least three (3) references. Related project experience and client references. (References should be recent with samples attached and indicate scale of services completed) (See Exhibit "A").
5. **Subcontracting:** No subcontracting will be allowed without the express prior written consent of the District.
6. **Additional Information:** Provide any other qualifications that you believe are relevant.

#### **PROJECT FEES AND FEE STRUCTURE:**

The District prefers proposals for this study that quote a fixed cost, without hourly billing rates or contingency for reimbursement of out of pocket expenses. However, consideration will be given to other pricing proposals, such as an hourly rate with a "not to exceed" limit.

The proposal should include proposed fees for the market pricing salary survey alone, the evaluation and recommendations for adjusting the salary grade structure alone, and a full scope fee proposal to conduct both.

#### **CONFLICTS OF INTEREST STATEMENT:**

The proposal shall include "Potential Conflicts of Interests Summary" (See Exhibit "B").

The evaluation process will be directed primarily at those capabilities and advantages clearly shown in the written proposal; however, the District may request any or all firms to make oral presentations during the evaluation process.

The District reserves the right to reject any and all proposals submitted and to request additional information as deemed necessary, from Proposers. The District shall be the sole judge of the proposal and, particularly, which one best qualifies for acceptance. The District reserves the right to accept other than the lowest-price proposal and to negotiate with the consultant if it is in the District's best interest to do so.

The District also reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of the proposal indicates acceptance by the proposer of the conditions contained in this request for proposal, unless it is otherwise clearly and specifically noted in the proposal submitted, and confirmed in the engagement contract between the District and the proposer selected.

There is no expressed or implied obligation for the District to reimburse responding firms for any expenses incurred in the preparation, submission or presentation of proposals in response to this request.

## **PROJECT DELIVERABLES**

1. Meet with the Human Resources Manager and General Manager to discuss related issues and receive any additional information and materials. Ongoing communication between the Project Manager and the Human Resources Manager is essential.
  2. Review and make recommendations for internal pay relationships including between classes in a series and differentials between lead workers, supervisors, and managers, [with special attention to identifying and comparing positions that perform substantially similar work when viewed as a composite of skill, effort, and responsibility to ensure compliance with the California Equal Pay Act.](#)
  3. Conduct a salary survey of benchmark classifications (see attached list) for the local labor market (see attached list). The survey will be conducted by matching job duties and responsibilities and not based on job titles. The selected consultant/firm may make recommendations to the list of benchmark classifications [and which positions have private sector equivalents that should be benchmarked.](#)
  4. Prepare a table for each benchmark that displays the list of labor market agencies surveyed and identify those with job matches and those without job matches, agency job titles for each of the job matches, monthly minimum and maximum of the salary range for each job match, the mean of the monthly minimum and maximum, the total number of job matches for each job title, the percentage above or below the minimum and maximum current pay rate for the comparable Rainbow Municipal Water District position, and the ranking of each agency's pay for each specific classification by comparison.
  5. Include notes related to special cash compensation, such as auto allowances or longevity pay, when comparing RMWD base pay salary ranges to positions receiving additional cash compensation at other agencies for a true cash compensation comparison.
  6. [Include a survey of health and other benefits offered by the target public agencies and compare RMWD's market position for each benefit, as well as make recommendations for adjustments.](#)
  7. Review and make recommendations for adjustments to Rainbow Municipal Water District's salary grade structure, including total number of grades, recommended distance between midpoints, and size of salary grades based on the survey data collected, analysis of data, and internal pay relationships. Recommendations should be based on the mean of the market.
  8. Provide a chart/table of the most recent pay increases (date and percentage) for each of the agencies surveyed and the next scheduled pay increase (date and percentage). These types of pay increases are usually identified as COLA adjustments or general pay increases. If the pay increase is an offset, indicate if the offset is temporary or permanent. When appropriate, pay increases should be incorporated into the salary survey data and analysis and subsequent recommendations. Any pay increases scheduled to be effective before July 1, 2017 for the agencies surveyed should be specifically identified to ensure use of the most current data.
  9. Attend one or two Board meetings to present and explain findings and recommendations.
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## **METHOD OF DELIVERY**

The final Scope of Work items that are to be provided shall be delivered electronically for all components in a format that the District can use for production, copying or modification. Raw data should be delivered in Excel. Proprietary formats or programs that are not reasonably available shall not be used. A listing of proposed deliverables shall be provided in the detailedscope.

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## **BENCHMARK POSITIONS FOR 2017 COMPENSATION STUDY**

<b>Classification</b>	<b>Labor Market Employers</b>
Accounting Specialist I	Private
Accounting Specialist II	Public
Administrative Assistant I/II	Public and Private
Administrative Analyst	Public
Associate Engineer	Public and Private
Construction and Maintenance Superintendent	Public
Crew Leader - Construction	Public
Crew Leader Meter Services	Public
Crew Leader Valve Construction	Public
Customer Service Representative I/II	Public and Private
Electrical Technician I	Private
Electrical Technician II	Public
Engineering Inspector I/II	Public
Engineering Manager	Public
Engineering Technician I	Private
Engineering Technician II	Public
Executive Assistant and Board Secretary	Public and Private
Finance Manager	Public
General Manager	Public
Human Resources Manager	Public and Private
IT Administrator	Public and Private
Mechanic I/II	Public and Private
Purchasing Warehouse Representative, I/II	Public and Private
Safety Administrator I/II	Public and Private
System Operator I/II/III	Public
Utility Worker Construction & Maintenance I	Private
Utility Worker Construction & Maintenance II/III	Public
Utility Worker Valve Maintenance I/II/III	Public
Utility Worker Wastewater Services I/II/III	Public
Utility Worker Meter Services I	Private
Utility Worker Meter Services II/III	Public
Wastewater Superintendent	Public
Operations Manager	Public
Water Operations Superintendent	Public
Water Quality Technician I/II	Public

## **LABOR MARKET PUBLIC AGENCIES FOR 2017 COMPENSATION STUDY**

City of Carlsbad \*

City of Escondido \*

City of Oceanside \*

City of Poway

City of Vista \*

Eastern Municipal Water District

Fallbrook Public Utility District \*

Helix Water District \*

Irvine Ranch Water District \*

Metropolitan Water District

Moulton Nigel Water District \*

Olivenhain Municipal Water District

Otay Water District \*

Ramona Water District

Rancho California Municipal Water District

Rincon Del Diablo Municipal Water District

San Diego County Water Authority \*

Santa Margarita Water District \*

South Coast Water District

Sweetwater Authority

Valley Center Municipal Water District

Vallecitos Water District

Vista Irrigation District

Western Municipal Water District \*

Water Employee Services Authority \* (Elsinore Valley Water District)

\* These agencies have job specifications and pay ranges available through the District's subscription to NEOGOV. The District has access to the searchable database that the consultant can use to download raw data into Excel for these agencies for more efficient data gathering.

**EXHIBIT "A" - REFERENCES**

Bidder shall provide a minimum of three (3) customer references with two (2) or more years of experience with the Bidder. Local and similar size contract references are preferred.

	<b>REFERENCE NO. 1</b>
<b>NAME OF FIRM</b>	
<b>ADDRESS</b>	
<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE NO.</b>	
<b>CONTACT</b>	
<b>PROJECT NAME</b>	
<b>COMPLETION DATE</b>	
<b>APPROX. COST</b>	
	<b>REFERENCE NO. 2</b>
<b>NAME OF FIRM</b>	
<b>ADDRESS</b>	
<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE NO.</b>	
<b>CONTACT</b>	
<b>PROJECT NAME</b>	
<b>COMPLETION DATE</b>	
<b>APPROX. COST</b>	
	<b>REFERENCE NO. 3</b>
<b>NAME OF FIRM</b>	
<b>ADDRESS</b>	
<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE NO.</b>	
<b>CONTACT</b>	
<b>PROJECT NAME</b>	
<b>COMPLETION DATE</b>	
<b>APPROX. COST</b>	

**EXHIBIT “ B” - POTENTIAL CONFLICTS OF INTEREST SUMMARY**

All respondents and proposed sub consultants must respond to each of the following questions to determine if any actual or perceived conflicts of interest may exist. If any response has a “yes” answer, the supporting questions must also be answered completely and accurately in full detail to identify any potential or actual conflicts of interests, including organizational conflicts, bias, and unfair competitive advantages. Rainbow Municipal Water District (RMWD) reserves the right to review and make a final determination regarding whether any actual or potential conflicts of interests would violate RMWD’s procurement and ethics policies, and thus preclude a respondent’s participation in this award.

- 1. To the best of your knowledge, have you or any of your team member(s) ever been employed or retained by RMWD?  Yes or  No.

If your answer is “Yes,” please provide the following additional information (attach additional sheets as needed):

Name of individual: \_\_\_\_\_

Title/position within your company: \_\_\_\_\_

Was the individual an RMWD full-time employee?  Yes  No

Was the individual an RMWD part-time employee?  Yes  No

Was the individual and RMWD as-needed employee?  Yes  No

Was the individual an RMWD retained consultant?  Yes  No

Or, other? Please explain: \_\_\_\_\_

Dates of employment/engagement with RMWD: \_\_\_\_\_

RMWD department(s)/area(s) worked: \_\_\_\_\_

Name of RMWD supervisor: \_\_\_\_\_

Description of job duties and responsibilities for each RMWD position held: \_\_\_\_\_

- 2. To the best of your knowledge, are any present or former RMWD employees or Board members, or immediate relatives of any present or former RMWD employees or Board members, currently serving as officers, partners, or shareholders in your company?  Yes or  No

If the answer is “Yes,” please provide the following additional information as (attach additional sheets as needed):

Name of individual: \_\_\_\_\_

Title/position within your company: \_\_\_\_\_

Percentage of ownership of company shares: \_\_\_\_\_

- 3. To the best of your knowledge, are any of your former employees or officers currently employed or retained by RMWD?  Yes or  No

If the answer is “Yes,” please provide the following additional information (attach additional sheets as needed):

Name of individual: \_\_\_\_\_

Title/position within your company: \_\_\_\_\_

Dates or employment/service within your company: \_\_\_\_\_

Description of job duties within your company: \_\_\_\_\_

4. In the preceding twelve (12) months, have you, your company, or any employee or officer made, arranged, or delivered any gifts (including entertainment) to any RMWD employee or Board member?  Yes or  No

If the answer is "Yes," please provide the following additional information as (attach additional sheets as needed):

Name of RMWD Board member/employee receiving gift: \_\_\_\_\_

Value of the gift: \_\_\_\_\_

Description of the gift: \_\_\_\_\_

Date the gift was delivered: \_\_\_\_\_

5. In the preceding twelve (12) months, have you, your company, or any employee or officer made, arranged, or delivered any campaign contributions to any RMWD Board member?  Yes or  No

If the answer is "Yes," please provide the following additional information as (attach additional sheets as needed):

Name of RMWD Board member receiving contribution: \_\_\_\_\_

Amount of contribution: \_\_\_\_\_

Form of contribution (i.e., cash, check, etc.): \_\_\_\_\_

Date the contribution was delivered: \_\_\_\_\_

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***I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.***

\_\_\_\_\_  
Name (Type or print)

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## DRAFT PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is entered into by and between Rainbow Municipal Water District (District), a Municipal Water District organized and operating pursuant to California Water Code sections 71000 et seq., and \_\_\_\_\_ (Consultant), a \_\_\_\_\_ (California Corporation, LLC, etc.), as follows,

### **R-E-C-I-T-A-L-S**

1. The District requires the professional services of a consultant to conduct a Classification and Compensation Study responsive to a Request for Proposals issued by the District (Project).
2. Consultant is a professional firm and has represented to District that it is qualified and has the knowledge, skill, expertise, and other resources necessary to complete the Project, that it is fully acquainted with the scope of services required for the Project having taken such actions as necessary and advisable to make itself familiar with the Project, and that the Services described in the Schedule A, Scope of Services, adequately address the requirements to complete the Project.
3. The District has relied on Consultant's representations in selecting Consultant to perform the Services, and Consultant desires to provide District with such Services, in accordance with the terms and conditions of this Agreement.

### **C-O-V-E-N-A-N-T-S**

#### **1. CONSULTANT'S SERVICES AND SCHEDULE**

- 1.1 Services. Consultant shall provide all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide District with professional outreach and communication services as required to conduct the Project, as more fully described in the Scope of Services attached hereto as Schedule A and incorporated herein by this reference (Services). Consultant shall provide District with such Services in accordance with the terms and conditions of this Agreement. All Services shall be performed by Consultant to the reasonable satisfaction of District.
- 1.2 Consultant's Schedule. The time limits and standards established in Consultant's Schedule, set forth in Schedule B and any updates thereto as approved by District, shall be adhered to by the parties in the performance of this Agreement.
- 1.3 Personnel. Consultant shall assign adequate and competent personnel as necessary and appropriate for the skillful, competent and timely performance of the Services. A person demonstrating a lack of acceptable job skills, insubordination, actions disrupting the work or good order of others, or faulty workmanship shall be deemed to present good cause, **as determined by District in its sole discretion**, for District to direct, by notice to Consultant, that such person be removed from performing any aspect of the Services. Within ten (10) days of its receipt of such notice, Consultant shall replace, or ensure the replacement of, such individual with a qualified person acceptable to District.

Subcontractors. Consultant shall not hire any subcontractor to perform any aspect of the Services without the prior express written consent of District. Consultant remains responsible for the professional and technical accuracy of all Services furnished and for the performance of all Services in accordance with this Agreement, whether the Services are performed by Consultant or by its subcontractor.

- 1.4 Nondiscrimination. In performing under this Agreement the Consultant will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition, or otherwise commit an unfair labor practice.
- 1.5 Correction of Defective Services. In the event Consultant fails to conduct the Services in accordance with the terms and conditions of this Agreement, Consultant shall promptly perform such corrective action as necessary **and required by District in its sole discretion** to remedy such failure, at its own expense. District review, approval, acceptance or payment for any of the Services does not relieve the Consultant of its obligation to perform the Services in accordance with the terms and conditions of this Agreement.
- 1.6 Additional Services. "Additional Services" shall mean those additional professional services which were not originally included in the Scope of Services set forth in Schedule A of this Agreement. Additional Services shall not be performed by Consultant until expressly authorized by District in writing and will be paid for in accordance with Section 2.
- 1.7 Records. Consultant shall maintain accurate and complete accounting records of expenditures, costs and time incurred by the Consultant in connection with the Services and such records will be maintained in accordance with recognized commercial accounting practices. **District shall have the right to inspect Consultant's records upon reasonable notice.**
- 1.8 Compliance with Laws. In performing the Services, Consultant shall, and shall require its subcontractors, if any, to at all times comply with all applicable laws, rules, regulations, codes, ordinances, and orders of every kind whatsoever issued, adopted, or enacted by any federal, state, or local governmental body having jurisdiction over the Project or the Services.
- 1.9 District's Representative. For purposes of the Agreement, the District's Representative shall be the District's General Manager, Tom Kennedy, located at 3707 Old Highway 395, Fallbrook, CA 92028.

## **2. COMPENSATION**

- 2.1 Compensation for Services. For the full and satisfactory performance of the Services, District shall compensate Consultant for services not to exceed the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_) (Total Compensation) set forth in Schedule C attached hereto and incorporated herein by this reference. Except as provided in Paragraph 2.2, the District shall not be obligated to pay Consultant any compensation for Services in excess of the amounts set forth in Schedule C.
- 2.2 Compensation for Additional Services. Services in addition to those described in the Scope of Services may be requested by District. Compensation shall be provided at the value agreed to in writing by the parties.
- 2.3 Reimbursement of Expenses. District shall reimburse Consultant for reasonable expenses in an aggregate sum not to exceed the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_). This amount is included in and a part of the Total Compensation as provided in Paragraph 2.1.
- 2.4 Invoices. Consultant shall deliver monthly invoices to District for Services provided in



accordance with Schedule C.

2.5 Payment. The District shall remit payment for all amounts due to Consultant within thirty (30) days after receipt of invoices; provided, however, in the event District disputes any portion of Consultant's invoice, it shall timely pay any undisputed amounts invoiced and notify Consultant within thirty (30) days of its receipt of the invoice of the specifics of any disputed amounts. The parties shall resolve the subject of any disputed amounts in accordance with Paragraph 13, Disputes. Any such dispute shall not relieve Consultant of its obligation to continue diligently performing the Services.

3. **TERM OF AGREEMENT.** The term of this Agreement shall run from the date this Agreement is fully executed until Consultant has completed its Services and District has accepted such Services, subject to District's right to terminate or suspend this Agreement as provided below:

3.1 Termination for Convenience. District may at any time, in the exercise of its sole discretion, terminate this Agreement in whole or in part, with or without cause, by providing notice to Consultant of its intention to terminate the Agreement for convenience at least ten (10) days before the effective date of termination. So long as the Consultant is not in default under this Agreement at the time of such termination, District shall make an equitable adjustment to the compensation due Consultant taking into account the following:

- (a) All compensation and reasonable expenses due to Consultant for Services and any Additional Services performed up to the effective date of termination;
- (b) The amount of any advance payments made by District to Consultant;
- (c) Any amounts owing by Consultant to District under the terms of this Agreement, including any amounts that may be withheld by District pursuant to Paragraphs 2.5; and,
- (d) No amount shall be payable by District for the Consultant's anticipated profit on the value of Services or any authorized Additional Services not performed by Consultant, or for any loss, cost, damage, or consequential damages which Consultant or any other party may sustain by reason of or in connection with District's termination of this Agreement.
- (e) Consultant hereby expressly waives any and all claims for damages and/or compensation arising under this Paragraph 3.1, except as set forth herein, in the event of such termination.

3.2 Termination for Cause. An Event of Default by Consultant shall be deemed to have occurred when there is: (a) a failure, neglect, or refusal on the part of Consultant to duly observe or perform any obligation or duty required under this Agreement, which failure, neglect, or refusal continues for a period of ten (10) days after the date on which written notice of the same has been delivered to Consultant by District, and/or (b) any representation or warranty of Consultant set forth in this Agreement or otherwise delivered pursuant to the Agreement will have been false in any material respect when so made or furnished to District. If an Event of Default occurs, then District may exercise any right, power or remedy available to it under this Agreement, law or in equity and has in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to Consultant, in which event District has no further obligations hereunder or liability to Consultant except as to payment for Services actually received and accepted by District

through the effective date of termination, subject to set off of any claims of District against Consultant for failure to perform the Services in accordance with this Agreement.

- 3.3 Continuing Responsibility. Termination or suspension of this Agreement, in whole or in part, as provided in Paragraphs 3.1, 3.2, 3.3 or in any other manner provided under this Agreement, does not relieve Consultant from liability for its performance of any obligation or Services under this Agreement that was performed or was to have been performed by Consultant on or before the effective date of such termination or suspension. In no event will District be liable to the Consultant in any amount for Services or any authorized Additional Services not performed by Consultant.
4. **INDEPENDENT CONTRACTOR.** District has retained Consultant to provide the Services as a wholly independent contractor maintaining exclusive direction and control over its employees; and, no personnel utilized by Consultant to perform the Services are employees of District. Consultant shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and sub consultants. CONSULTANT and all persons retained or employed by Consultant shall have no authority, express or implied, to bind District in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, District, whether by contract or otherwise.
5. **OWNERSHIP OF DOCUMENTS.** All Deliverables and other documents generated by Consultant in the performance of the Services, including all work papers, work-in-progress, designs, drawings, documents, and data prepared by Consultant as a part of the Services or authorized additional work shall belong to and be subject to the sole ownership and use of District.
6. SURVIVAL OF PROVISIONS. The provisions of this Paragraph shall survive any termination of this Agreement.
7. **CONSULTANT LIABILITY.** Should Consultant fail to perform any of its obligations under this Agreement, or otherwise fail to complete the Services within the time prescribed by this Agreement, the Consultant shall be liable to District for the actual damages incurred.
8. **INSURANCE.** Consultant shall procure and maintain, at its sole cost and expense, and at all times during the performance of the Services, policies of insurance providing coverage in the amounts and types set forth below, insuring against claims which may arise out of or in connection with this Agreement and/or Consultant's performance of the Services. Consultant shall provide District with Certificates of Insurance or other satisfactory evidence that such policies have been procured and are in effect before commencing work per this Agreement. The policies of insurance shall be obtained from an insurer admitted in the State of California having an A.M. Best rating of at least A: VIII or better. Proof of renewal shall be provided to District two weeks before any such policy of insurance expires during the term of the Agreement. Consultant's insurance policies or self-insured retention shall be primary to any insurance or other coverage available to District, which shall be deemed excess to Consultant's policies of insurance and non-contributing. All self-insured retention and deductible amounts under Consultant's policies of insurance shall be in amounts approved by District. Each insurance policy required hereunder shall provide that coverage shall not be suspended, voided, reduced, or cancelled except on thirty (30) days written notice by certified mail, return receipt requested, to District (except for cancellation due to nonpayment of premium which shall be on ten (10) days written notice). The policies of insurance shall not preclude Consultant from waiving the right of subrogation prior to a loss, and Consultant hereby waives all rights of subrogation against District.

- 8.1 Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and an aggregate of Two Million Dollars (\$2,000,000.00) for products and operation hazard, contractual insurance, broad form liability, property damage, independent consultants, and personal injury where applicable.
- 8.2 Automobile Liability Insurance providing coverage for vehicles used in connection with the performance of this Agreement, whether owned, hired, leased, or borrowed with limits not less than One Million Dollars (\$1,000,000.00) per claimant and One Million Dollars (\$1,000,000.00) per accident, for bodily injury and property damage.
- 8.3 Worker's Compensation Insurance as required by the laws of the State of California. In addition, Consultant agrees to maintain Employer's Liability Insurance covering bodily injury and property damage insurance, for injury to employees or damage to employee property, in a minimum amount of One Million Dollars (\$1,000,000.00) each for bodily injury and property damage.

9. **INDEMNIFICATION.** As a material term of this Agreement, Consultant agrees to hold harmless, indemnify, and defend the District and its directors, officers, employees, agents, and representatives from and against any and all demands, liability, claims, suits, actions, damages, costs, fees, expenses, fines, and penalties, of whatever type or nature, including, but not limited to, reasonable attorney fees, to the extent caused in whole or in part, or claimed to be caused in whole or in part by the willful misconduct, recklessness, or negligence of Consultant or its directors, officers, employees, agents, subcontractors, sub-consultants, representatives, or independent contractors, including claims and causes of action asserting the concurrent negligence of Consultant or other persons and entities employed or utilized by Consultant in the performance of this Agreement. In the event that any administrative proceeding, litigation or arbitration is instituted naming the District or any other indemnified parties as a defendant, the District and such other indemnified parties shall be entitled to appoint their own independent counsel to represent them, and Consultant agrees to pay all reasonable attorneys' fees, expert fees and costs, and litigation costs associated with this defense within thirty (30) days of any billing.

10. **NOTICE.** All notices to be given under this Agreement shall be in writing and shall be deemed effective upon receipt when personally served or two days after mailing by certified, return receipt requested, to the following addresses:

<b>District</b>	<b>Consultant</b>
Rainbow Municipal Water District	Company Name
Attention: Tom Kennedy	Attention, Name,
General Manager	Title
3707 Old Highway 395	Address
Fallbrook, CA 92028	City, State, Zip

11. **CONFIDENTIAL INFORMATION.** During the course of the performance of this Agreement, Consultant may receive written or verbal information from District, its representatives or agents, not in the public domain. Such information may include District's know how, trade secrets, and other proprietary and confidential information and Consultant agrees to treat such information as confidential information belonging to District. Consultant agrees that neither it, nor its officers, employees, representatives, agents, successors, or assigns, will disclose such information to any third party or use the same in any manner without the prior written consent of District. Moreover,

Consultant agrees to safeguard such proprietary and confidential information from unauthorized disclosure and/or use using the same degree of care it uses to protect its own proprietary and confidential information, but not less than a reasonable standard of care.

12. **REMEDIES NOT EXCLUSIVE.** No right or remedy in the Agreement conferred on District is exclusive of any other right or remedy provided or permitted under this Agreement, law, or in equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity, and may be enforced concurrently or from time to time.
13. **DISPUTES.** All Claims arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including matters concerning compensation and all claims for alleged breach of contract, shall first be presented to the District's Designated Representative. [The Parties agree to use their best efforts to meet in-person for the purpose of informally resolving any dispute prior to filing litigation.](#)
14. **FORCE MAJEURE.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to Force Majeure. Force Majeure shall mean an extraordinary and unforeseeable act of God, strike, lockout or other industrial disturbance, act of the public enemy, war, blockage, riots, lightning, fire, flood, or explosion, preventing the District, the Consultant, or both from performing some or all of their respective obligations under the Agreement and which is beyond the control of the party whose performance is affected. To the extent either party is rendered unable to perform its obligations under this Agreement by reason of Force Majeure, the party unable to perform shall give prompt notice to the other party setting forth the circumstances of the Force Majeure and its effect upon such party's ability to perform under the Agreement. Upon providing such notice, the obligations of the party unable to perform shall be suspended during, but not longer than, the continuance of the Force Majeure, provided said party shall use all reasonable diligence to remove the Force Majeure as quickly as possible.
15. **CONSEQUENTIAL DAMAGES.** In no event shall [the District and its directors, officers, employees, agents](#) or representatives be liable in contract, tort, strict liability, warranty, or otherwise, for any special, indirect, incidental, or consequential damages, such as, but not limited to, loss of product, loss of revenue, loss of use of equipment or system, non-operation or increase expense of operation of other equipment or systems, or cost of capital.
16. **MISCELLANEOUS PROVISIONS.**
  - 16.1 Venue. Venue shall lie only in the federal or state courts in the [northern district of the County of San Diego, State of California.](#)
  - 16.2 Modification. This Agreement may not be altered in whole or in part except by a modification, in writing, executed by all the parties to this Agreement.
  - 16.3 Entire Agreement. This Agreement, together with all the Schedules attached to this Agreement, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Schedules.
  - 16.4 Assignment. Consultant shall not be entitled to assign all or any portion of its rights or obligations contained in this Agreement without obtaining the prior [written](#) consent of the District, which consent District may withhold in its sole discretion.

- 16.5 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs, and assigns.
- 16.6 Severability. The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.
- 16.7 Representation of Capacity to Contract. Each party to this Agreement represents and warrants that he has the authority to execute this Agreement on behalf of the entity represented by that individual.
- 16.8 No Waiver. The failure of either party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.
- 16.9 Counterparts. This Agreement shall be executed in two (2) original counterparts each of which shall be of equal force and effect. One counterpart shall be delivered to Consultant and the other shall be retained by District. No handwritten or typewritten amendment, modification or supplement to any one counterpart shall be valid or binding unless made to all counterparts in conformity with Section 16.2 above.
- 16.10 Time is of the Essence. Time is of the essence for each and every provision of this Agreement.
- 16.11 No Third Party Benefit. There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

This Agreement is entered into in San Diego County, California on \_\_\_\_\_, 2017.

**Rainbow Municipal Water District**

**Company Name**

By: \_\_\_\_\_  
Tom Kennedy, General Manager

By: \_\_\_\_\_  
Name, Title

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_