



RAINBOW MUNICIPAL WATER DISTRICT

REQUEST FOR PROPOSALS

January 23, 2019

TO PROVIDE:

**PROFESSIONAL INUNDATION MAP DEVELOPMENT SERVICES
FOR
BECK DAM INUNDATION MAP PROJECT**

PROPOSALS DUE BEFORE 3:00 P.M.

ON

February 26, 2019

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

I. INTRODUCTION

Rainbow Municipal Water District (“District”) covers an area of approximately 82 square miles serving the unincorporated communities of Rainbow and Bonsall, as well as portions of Pala, Fallbrook, and Vista. The District has approximately 320 miles of water pipeline within the system, along with 14 storage tanks, and 4 water reservoirs. The Beck Reservoir, which is currently not in operation, is impounded by Beck Dam. Beck Dam is registered with the Division of Safety of Dams under dam number 2048.

The District prepared this Request for Proposals (RFP) to solicit proposals and select the most qualified consultant with expertise in inundation map development to assist the District with services as described in the “Project Scope of Services.”

The contract duration will be 120 calendar days from the issuance of the notice to proceed.

This Request for Proposals describes the general scope of services and the proposal submittal requirements. Failure to submit the information in accordance with the requirements of this Request for Proposal and its associated procedures may be cause for disqualification.

II. PROJECT SCOPE OF SERVICES

The District intends to contract for the services of a licensed civil engineering firm who maintains expertise and experience in hydraulics and hydraulic studies of dams, including development of inundation maps, to provide the professional services described below. The scope of the services includes the following key elements:

- Development of a new inundation map and associated technical study and report for Beck Dam, DSOD registered dam #2048.
- Development of inundation map, technical study report and associated materials will be developed per “Draft DSOD Inundation Map Regulations – Draft 13.2 (23 CCR et seq (Inundation Maps) – Draft 13.2)” released by DSOD on September 15, 2017.
- Draft DSOD Inundation Map Regulations are incorporated herein as Attachment “A” for reference.
- Deliverables shall incorporate all requirements of DSOD Inundation Map Regulations – Draft 13.2 as required for submittal, review and approval by DSOD.

PROJECT MANAGEMENT

Consultant shall provide overall project management including contract administration, and budget and schedule tracking, sub-consultant management, kick-off and progress meetings and controls. Consultant shall provide internal quality control and quality assurance procedures.

The Consultant shall prepare meeting agendas and minutes for all meetings. The minutes shall be distributed to all attendees, invitees, and the District’s project manager within seven (7) working days after the meeting. The minutes shall include, but not be limited to, list of attendees with phone numbers and e-mail, synopsis of discussion items, any pertinent information, action items, and follow-up to the action items.

The Consultant shall provide a digital version of the project schedule in Microsoft Project format and hard copy. The project schedule shall be updated regularly.

III. PROPOSAL REQUIREMENTS

The proposal shall not exceed 25 pages excluding resumes, cover letter, dividers, front and back covers. Proposals failing to provide sufficient information and assurances of performance to accurately assess each category of the required services and failing to comply with requirements and conditions of the RFP will not be given further consideration. The Consultant’s Proposal shall include, at a minimum, the following:

1. A statement that this RFP shall be incorporated in its entirety as a part of the Consultant's Proposal.
2. A statement that this RFP and the Consultant's Proposal will jointly become part of the Agreement for Professional Consultant Services for this project when said Agreement is fully executed by the Consultant and the President of the Board of Directors of the Rainbow Municipal Water District.

3. Executive Summary

Summarize the contents of your firm's proposal in a clear and concise manner.

4. Project Description

- i. Explain the objective of the project and how you propose to accomplish the recognized goals.
- ii. Describe the services and deliverables to be provided.
- iii. Include a statement on what makes your firm uniquely qualified.

5. Identification of Prime Consultant

- 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, address and telephone number of person to contact concerning the Response Submittal.
- v. Number of staff and the discipline/job title of each.

6. Identification of Sub Consultants

- i. Legal name and address of the company.
- ii. Name, title, address and telephone number of prime contact
- iii. Number of staff and the discipline/job title of each.

7. Project Organization and Experience of the Project Team

- i. Describe proposed project organization, including identification and responsibilities of key personnel, including sub-consultants. Include resumes.
- ii. Describe the experience of the Project Manager and the experience that the proposed personnel have working on past projects as a team.
- iii. Describe project management approach to the work effort, locations where work will be done, responsibilities for coordination with the District, lines of communication necessary to maintain design on schedule.
- iv. Describe a proposed schedule showing all facets of work that will meet the District's objectives and goals in a timely manner.
- v. Describe the Firm's capacity to perform the work within the time limitations, considering the firm's current and planned workload and the firm's current and planned work force.

8. Statement of Qualifications

A statement of qualifications applicable to this project including the names, qualifications and proposed duties of the Consultant's Staff to be assigned to this project; a listing of recent similar projects completed including the names, titles, addresses and telephone numbers of the appropriate persons whom the District could contact. If one or more of the Consultant's staff should become unavailable, the Consultant may substitute other staff of at least equal competence only after prior written approval by the District.

9. Resource Allocation Matrix

A resource allocation matrix must be submitted with the Proposal. The resource allocation matrix must list detailed tasks in rows and the appropriate individual (Job Title Only) as well as the number of hours that

these individuals will be working on each task listed, will be included in adjacent columns. The resource allocation matrix and the project design schedule are required of both the primary consultant, as well as any sub-consultant. In addition, the applicable construction support services consultant must list the type and number, or hours of geotechnical tests being proposed, as well as the type and number of hours of inspection or survey work within the Proposal. Failure to do so will result in the Consultant's Proposal being deemed incomplete and it will not receive further consideration. The construction support services Consultant is not required to provide a Project Schedule with milestones.

10. A statement that the Consultant acknowledges and understands that the consultant will not be allowed to change the sub-consultant without written permission from the District.

11. Firm's Local Experience

Describe the firm's experience and knowledge with inundation map development.

12. Creative Alternatives

Discuss any creative solutions to meet the project objectives.

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

- i. Proposed fee will not be used as a selection criteria for award, but may be used to evaluate the Consultant's understanding of the Scope of Work.
- ii. Include the hourly rates of all staff that will charge directly to the project. The cost proposal format **shall conform exactly to the Resource Allocation Matrix**. Rows and Columns shall all match

14. Exceptions to this RFP

A single and separate section with the heading "ADDITIONS OR EXCEPTIONS TO THE DISTRICT'S REQUEST FOR PROPOSAL" containing a complete and detailed description of all the exceptions to the provisions and conditions of this Request for Proposal upon which the Consultant's Proposal is contingent and which shall take precedent over this RFP.

15. 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 primary selection criterion, 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	5%
4. Project Organization and Experience	25%
5. Past Performance, Including Cost Control and Schedule Control	20%
6. Firm's Local Experience	5%
7. Creative Alternatives	10%

IV. SELECTION PROCESS

The District may enter into negotiations with one or more top-ranked firms to obtain the best and final offer of each. 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 work, contract terms and conditions, office arrangements, attendance requirements and appropriateness of the proposed fee.

If negotiations result in a proposed agreement that the General Manager determines to be fair and reasonable, the contract will be presented 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.

V. 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:

Proposal Due Date	February 26, 2019
Preliminary Selection	March, 2019
RMWD Board of Directors Approval (TBD)	April, 2019

VI. SPECIAL CONDITIONS / ATTACHMENTS

1. Draft DSOD Inundation Map Regulations dated October 18, 2017 (Attachment “A”).
2. An example professional services contract is attached. Consultant shall identify any exceptions regarding the contract. (Attachment “B”)

VII. SUBMITTAL REQUIREMENTS

1. One (1) executed original marked “ORIGINAL” in red ink and three (3) 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 electronic copy of the proposal in PDF format, on a “thumb drive”. The Response 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 **3:00 p.m.** local time, on or before **February 26, 2019** at the office of:

**RMWD Engineering Department
3707 Old Highway 395
Fallbrook, CA 92028**

Attn: RMWD Engineering Department (D. 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. The deadline for questions is February 19, 2019.

ATTACHMENT "A"

State of California Office of Administrative Law

In re:
Department of Water Resources

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 335, 335.2, 335.4, 335.6,
335.8, 335.10, 335.12,
335.14, 335.16, 335.18,
335.20

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

OAL Matter Number: 2017-1009-03

OAL Matter Type: Emergency (E)

This emergency rulemaking by the Department of Water Resources establishes criteria for dam owners to prepare and submit inundation maps for review pursuant to Water Code sections 6160, 6161, and 6162 (added by Stats. 2017, ch. 26, § 88 (SB 92)).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/19/2017 and will expire on 4/18/2018. The Certificate of Compliance for this action is due no later than 4/17/2018.

Date: October 19, 2017



Nicole C. Carrillo
Attorney

For: Debra M. Comez
Director

Original: Grant Davis
Copy: Michael Waggoner

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-1009-03E
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ENDORSED - FILEDin the office of the Secretary of State
of the State of CaliforniaOCT. 19 2017
1:50 P.M.

For use by Office of Administrative Law (OAL) only

2017 OCT -9 AM 10
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Water Resources

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Inundation Maps	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 335, 335.2, 335.4, 335.6, 335.8, 335.10, 335.12, 335.14, 335.16, 335.18, 335.20
	AMEND
TITLE(S) 23	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

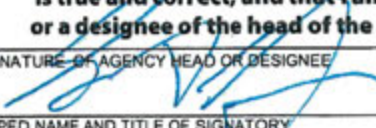
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Michael Waggoner	TELEPHONE NUMBER (916) 227-9800	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) mapregs@water.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9.12.17
TYPED NAME AND TITLE OF SIGNATORY Grant Davis, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 19 2017

Office of Administrative Law

NOTE: All of the proposed regulation text is to be added to the California Code of Regulations.

**California Code of Regulations
Title 23. Waters
Division 2. Department of Water Resources
Chapter 1. Dams and Reservoirs
Article 6. Inundation Maps**

§ 335. Scope of Regulations

Inundation maps shall be prepared for dams and critical appurtenant structures regulated by the state, except dams classified by the department as low hazard as described in Section 335.4. The regulations in this article apply to inundation maps and supporting technical studies necessary to develop the maps. Owners are responsible for preparing and submitting these documents to the department.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Sections 6002, 6160 and 6161, Water Code.

§ 335.2. Definitions

For purposes of this Article, the terms listed below shall have the meanings noted:

- (a) “Breach” refers to a sudden opening through a dam system that drains the reservoir.
- (b) “Breach elevation” refers to the elevation of the water in a reservoir at full reservoir conditions.
- (c) “Breach time” refers to the modeled time elapsed from initial dam failure to total dam failure.
- (d) “Critical appurtenant structure” refers to a man-made barrier or hydraulic control structure that impounds the same reservoir as the dam and is 25 feet or more in height; impounds a minimum of 5,000 acre-feet of water at full reservoir conditions; or has the potential to inundate downstream life or property, including but not limited to emergency spillways, gated spillways, and saddle dams. The height of a critical appurtenant structure shall be determined as follows: saddle dams shall be measured from the downstream toe to the maximum water storage elevation; all other critical appurtenant structures shall be measured from the upstream toe to the maximum water storage elevation.

Emergency Regulations – Inundation Maps

A critical appurtenant structure may contain multiple water-barrier features, including but not limited to gates, flashboards, and concrete monoliths. Power system penstocks, lined spillway chutes, and low level outlets whose failure would not exceed the downstream channel capacity are not considered critical appurtenant structures as they pertain to inundation maps.

(e) “Critical facilities” refers to lifeline infrastructure and facilities including but not limited to schools, hospitals, skilled nursing facilities, major roads, public water and electric utilities, and communication infrastructure, as described in Section 8589.5 of the Government Code.

(f) “Cross-section” refers to a linear representation perpendicular to a watercourse and its adjacent floodplain, capturing the topography perpendicular to the flow direction.

(g) “Dam system” refers to a dam and all critical appurtenant structures that impound the same reservoir.

(h) “Deflood time” refers to the time elapsed from the flood wave arrival time until water at the measured location recedes to within one foot of its preflood water elevation.

(i) “Dynamic routing” refers to hydraulic flow routing based on the shallow water equations to compute changes in discharge, velocity, and stage with respect to time at various locations along a watercourse. The most common form of the equations is the Saint-Venant equations.

(j) “Failure scenario” refers to the modeled simulation of a complete failure of a dam or critical appurtenant structure which results in the uncontrolled release of water.

(k) “FEMA P-946” refers to the “Federal Guidelines for Inundation Mapping of Flood Risks Associated with Dam Incidents and Failures” dated July 2013, hereby incorporated by reference.

(l) “Flood surcharge” refers to the volume in a reservoir above the maximum certified water storage elevation resulting from a storm event.

(m) “Flood wave arrival time” refers to the elapsed time from the initiation of the failure scenario until the arrival of the leading edge of the flood wave comprising a one (1) foot rise above the ground elevation or water surface elevation before the failure scenario.

Emergency Regulations – Inundation Maps

- (n) “Freeboard” refers to the vertical distance between the lowest point along the top of a dam, dike, berm, levee, or other similar feature and the surface of the water contained therein.
- (o) “Full reservoir conditions” refers to the maximum water storage elevation authorized in the department’s Certificate of Approval for the dam.
- (p) “Hydraulic model” refers to a simulation of conveyance of water through a watercourse.
- (q) “Hydrologic model” refers to a simulation of watershed processes such as precipitation, infiltration, and runoff. Hydrologic models perform simplified forms of dynamic routing.
- (r) “Inundation area” refers to the area that would experience a rise in water surface elevation of at least one (1) foot as the result of a failure scenario.
- (s) “Inundation map” refers to a map showing the area that would result in flooding from a failure scenario.
- (t) “One-dimensional model” refers to a numerical hydraulic model in which variables such as velocity and depth vary in one direction along a watercourse.
- (u) “Peak flow” refers to the maximum rate of water discharge.
- (v) “River mile” refers to the distance from a fixed point along a watercourse, measured along the thalweg.
- (w) “Sequential dam failure” refers to a failure scenario of an upstream dam system that results in the failure of one or more downstream dam systems.
- (x) “Storm-induced failure” refers to a failure scenario in which the extent of the inundation area is greater than that of a sunny day failure scenario.
- (y) “Sunny day failure” refers to a failure scenario of the dam system during full reservoir conditions with non-flood season inflow.
- (z) “Thalweg” refers to the line connecting the lowest point of a watercourse.
- (aa) “Toe” refers to the junction of the slope of a dam or critical appurtenant structure with the natural ground surface.
- (bb) “Two-dimensional model” refers to a numerical hydraulic model in which variables such as velocity and depth vary in two directions along a watercourse.

Emergency Regulations – Inundation Maps

(cc) “Watercourse” refers to a stream or open conduit, including but not limited to canyons and floodplains.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; Sections 6002, 6002.5, 6004.5, 6005, 6008 and 6161, Water Code.

§ 335.4. Hazard Potential Classification

The department shall classify the public safety risk of all state jurisdictional dams as follows:

(a) Low Hazard Potential. Dams assigned the low hazard potential classification are those where failure or mis-operation of the dam system would result in no probable loss of human life and low economic and/or environmental losses. Losses are expected to be principally limited to the owner’s property.

(b) Significant Hazard Potential. Dams assigned the significant hazard potential classification are those dams where failure or mis-operation of the dam system would result in no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or other significant impacts.

(c) High Hazard Potential. Dams assigned the high hazard potential classification are those where failure or mis-operation of the dam system will probably cause loss of human life.

(d) Extremely High Hazard Potential. Dams assigned the extremely high hazard potential classification are dams that would otherwise be classified as high hazard dams, but where failure or mis-operation of the dam system would probably cause considerable loss of human life and would affect an inundation area with a population of 1,000 persons or more, or where critical facilities could be impacted.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6002.5, 6009, 6160 and 6161, Water Code.

§ 335.6. Inundation Map Updates

The owner of a dam shall update all inundation maps for the dam system under each of, but not limited to, the following circumstances:

Emergency Regulations – Inundation Maps

- (a) The department determines there is a significant change in the dam or critical appurtenant structure.
- (b) There is a significant change in downstream development that involves people and property.
- (c) The department changes the hazard classification of the dam.
- (d) No less frequently than every 10 years.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6006, 6007 and 6161, Water Code.

§ 335.8. Civil Engineering

Inundation maps and technical studies shall be prepared by, or under the direction of, a civil engineer who is registered pursuant to California law and authenticated as provided in the Business and Professions Code, Division 3, Chapter 7 commencing with Section 6700.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code; Section 6700, Business and Professions Code.

§ 335.10. Reporting Standards

Inundation maps and technical studies prepared in accordance with this Article shall utilize the following standards and conventions, unless otherwise indicated:

- (a) Reservoir storage and other water volumes shall be reported in acre-feet.
- (b) Water discharge shall be reported in cubic feet per second.
- (c) Geographic locations shall be reported in California Coordinate System or Universal Transverse Mercator coordinates relative to NAD83. Coordinates shall be specified commensurate with the precision of the analysis.
- (d) Elevations shall be reported in feet above a specified vertical datum such as NAVD88 or NAVD29. Elevations may also be reported relative to an established local datum.

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(e) Geospatial data shall be submitted in NAD 1983 Teale (California) Albers projection, with the units specified.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

§ 335.12. Technical Study

A single technical study shall be prepared for each dam system for which inundation maps are required.

(a) Study contents. The technical study shall include the following:

- (1) The name of the dam, department dam number, national dam ID number, and name or description of any critical appurtenant structures.
- (2) The location of the dam and all critical appurtenant structures.
- (3) The name and location of cities, towns, counties, and any populated area that could be affected by a failure scenario.
- (4) A brief narrative of the hydrologic, meteorologic, and topographic features of the watershed, dam site, and downstream areas.
- (5) An engineering description of the dam, including the type of construction (e.g., earth, rock, or concrete). Include a description of the features comprising each critical appurtenant structure (i.e., a description of all the gates and concrete structures comprising a gated spillway structure).
- (6) Elevation of the crest and upstream toe for the dam and each critical appurtenant structure. Report the elevation of the downstream toe of the dam.
- (7) A reservoir storage capacity curve that shows the relationship between reservoir elevation, surface area, and volume from the base of the reservoir to the dam crest.
- (8) A spillway rating curve that shows the relationship between stage and discharge.
- (9) The type of terrain data used, including any modifications made to the terrain.

Emergency Regulations – Inundation Maps

(10) A summary of the modeled failure scenarios for the dam system. For each failure scenario, include the breach hydrograph immediately downstream of the dam or critical appurtenant structure.

(11) The modeling methodology, the reasons for its use, and the name, version, release date and author of the modeling software. Report all assumptions, failure parameters, calibration and sensitivity analyses of the model, including the model's response to changes made to the roughness or other friction coefficients. Report modifications made to stabilize the model or accelerate its computational runtime, and the effects such modifications have on the modeled inundation results. Describe known limitations of the modeling method utilized. Provide justification for determining the downstream extent of the inundation boundary.

(12) Digital files comprising the following for each failure scenario:

(A) A vector file of the inundation area boundary.

(B) Raster files of the flood wave arrival time, maximum depth, peak velocity, and deflood time.

(13) The department may request additional information during the course of its review.

(b) Modeling Requirements.

(1) A two-dimensional, open channel, unsteady flow, hydraulic model shall be used to evaluate each failure scenario for a dam system, except as described below. The model must be capable of performing dynamic routing to approximate the temporal and spatial changes in inundation magnitude and extent.

(2) A one-dimensional hydraulic model may be used that is capable of computing spatial and temporal changes to water surface elevation, velocities, and flows at each cross section. A one-dimensional model may be used only in the following circumstances:

(A) To simulate levee overtopping as a subcomponent of the two-dimensional model of the failure scenario.

(B) Where the flood wave would be confined to a canyon or narrow watercourse in which the direction of flow is dominantly in the downstream direction.

(3) Upon approval of the department, the owner of a significant hazard dam may use a hydrologic model, rather than a hydraulic model, if the dam impounds less than 100 acre-feet of water and the flood wave produced by the failure scenario would be confined to a

Emergency Regulations – Inundation Maps

canyon or narrow watercourse in which the direction of flow is dominantly in the downstream direction.

(4) Each model shall utilize the best available terrain data, consisting of the finest resolution discretization available.

(c) Failure Scenarios. A sunny day failure scenario is required for each dam and critical appurtenant structure. A storm-induced failure scenario is not required, but may be submitted in lieu of a sunny day failure scenario.

Each failure scenario shall employ a complete and nearly instantaneous loss of the dam or critical appurtenant structure, and utilize breach parameters as described in FEMA P-946 (2013). The geographic extent of the model simulation shall terminate in accordance with FEMA P-946 (2013). Failure scenarios shall be modeled as follows:

(1) For gated critical appurtenant structures, such as a spillway with multiple radial gates, the failure scenario shall consist of the complete failure of all gates together with the concrete control section breached to the upstream toe.

(2) A sequential dam failure scenario is required for an upstream dam system that causes the failure of one or more downstream dam systems, as described in FEMA P-946 (2013). A sequential dam failure scenario shall employ an overtopping failure mode for all downstream dam systems impacted by the routing of the flood wave downstream. The owner of the upstream dam system is responsible for preparing the sequential failure scenario.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

§ 335.14. Inundation Maps

Inundation maps shall be prepared for each failure scenario to satisfy the FEMA P-946 (2013) and the requirements of this section.

(a) Temporal contours. Two separate inundation maps shall be prepared for each failure scenario, with contours depicting time increments appropriate for the failure scenario for flood wave arrival time and deflood time.

(b) Depth grid. All inundation maps shall depict the entire inundation area with discrete categories of maximum flood wave depths, with a legend showing each depth range. The opacity of the maximum flood wave depth layer shall be adjusted to display the underlying base map.

Emergency Regulations – Inundation Maps

(c) General information. Each inundation map shall contain the following general information:

- (1) The name of the dam, the department's dam number, the national dam ID number, and the county in which the dam is located.
- (2) The failure scenario. If a storm-induced failure scenario is depicted, the return period shall be reported on the inundation map.
- (3) The map background with suitable aerial imagery.
- (4) Callouts identifying the location of the dam, all critical appurtenant structures, and all critical facilities affected by the failure scenario. The downstream watercourse and flood control features, such as dams, levees, weirs, pumps, and control structures shall be labeled.
- (5) The identity of any jurisdictions, including boundary delineations or place marks identifying the city, county, or other governmental agency jurisdictional boundaries affected by the inundation area.
- (6) An arrow indicating north.
- (7) An appropriate scale bar and the stated map scale.
- (8) Vertical elevation datum.
- (9) Map collar information, including horizontal reference grid ticks.
- (10) An index showing the relationship of the map sheet to the other map sheets if the map has multiple sheets.
- (11) The date of preparation of the map.
- (12) The signature, seal, and licensed civil engineer number of the engineer responsible for preparing the map.
- (13) All features on maps shall be clearly labeled with text boxes and legends, as appropriate.
- (14) A statement that the information shown is approximate, and should be used as a guideline for emergency response and preparation purposes.

Emergency Regulations – Inundation Maps

(15) A statement confirming the inundation map meets all applicable state and federal standards and has been prepared in consideration of all potential downstream hazards by a licensed civil engineer.

(d) Map Layout. Each of the inundation maps shall be printed on paper sized 11×17 inch or larger, with a minimum resolution of 300 dots per inch. All inundation maps shall apply an appropriate map scale as described in FEMA P-946 (2013). For failure scenarios with a large inundation area, each inundation map may comprise more than one sheet.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; Sections 6160 and 6161, Water Code.

§ 335.16. Submission of Inundation Maps and Technical Study

The owner of a dam shall submit inundation maps and the supporting technical study to the department as specified below:

(a) An electronic color copy of each new and revised inundation map in portable document format (PDF extension). If practical, two hard color copies of each inundation map should also be submitted.

(b) Technical Study: Two hard copies and an electronic copy including digital content.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

§ 335.18. Department Review and Approval

(a) The department shall evaluate each inundation map and technical study that is submitted for consistency with the requirements of this article and shall notify the dam owner in writing that the map and study have been approved, are incomplete, or are disapproved and the reasons therefor, as follows:

(1) Approved. The department has evaluated the inundation map(s) and technical study and determined that they satisfy the requirements of this article.

(2) Incomplete. The department has evaluated the inundation map(s) and technical study and determined that one or both do not satisfy the requirements of this article as a result of minor problems identified by the department. A dam owner shall remedy any deficiencies and submit the corrected map and study.

Emergency Regulations – Inundation Maps

(3) Disapproved. The department has evaluated the inundation map and technical study and determined that one or both do not satisfy the requirements of this article due to unresolved problems associated with an incomplete submittal. When an inundation map or technical study is disapproved, the dam owner shall submit a new map and technical study that satisfy this article.

b) Inundation maps submitted to the department for review by January 1, 2018, shall be evaluated for consistency with the FEMA P-946 (2013).

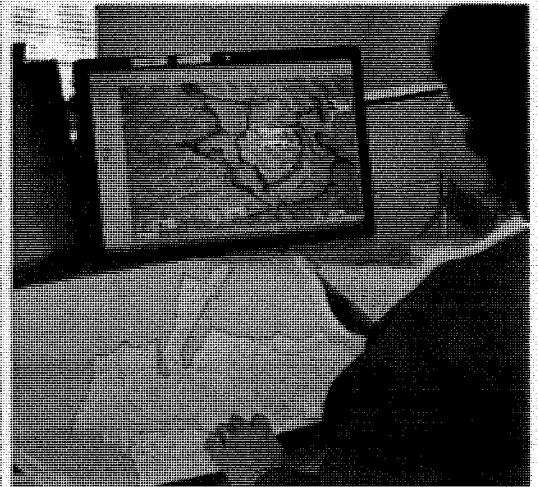
Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 8589.5, Government Code; Sections 6161 and 6431, Water Code.

§ 335.20. Public Availability of Inundation Maps

The department shall post copies of approved inundation maps on the department's website.

Note: Authority cited: Sections 6078 and 6162, Water Code. Reference: Section 6161, Water Code.

ADOPT



Federal Guidelines for Inundation Mapping of Flood Risks Associated with Dam Incidents and Failures

First Edition

FEMA P-946 / July 2013



FEMA



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

PROFESSIONAL SERVICES AGREEMENT

PROJECT: TITLE
Project No. 000000, Contract No. 19-00

THIS AGREEMENT ("Agreement") is made and entered into this ___ day of Month, 2019 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 CONSULTANT 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 (5th) 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 _____
TOM KENNEDY, 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