

**Professional Services Agreement  
Work Order Number: [75914 & 75922]**



**ELSINORE VALLEY MUNICIPAL WATER DISTRICT  
Engineering Department**

**REQUEST FOR PROPOSALS**

**FOR:**

**AMI Phases II & III Installation – Construction Management and  
Inspection Services**

**Contact Person:  
Amy Czajkowski  
Phone Ext. 8786**

**31315 Chaney Street  
Lake Elsinore, CA 92530  
951.674.3146**

**October 20, 2016**

# ELSINORE VALLEY MUNICIPAL WATER DISTRICT REQUEST FOR PROPOSALS

## 1. INTRODUCTION

### 1.1 GENERAL

Elsinore Valley Municipal Water District (“EVMWD”) is requesting proposals (“Proposals”) from qualified consultants (“Respondents”) for:

AMI Phase II Installation – Professional Construction Management & Inspection Services  
*and*

AMI Phase III Installation – Professional Construction Management & Inspection Services

(the “Projects”). The purpose of the Proposal is to demonstrate the qualifications, competence and capacity of Respondent to perform the work or provide the services described in this RFP. The Proposal should demonstrate the qualifications of the Respondent and of the particular staff to be assigned to these Projects.

### 1.2 Project Background

EVMWD is located in Southern California in the western portion of Riverside County, one of the fastest growing areas in California. EVMWD provides water and wastewater services to approximately 42,000 residential, commercial, and irrigation customers in the cities of Lake Elsinore, Canyon Lake, and Wildomar, parts of Murrieta, and unincorporated areas of Riverside County.

### 1.3 Project Description

EVMWD’s goal is to expand implementation of an Automated Metering Infrastructure (AMI) system to the entire service area. The Projects represent the second and third phases of a multi-phased program to implement AMI throughout the District’s 42,000 plus connections. Phase II of AMI installation will focus on approximately 5,227 customers located primarily within the District’s most inefficient areas (“Phase II”). Phase II is for the installation and/or retrofit of meter transmission units (MTUs) for approximately 5,227 connections within the meter routes of 303, 402, 403, 502, and 503. Phase III is for the remainder of the meter routes not covered with the initial trial and Phase II, which is approximately 33,000 connections (“Phase III”). These projects will install advanced meter data management systems that will provide timely, high resolution meter reading and enable EVMWD to eliminate on-site visits and estimated reads, reduce theft and loss, reduce unaccounted for water, and implement time of use billing.

EVMWD has determined that the Aclara AMI system best meets its needs. Aclara will be installing the Aclara Owned Network (AON) and EVMWD will contract for the installation of the Meter Transmission Units (MTU) that enable the system to operate. The contractor will enter each existing meter box and install the MTU and program the unit. There will also be meter change outs, and other miscellaneous work, as needed.

EVMWD is soliciting proposals for construction management and inspection services to select a consultant to support each of the Projects. Respondents shall have a construction management

and inspection background and understand all of the steps required for MTU installation, meter box change out work, meter box lid change outs, and programming of MTUs.

Respondents' staff shall be capable of understanding and monitoring the use of a Work Order Management Systems (WOMS). The purpose of the WOMS is to not interfere with the District's billing system but have a seamless integration of each MTU directly synched to the District's Customer Information System (CIS).

#### 1.4 Project Funding

The Projects will be funded in whole or in part by the following funding source in addition to District funds:

- Phase II: 2014 Water Energy Grant Program (Department of Water Resources, State of California)
- Phase III: Clean Water State Revolving Fund (State Water Resources Control Board)

The successful Respondent will be required to comply with all requirements associated with the funding in carrying out the Project.

#### 1.5 Project Schedule

EVMWD anticipates a Project duration of 6 months for Phase II and 18 months for Phase III. It is anticipated the start dates for each project will be as follows:

- Phase II: January 2017
- Phase III: March 2017

Respondents to this RFP must be able and willing to commit the necessary resources to provide the necessary services throughout this timeframe. Respondents to this RFP must be able and willing to commit the necessary resources to complete each project within the timeframes required by the District.

#### 1.6 Pre-Proposal Meeting

EVMWD will conduct a **mandatory** pre-proposal meeting at the District Headquarters, 31315 Chaney St., Lake Elsinore, on **Thursday, November 3, 2016** at 11:00 a.m.

## 2. **SCOPE OF REQUIRED SERVICES**

### 2.1 Summary of Services

The scope of services to be provided generally includes the following:

Consultant will be expected to provide field inspection for the AMI/MTU installation contract. Resident Engineering services will be required for submittal review, payment requests, quality control, and general construction management services to support the

construction/installation efforts. The Consultant will be expected to maintain the construction records and transmit them to EVMWD on a bi-weekly basis.

A detailed Scope of Services is attached hereto as Attachment "1". While the full scope of work shall be negotiated in a Professional Services Agreement, the Respondent will be expected to fulfill, at a minimum, the services and technical requirements described in the attached Scope of Services.

## 2.2 Public Works Contractor Registration

If the scope of services to be provided pursuant to paragraph 2.1 above include public works project as defined by Labor Code Section 1720, et seq. and 1770, et seq., then pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a Contract, the Respondent and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

## 3. SCHEDULE OF EVENTS

Timetable for Reviewing and Evaluating Proposals:

1. RFP Release	October 20, 2016
2. Pre-Proposal Meeting	November 03, 2016
3. Pre-proposal Requests for Clarification Due	November 17, 2016
4. Proposal Due Date	November 22, 2016
5. Anticipated Final Selection	December 08, 2016
6. Project Start	January 2017

## 4. PROPOSAL REQUIREMENTS

### 4.1 Proposal Format

Respondent's Proposal shall be clear, accurate, and comprehensive. Excessive or irrelevant materials will not be favorably received. The Proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Respondent.

Proposals shall be three-hole punched in a three-ring binder. Proposals shall be organized, tabbed, and numbered in the order presented below:

(a) Cover Letter. Identify Respondent's legal name, background, and contact person, including corporate office and local office address, city, state, zip code, telephone number, fax number, web site address, and e-mail address. Summarize key elements of the proposal. The letter must stipulate that the cost proposal will remain valid for a period of at least 180 days.

(b) Understanding of Project and Project Approach. A detailed description of Respondent's understanding of and approach to the project. Provide a detailed scope of services which reflects the Scope of Services described in this RFP.

(c) Personnel and Subconsultants. Identify the names and specific qualifications, experience, and appropriate licenses held, if applicable, of the primary staff to be assigned to the project. Include a resume for all primary staff. Respondent must be capable of providing up to four inspectors at one time. Identify any subconsultants which Respondent proposes to use for any portion of the services.

(d) List of Representative Projects. List of representative projects undertaken by Respondent in the last 5 years demonstrating experience in AMI installation work and/or instrumentation work.

(e) References. Provide three (3) references regarding the Respondent's experience and performance performing similar services. Include the following information: (1) Organization contact name, phone number, e-mail address; and (2) Project size and description, if applicable, and description of services. Each reference must be from a different organization.

(f) District Experience. Identify all previous and current contracts with the District. Include a contact name, description of services, and dates of services performed.

(g) Cost Proposal. Include a detailed cost proposal for each phase of work inclusive of all hourly rates, anticipated travel, and other incidental costs and charges. Costs shall be broken down by task. It is anticipated that a not-to-exceed dollar limit will be negotiated with the successful Respondent. The following shall be assumed for each phase:

- Phase II: 1 inspector full time (100%) and CM for 20%
- Phase III: 3 inspectors full time (100%) and CM for 20%

(h) Conflict of Interest Disclaimer. Respondent must submit the Conflict of Interest Disclaimer statement disclosing interest, ownership or remuneration of any type that has been received or is anticipated from any manufacturer, supplier or distributor which may be recommended on the project. The Conflict of Interest Disclaimer is included in Attachment "2" Required Forms.

(i) Acknowledgment of Insurance Requirements. Respondent must submit the attached "Acknowledgment of Insurance Requirements" form acknowledging that it has reviewed the insurance requirements and will provide such insurance. The Acknowledgment of Insurance Requirements Form is included in Attachment "2" Required Forms. The applicable insurance requirements are described in section 3.6 of the Professional Services Agreement, attached hereto as Attachment "3."

(j) Public Works Contractor Registration Certification. Respondents must complete the Public Works Contractor Registration Certification, attached hereto as Attachment "2."

#### 4.2 No Deviations from the RFP

In submitting a Proposal, Respondent is certifying that it takes no exceptions to this RFP including, but not limited to the Professional Services Agreement attached hereto as Attachment "3." Respondent is directed to carefully review the proposed Professional Services Agreement and, in particular, the insurance and indemnification provisions therein.

## 5. SUBMITTAL INSTRUCTIONS

To be considered, EVMWD must receive three (3) hard copies of the Proposal and one (1) electronic pdf version on a CD or USB Drive, at the address set forth below, prior to **5:00 p.m. local time on Tuesday, November 22, 2016**. The Proposal must be enclosed in a sealed envelope.

**By Mail or Delivery**  
Elsinore Valley Municipal Water District  
Engineering Department  
31315 Chaney St  
Lake Elsinore, CA 92531  
Attn: Engineering Manager

Respondent's name and address shall appear in the upper left hand corner of the envelope. If more than one envelope is required, each envelope shall be legibly numbered below the name of the Respondent, e.g. Envelope 1 of 3, as required.

## 6. EVALUATION

### 6.1 Evaluation Criteria

A Selection Committee will evaluate and rank the proposals. Proposals will be evaluated according to the following criteria:

<u>Evaluation Criteria</u>	<u>%</u>
Relevant Qualifications/Experience	25
Understanding of Project and Project Approach	30
Scope of Work and Schedule	25
Cost	10
Overall Quality Of Proposal	10

Respondents should note that the lowest cost proposal is not the sole determining factor in the final selection.

Upon determination of the highest ranked firm, EVMWD will endeavor to negotiate a mutually agreeable scope and fee with the selected firm. In the event that EVMWD is unable to reach agreement, EVMWD will proceed, at its sole discretion, to negotiate with the next firm selected by EVMWD.

### 6.2 Interviews

EVMWD may, at its discretion, invite a shortlist of Respondents to participate in a panel interview to be held at EVMWD. No Respondent shall be entitled to or otherwise guaranteed an interview with EVMWD.

### 6.3 Award of Contract

If awarded, the contract will be awarded on the basis of demonstrated competence and professional qualifications. EVMWD reserves the right to reject all proposals and to contract for services in the manner that most benefits EVMWD including awarding more than one contract if desired.

Any Respondent awarded a contract shall execute EVMWD's Professional Services Agreement, which is attached as Attachment "3", without exception.

If awarded, EVMWD will award separate contracts for each Project on the form provided in Attachment "3". EVMWD may award both Projects to the same Respondent or it may award the Projects to two or more Respondents.

## 7. REQUESTS FOR CLARIFICATIONS

All questions, interpretations or clarifications, either administrative or technical must be requested in writing and directed to:

Amy Czajkowski

Email: [aczajkowski@evmwd.net](mailto:aczajkowski@evmwd.net)

Fax: 951-674-7554

All written questions will be answered in writing and conveyed to all firms on the Proposer's List. Oral statements regarding this RFP by any persons should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing by 4:00 p.m. local time on Thursday, November 17, 2016.

## 8. GENERAL PROVISIONS

Respondent is encouraged to review this RFP carefully in its entirety prior to preparation of its Proposal. EVMWD reserves the right to reject any or all Proposals or to select the Proposal most advantageous to EVMWD. EVMWD reserves the right to verify all information submitted in the Proposal.

8.1 Amendments to RFP. EVMWD reserves the right to amend the RFP or issue to all Respondents a Notice of Amendment to answer questions for clarification.

8.2 No Commitment to Award. Issuance of this RFP and receipt of proposals does not commit EVMWD to award a contract. EVMWD expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Respondent concurrently, or to cancel all or part of this RFP.

8.3 Amendments to Proposals. No amendment, addendum or modification will be accepted after the deadline stated herein for receiving Proposals. Respondent may modify or amend its Proposal only if EVMWD receives the amendment prior to the deadline stated herein for receiving Proposals.

8.4 Non-Responsive Proposals. A Proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the Proposal.

8.5 Late Proposals. EVMWD will not be responsible for Proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for by EVMWD.

8.6 Costs for Preparing. EVMWD will not compensate any Respondent for the cost of preparing any Proposal, and all materials submitted with a Proposal shall become the property of EVMWD. EVMWD will retain all Proposals submitted and may use any idea in a Proposal regardless of whether that Proposal is selected.

8.7 Alternative Proposals. Only one final proposal is to be submitted by each Proposer. Multiple proposals will result in rejection of all proposals submitted by the Respondent.

8.8 Public Documents. All Proposals and all evaluation and/or scoring sheets shall be available for public inspection at the conclusion of the selection process.

8.9 No Exceptions. Submission of a Proposal constitutes acceptance by Respondent of the conditions contained in this RFP and the Professional Services Agreement, should Respondent be selected.

**ELSINORE VALLEY MUNICIPAL WATER DISTRICT  
REQUEST FOR PROPOSALS**

**ATTACHMENT 1  
SCOPE OF SERVICES**

**CONSTRUCTION MANAGEMENT AND OBSERVATION SERVICES**

General: The Consultant will be expected to manage the installation of AMI equipment and provide field inspection for the construction contract. Resident Engineering services will be required for submittals review, pay requests, quality control, and general Construction Management services to support the construction efforts. Construction Observation services will be required to assure quality control, assure no interruptions in EVMWD customer billing, document work, and provide direct interaction with the construction Contractor. The Consultant will be expected to maintain the construction records and transmit them in an orderly fashion to EVMWD on a bi-weekly basis.

**Task 1 - Pre-Construction Conference & Progress Meetings**

1.1 Pre-Construction Conference: Consultant shall attend a pre-construction conference scheduled by EVMWD for both projects. Consultant shall be prepared to address construction concerns at the conference. Consultant shall be prepared to comment on the Contractor's proposed means of construction and preliminary schedule, as well as provide agendas and minutes for the conference. EVMWD will provide copies of the plans and specifications.

1.2 Progress Meetings: Consultant shall regularly arrange for and meet with the Contractor as required by the Contract Documents and as needed for the work effort. Consultant shall prepare meeting agendas and minutes. Consultant shall lead the meetings and use them as a forum to discuss and resolve construction issues. EVMWD has bi-weekly project meetings, however, this may vary dependent upon project needs. For the purposes of the proposal each firm shall assume telephone bi weekly progress meetings after the NTP is issued and then biweekly progress meetings to be held at the District once the construction begins.

**Task 2 – Document Control**

General: Consultant must provide an on-line, web based document control software for each of the projects. This software document control system must be described in each Consultant's proposal.

2.1 Shop Drawings/Submittals: Consultant shall process shop and work drawings submitted by the Contractor for compliance with the various project specifications and plans. All submittals for schedule and WOMS shall be reviewed and approved by EVMWD. Consultant shall log and track all shop drawing submittals. Consultant shall inform EVMWD staff of any outstanding shop drawings. All correspondence shall be copied to EVMWD.

2.2 RFIs: Consultant shall timely respond to RFIs in order to prevent construction delays. Consultant shall coordinate with the EOR for any drawings, sketches, and written replies as needed to respond. Consultant shall review responses with EVMWD and advise staff of any potential changes in the construction scope of work. Consultant shall coordinate with EVMWD in preparing any response to the RFIs that might involve inquiries to the design engineer. All responses shall be written; and minor clarifications may be included in emails.

2.3 Pay Requests: Consultant shall review the various Contractor pay requests and reconcile the work done with the pay request. Consultant shall work with the Contractors on required corrections to the pay request. Consultant shall ensure the pay requests are in the format required by EVMWD. Consultant shall submit the requests to EVMWD along with a written statement that they have been reviewed. Stop Notices: Consultant shall track and log all Preliminary Notices and all Stop Notices for EVMWD. Consultant shall provide EVMWD with these logs and assist EVMWD with maintaining internal logs. Consultant shall provide EVMWD notice of any problems with making payments due to stop notices immediately.

2.4 Record Drawings: Consultant shall keep independent sets of record drawings. When construction work has been completed and accepted by EVMWD, Consultant shall assist the EVMWD for each project in the preparation of record drawings. The drawings will become EVMWD property. The original CAD files will be provided to the Consultant as necessary. During the course of construction, Consultant shall regularly inspect the record drawings being maintained by the Contractor. Consultant shall advise EVMWD of the adequacy of these records.

2.5 Project Closeout: Consultant will be responsible for all close-out activities including final reports, assistance with as-built drawing preparation, final project accounting, and close-out Change Orders. These documents are required to be on EVMWD-provided forms. Consultant shall complete all project close-out tasks within 30 days of the completion of construction.

### Task 3 – Contractor Change Orders

Change Orders: Consultant shall advise EVMWD when changes are requested and assist EVMWD with preparation of Change Orders, as needed. Consultant shall review and provide recommendations regarding all Contractor requests for changes, including whether the changes are warranted. Work may include preparation of Change Order drawings and specifications and the following other work items:

- Cost Evaluation: Consultant shall prepare independent opinions of costs for changes. Consultant shall evaluate the Contractor's costs for reasonableness. When authorized by EVMWD, consultant shall negotiate costs and associated requests for time extensions with the Contractor.
- Force Account Work: Consultant shall carefully document all force account work and document labor, materials, and equipment utilized.
- Disputed Work: Consultant shall carefully document all disputed work.

- Time Extensions: Consultant shall review all time extension requests and provide an opinion of whether they are warranted and reasonable. Consultant shall review time extension impacts for compensability with EVMWD staff.

#### Task 4 - Construction Observation

- 4.1 General: Consultant shall observe, document, and determine the acceptability of the construction work in coordination with EVMWD staff.
- 4.2 Daily Reports: Consultant shall prepare daily construction reports and review the Contractor's daily reports. As a minimum, Consultant shall document labor, materials, and equipment used; weather, problems, visitors, change work, questions, directions given, and disputed work.
- 4.3 Photos: Consultant shall photograph the work daily and shall photograph any changed conditions, disputed work, and extra work. Consultant shall identify each photo with a description and date.
- 4.4 Punch Lists: Consultant shall develop and maintain construction punch lists and coordinate the completion and correction of the punch list items with the Contractor.
- 4.5 Testing: Consultant shall coordinate, observe, document, and determine the acceptability of each MTU per Aclara's documented acceptance procedure.
- 4.6 Bi-Weekly Summary Reports: Consultant shall prepare bi-weekly executive summary reports. As a minimum, Consultant shall identify work completed and work remaining to date, the project financial/schedule status reports including work performed under the CM Contract, and a three (3) week look ahead of anticipated project progress.

#### **QUALITY ASSURANCE/QUALITY CONTROL AND PROJECT ADMINISTRATION**

Consultant shall administer a program of Quality Assurance/Quality Control (QA/QC) procedures for producing quality work and shall effectively manage and control the work. Specific procedures shall include, but shall not be limited to, coordination, cost control, checking, reviewing and scheduling the work.

Consultant shall provide a quality check of all construction calculations, Change Order drawings, survey notes, Change Order specifications, construction cost opinions, and reports.

#### **STAFF ASSISTANCE**

EVMWD's staff member assigned to work with Consultant on this project is Amy Czajkowski, Project Manager (760) 518-6266. EVMWD reserves the right to modify staff assignments.

**ELSINORE VALLEY MUNICIPAL WATER DISTRICT  
REQUEST FOR PROPOSALS**

**ATTACHMENT 2  
REQUIRED FORMS**

**CONFLICT OF INTEREST DISCLAIMER**

The undersigned, \_\_\_\_\_ (*Print or Type Name*), declares that \_\_\_\_\_ (*Name of Firm*) [has/ does not have] interest, ownership, or receives/ anticipates receiving remuneration of any type from the manufacturer(s), supplier(s) or distributor(s) which may be recommended on the project, as listed below.

<u>Firm</u>	<u>Product</u>	<u>Remuneration</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**ACKNOWLEDGMENT OF INSURANCE REQUIREMENTS  
AND CERTIFICATION OF ABILITY TO  
PROVIDE COVERAGES SPECIFIED**

I, \_\_\_\_\_, the \_\_\_\_\_  
(President, Secretary, Manager,  
Owner or Representative)

of \_\_\_\_\_, certify that I have  
(Name of Company or Corporation or Owner) read and understand the Insurance  
Requirements set forth in the Professional Services Agreement for the AMI Phases II & III  
Installation – Construction Management and Inspection Services and that our insurance  
company(ies)

\_\_\_\_\_ [fill in name(s) of insurance company(ies)]

is/are able to provide the coverages specified.

\_\_\_\_\_  
Signature of President, Secretary,  
Manager, Owner or Representative

\_\_\_\_\_  
Date

## **PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information. No bid or proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Respondent hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project or contract.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in any contract with subcontractors and ensure that all subcontractors are registered at the time of the proposal submittal and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

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

**ELSINORE VALLEY MUNICIPAL WATER DISTRICT  
REQUEST FOR PROPOSALS**

**ATTACHMENT 3  
PROFESSIONAL SERVICES AGREEMENT**

**ELSINORE VALLEY MUNICIPAL WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **\*\*\*INSERT DAY\*\*\*** day of **\*\*\*INSERT MONTH\*\*\***, **\*\*\*INSERT YEAR\*\*\*** by and between the Elsinore Valley Municipal Water District, a California municipal water district with its principal place of business at 31315 Chaney St., Lake Elsinore, CA 92531 (“District”) and **\*\*\*INSERT NAME\*\*\***, a **\*\*\*[INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]\*\*\*** with its principal place of business at **\*\*\*INSERT ADDRESS\*\*\*** (“Consultant”). District and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing construction management and inspection services to public clients, is licensed in the State of California, and is familiar with the plans of District.

**2.2 Project.**

District desires to engage Consultant to render such services for the AMI Phase **[II OR III]** Installation Construction Management and Inspection Services project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope and Schedule of Services.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional construction management and inspection consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from **\*\*\*INSERT START DATE\*\*\*** to **\*\*\*INSERT ENDING DATE\*\*\***, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, District shall respond to Consultant's submittals in a timely manner. Upon request of District, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

### **3.2 Fees and Payments.**

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [\*\*\*INSERT WRITTEN DOLLAR AMOUNT\*\*\*] (\$[\*\*\*INSERT NUMERICAL DOLLAR AMOUNT\*\*\*]) without written approval by District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment. Consultant shall submit to District a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

3.2.4 Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization by District.

### **3.3 Responsibilities of Consultant.**

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of District and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the

standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

3.3.4 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of District. In the event that District and Consultant cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows: **\*\*\*INSERT NAMES\*\*\***.

3.3.5 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.3.6 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.3.7 Labor Code Provisions.

(a) Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of

Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. 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 available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) Registration and Labor Compliance. If the services are being performed as part of an applicable “public works” or “maintenance” project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

(c) Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.3.8 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3.9 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.3.10 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify District against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### **3.4 Representatives of the Parties.**

3.4.1 District's Representative. The District hereby designates its Director of Engineering, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.4.2 Consultant's Representative. Consultant hereby designates **\*\*\*INSERT NAME OR TITLE\*\*\***, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

### **3.5 Indemnification.**

To the fullest extent permitted by law, Consultant shall immediately indemnify and hold the District, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

Consultant shall immediately defend, with Counsel of District's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind that may be brought or instituted against District or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse District for the cost of any settlement paid by District or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other

proceeding. Such reimbursement shall include payment for District's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents, or volunteers.

### **3.6 Insurance.**

3.6.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the District to terminate this Agreement for cause.

3.6.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(a) Commercial General Liability. Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Consultant shall maintain limits no less than \$2,000,000 per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(b) Automobile Liability. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Consultant shall maintain limits no less than \$1,000,000 per accident for bodily injury and property damage. The automobile liability policy shall include or be endorsed

(amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

(c) Workers' Compensation and Employer's Liability Insurance. Consultant shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount no less than \$1,000,000 per accident for bodily injury or disease. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(d) Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their 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. Consultant shall purchase a one-year extended reporting period: i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. Such insurance shall be in an amount not less than \$2,000,000 per claim.

(e) Excess Liability (if necessary). The limits of Insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the District (if agreed to in a written contract or agreement) before the District's own primary or self-insurance shall be called upon to protect it as a named insured. The policy shall be endorsed to state that the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured at least as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents, and volunteers.

(f) All Coverages. The Consultant is required by this Agreement to state that: (i) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; If any of the required coverages expire or cancel during the term of this agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to District at least ten (10) days prior to the cancellation or expiration date. and (ii) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents, and volunteers.

(g) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents, and volunteers.

(h) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Consultant shall guarantee that, at the option of the District, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents, and volunteers; and insurer shall provide or be endorsed to provide that the deductibles or SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured or (ii) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.6.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII or equivalent, or as otherwise approved by the District.

3.6.4 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time. In the event that the Consultant employs other consultants (sub-consultants) as part of the services covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

3.6.5 Reporting of Claims. Consultant shall report to the District, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

### **3.7 Termination of Agreement.**

3.7.1 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.7.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.7.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.8 Ownership of Materials and Confidentiality.**

3.8.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of District, and shall not be used in whole or in substantial part by Consultant on other projects without the District's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to District reproducible copies of all Documents & Data, in a form and amount required by District. District reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by District at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to District upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to District any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to District upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify District and provide District with the opportunity to obtain the documents.

3.8.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the District.

3.8.3 Right to Use. District shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at District's sole risk. If District uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the District upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a

party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.8.4 Indemnification. Consultant shall defend, indemnify and hold the District, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by District of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.8.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of District, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

### **3.9 Subcontracting/Subconsulting.**

3.9.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

### **3.10 General Provisions.**

3.10.1 Funding Requirements. The Project will be funded in whole or in part by the following funding source: [2014 Water Energy Grant Program (Department of Water Resources, State of California) OR Clean Water State Revolving Fund (State Water Resources Control Board)]. Consultant shall comply with the additional requirements attached to this Agreement as Exhibit "B" and incorporated herein by reference.

3.10.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**DISTRICT:**

Elsinore Valley Municipal Water District  
31315 Chaney St  
Lake Elsinore, CA 92531  
Attn: Director of Engineering

**CONSULTANT:**

[INSERT CONSULTANT NAME]  
[ADDRESS]  
[CITY, STATE ZIP CODE]  
Attn: [INSERT NAME]

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.10.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.10.5 District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project.

3.10.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.10.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.10.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.10.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.10.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.10.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.10.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.10.13 Prohibited Interests. Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the District's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.10.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.10.15 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.10.16 Government Code Claim Compliance. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the District.

3.10.17 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.10.18 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.10.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.10.20 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**ELSINORE VALLEY  
MUNICIPAL WATER DISTRICT**

**[INSERT CONSULTANT NAME]:**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative of Vendor)

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**EXHIBIT A  
SCOPE OF SERVICES**

**[INCLUDE FINAL SCOPE OF WORK]**

**EXHIBIT B  
DWR FUNDING REQUIREMENTS**

**\*\*INCLUDE ONLY FOR PHASE II CONTRACT\*\***

1. AMERICANS WITH DISABILITIES ACT: Contractor shall comply with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
2. AUDITS: Pursuant to Government Code Section 8546.7, the District shall be subject to the examination and audit by the State for a period of three years after final payment under the Grant Agreement with respect to all matters connected with the Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of the District or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after project completion or final billing, whichever comes later.
3. CHILD SUPPORT COMPLIANCE ACT: the Contractor acknowledges in accordance with Public Contract Code 7110, that:
  - a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
4. CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code, Section 1090 and Public Contract Code, Sections 10410 and 10411, for State conflict of interest requirements.
  - a) Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
  - b) Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State

employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

c) Employees of the Grantee: Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Cal. Gov't Code § 87100 et seq.

d) Employees and Consultants to the Grantee: Individuals working on behalf of a Grantee may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

5. DRUG-FREE WORKPLACE CERTIFICATION: Certification of Compliance: By signing this contract, Contractor and its subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

- i) The dangers of drug abuse in the workplace,
- ii) Grantee's policy of maintaining a drug-free workplace,
- iii) Any available counseling, rehabilitation, and employee assistance programs, and iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c) Provide, as required by Government Code Sections 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:

- i) Will receive a copy of Grantee's drug-free policy statement, and
- ii) Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.

6. INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grant Agreement. This right shall extend to any subcontracts, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Grant Agreement with State.

7. **NONDISCRIMINATION:** The Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. The Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

## EXHIBIT B SRF REQUIREMENTS

**[\*\*INCLUDE ONLY FOR PHASE III CONTRACT\*\*]**

The SRF funding agreement shall be on file at the offices of the District, and the District shall make a copy thereof available to Consultant upon request. Consultant shall comply with the SRF requirements contained in this Exhibit to ensure eligibility of this Agreement for SRF funding. Consultant shall agree to any changes to this Agreement required for compliance with the SRF funding agreement.

### 1. SRF ENVIRONMENTAL REQUIREMENTS

In addition to all other environmental requirements applicable to the Project, Contractor shall comply with the following environmental requirements related to the SRF funds:

1. If archaeological features or materials are unearthed during any phase of Project activities, all work in the immediate vicinity of the find shall halt until Recipient has contacted the State and the significance of the resource has been evaluated. Any mitigation measures that may be deemed necessary must have the approval of the State, and shall be implemented, pursuant to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716 , by a qualified archaeologist representing the Recipient prior to the resumption of construction activities.

2. If human remains are exposed by activity related to the Project, the Recipient must comply with California State Health and Safety Code section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to California Public Resources Code section 5097.98 .

### 2. BOOKS AND RECORDS.

Contractor shall maintain separate books, records and other material relative to the Project. Contractor shall retain such books, records, and other material for a minimum of thirty-six (36) years after Project completion. Such books, records, and other material shall be subject, at all reasonable times (at a minimum during normal business hours), to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow interviews, at Agency's cost and expense, at rates agreed upon in writing by the Parties prior to Contractor incurring any such expense, during normal business hour of any employees who might reasonably have information related to such records. The provisions of this section shall survive the term of this Contract.

### 3. COMPLIANCE WITH STATE WATER BOARD POLICY

Contractor agrees that, to the extent applicable, it will comply with the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund" and all other SRF requirements set forth in the Contract Documents. The policy can be found at: [www.waterboards.ca.gov/drinking\\_water/services/funding/documents/srf/dwsrf\\_policy/dwsrf\\_policy\\_final.pdf](http://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/dwsrf_policy_final.pdf).

#### 4. TRAFFICKING IN PERSONS.

Contractor, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Contract, procure a commercial sex act during the term of this Contract, or use forced labor in the performance of this Contract. Contractor must include this provision in its contracts and subcontracts under this Contract. Contractor must inform the Agency immediately of any information regarding a violation of the foregoing. Agency/The Agency may unilaterally terminate this Contract if Contractor is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

#### 5. EXECUTIVE ORDER NO. 11246.

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.