



Purchasing Department

REQUEST FOR PROPOSALS

FOR:

Professional Single Audit Service

**Contact Person:
Frida Anguiano
Phone 951-674-3146 Ext. 8215**

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

January 23, 2017

**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 Certified Public Accounting firms to perform audits and issue opinions on the District’s financial statements for the period July 1, 2016 to June 30, 2017.

Professional Single Audit Service

The purpose of this Request for Proposal (RFP) is to enter into a contract with a qualified Certified Public Accountant to conduct the annual audit of financial transactions and accounts kept by or for the District, subject to the Single Audit Act Amendments of 1996 (P.L.104-156) for the year ending June 30, 2017

A copy of the District’s prior years’ independent auditor’s report will be made available upon request. It is the proposing firm’s responsibility to obtain a thorough understanding of the District’s accounting system, the scope of the audit, and the work to be performed in order to successfully complete the audit prior to submitting your proposal and maximum price bid.

Proposers may access the Districts past CAFR and Audit reports on the District’s website at **www.evmwd.com**.

1.2 Project Description

The District Single Audit services from a qualified independent certified accounting firm to audit its financial transactions for the 2017 fiscal year, in addition to performing other financial audits and reviews as specified herein. The district prepares the Single Audit Report, and the auditors publishes the Single Audit Report for:

Elsinore Valley Municipal Water District

1.3 Project Schedule

EVMWD intends to initiate this project on July 31, 2017, anticipating completion TBD.

Respondents to this RFP must be able and willing to commit the necessary resources to complete the project within this timeframe.

1.4 Pre-Proposal Meeting

EVMWD will conduct a Non-mandatory pre-proposal meeting at the EVMWD, 31315 Chaney St Lake Elsinore, CA 92531 on February 14, 2017.

2. SCOPE OF REQUIRED SERVICES

2.1 Summary of Services

The scope of services to be provided by the independent audit firm includes the following:

The District Single Audit services (1) year 2017. Perform an annual audit and provide an Independent Auditor's Report. The audit is to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the General Accounting Office (GAO) Government Auditing standards, the provisions of the federal Single Audit Act of 1984 (as amended in 1996) and U.S. Office of Management and Budget (OMB) Circular A-133, Audit of States, Local Governments and Not for profit Organization, as well as any other applicable federal, state, local or programmatic audit requirements. A detailed Scope of Services is attached hereto as Attachment "1".

3. SCHEDULE OF EVENTS

Timetable for Reviewing and Evaluating Proposals:

1. RFP Release	01/23/17
2. Requests for Clarification Due	02/06/17
3. Proposal Due Date	03/03/17
4. Anticipated Final Selection	03/13/17
5. Anticipated Project Start	07/31/17

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. 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. Include any sub-consultants 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 each category of the project.

(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. Respondents shall include a detailed cost proposal for the services utilizing the Cost Proposal Worksheet included in Attachment "2" Required Forms. All costs shall be inclusive of all hourly rates, anticipated travel, and other incidental costs and charges. Billable work will begin at time Respondent(s) arrive on District job site. District will not pay for travel time to job site. It is anticipated that a not-to-exceed dollar limit will be negotiated with the successful Respondent based on the costs identified in the Cost Proposal Worksheet.

(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) Addendum Acknowledgement (if any). All Addenda issued by the District shall be acknowledged and included in the Proposal and made part of the Contract Documents. Failure to acknowledge and include all Addenda shall be sufficient cause for rejecting a Proposal.

(k) Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Respondents must complete the Certification

(l) Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form, included in Attachment "2" Required Forms.

(m) Additional Forms. Respondents must submit the Certification Regarding Lobbying and Certification Regarding Affirmative Steps for Minority Businesses, Women's Business Enterprises, & Labor Surplus Area Firms, which are included in Attachment "2" Required Forms.

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 **4:00 p.m. local time on March 03, 2017**. The Proposal must be enclosed in a sealed envelope.

By Mail

Elsinore Valley Municipal Water District
Purchasing Department
31315 Chaney St
Lake Elsinore, CA 92531
Attn: Purchasing Manager

In Person or by Courier

Elsinore Valley Municipal Water District
Purchasing Department
31315 Chaney St
Lake Elsinore, CA 92531
Attn: Purchasing 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:

Evaluation Criteria	%
Relevant Qualifications	20
Experience/ Work Product & References	25
Schedule	20
Cost	25
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. At the discretion of the District, firms submitting proposals may be request to present an oral presentation as part of the evaluation process.

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.

7. REQUESTS FOR CLARIFICATIONS

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

Frida Anguiano

Email: fanguiano@evmwd.net

Fax: 951-674-5867

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 3:00 p.m. local time on February 6, 2017.

To ensure fairness and avoid misunderstandings, all communications must be in written format and addressed only to the individual set forth above. Any verbal communications will not be considered or responded to. Written communications should be submitted via e-mail to the address provided above. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the RFP that will be posted on the District's website. Any communications, whether written or verbal, with any Board Member or District staff other than the individual indicated above, prior to award of a contract by EVMWD, is strictly prohibited and the Proposer shall be disqualified from consideration.

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, and sent to an address other than what is in section 5 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.

9. FEDERAL REQUIREMENTS

Respondent acknowledges and understands that this Agreement may be a federally assisted Agreement. Consultant must comply with all applicable federal funding requirements. A non-exhaustive list of federally mandated provisions shall be included in the Federal Requirements attached hereto as Exhibit "C" and incorporated as if fully set forth herein by this reference.

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

**ATTACHMENT 1
SCOPE OF SERVICES**

I. Scope of Auditing Services

The independent audit firm is expected to provide the following services:

- As required, perform an audit of the expenditures of federal grants in accordance with OMB Circular A-133 and render the appropriate audit reports on internal control over financial reporting based upon the audit of the District's financial statements in accordance with *Government Auditing Standards* and the appropriate reports on compliance with requirements applicable to each major program, internal control over compliance and on the schedule of expenditures of federal awards in accordance with OMB Circular A-133. The single audit report will include the appropriate schedule of expenditures of federal awards, footnotes, findings and questioned costs, including reportable conditions and material weaknesses, and follow up on prior audit findings, where required. The audit firm will prepare the single audit report and provide the District with five (5) hard copies and a copy in PDF format. The audit firm will complete required filings with the federal audit clearinghouse.
- The audit firm shall make available its working papers and respond to all reasonable inquiries of successor auditors and others to review working papers of the District upon the District's written consent. All working papers and reports must be retained at the auditor's expense for a minimum of seven (7) years, unless the firm is notified in writing by the District of the need to extend the retention period.
- Auditors shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the President, Board of Directors; Vice President, Board of Directors; General Manager; and Director of Finance.

The District will provide the following support:

- Provide the auditor with reasonable work space and chairs, access to a telephone and photocopying machines and to the District's financial system, if required.
- Be available during the audit to assist the firm by providing information, documentation and explanations.
- Prepare all confirmation requests and pull supporting documents.
- Prepare the District's Comprehensive Annual Financial Report, including the basic financial statements, notes to the financial statements and required supplementary information.
- For the District Single Audit, provide the audit firm with the financial statements, trial balance, supporting statements and documentation for account balances, and explanations for significant changes to revenue and expense account balances.

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

**ATTACHMENT 2
REQUIRED FORMS**

District Audit Price Form

Service	Hours	Staff	Amounts (by Classification)			
		Classification(s)	2016/17			
Other Single Audit and Related Reports			\$	\$	\$	\$
Maximum out-of pocket			\$	\$	\$	\$
Total for Fiscal Year (not to exceed)			\$	\$	\$	\$
Auditor's Standard Hourly Billing Rates						
Positions	2016/17					
	2016/17	2016/17	2016/17	2016/17		
Partner (Shareholder)	\$	\$	\$	\$		
Manager	\$	\$	\$	\$		
Senior Accountant	\$	\$	\$	\$		
Staff Accountant	\$	\$	\$	\$		
Clerical	\$	\$	\$	\$		

The vendor agrees to provide the proposed services at a cost not to exceed the stated cost in the vendor's response to this RFP. All costs shall include labor, travel expenses, and so forth.

District payment terms are NET 30. Proposer may offer a discount for early payment. If discount is offered terms are: _____% discount if paid in full within _____ days.

The undersigned as proposer, declares that the only persons or parties interested in this proposal

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 WATER Conservation Business Plan/2016-26] and that our insurance company(ies) is/are able to provide the coverages specified.

[Fill in name(s) of insurance company (ies)]

Signature of President, Secretary,
Manager, Owner or Representative

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Contractor Covered Transactions

1. The prospective contractor of the Recipient, _____ certifies, by submission of this proposal, that neither it nor its representatives are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective Recipient's contractor is unable to certify to the above statement in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR: _____

By: _____
Name and Title of Authorized Representative

Signature of Authorized Representative and Date

Name of Agency and DUNS number

Street Address

City, State, Zip

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Signature/Authorized Certifying Official

Signature/Authorized Certifying Official

Title

Date

**CERTIFICATION REGARDING AFFIRMATIVE STEPS
FOR MINORITY BUSINESSES, WOMEN'S BUSINESS
ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

Federal-aid Project _____ Bid Opening Date _____
 Bidder Name: _____ Bidder Phone: _____
 Bidder Address: _____

Elsinore Valley Municipal Water District ("EVMWD"), in accordance with 2 CFR § 200.321, requires bidders to provide information pertaining to the use of minority businesses, women's business enterprises, and labor surplus area firms (referred to herein, for ease of reference, as "DBEs").

Please provide the following information, using additional sheets of paper if necessary, and submit this form with your proposal:

- The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Name of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

3. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item? (Yes/No)	Breakdown of Items	Amount (\$)	Percentage of Contract (%)

4. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

5. Efforts made to establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises:

6. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms, such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

7. Any additional data to support a demonstration of affirmative steps (use additional sheets if necessary):

**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 *****INSERT TYPE OF SERVICES***** 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 *****INSERT NAME OF PROJECT***** 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 *****INSERT TYPE OF SERVICES***** 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 THE FOLLOWING SENTENCE FOR MULTI-YEAR, OPTIONAL RENEWAL NOT TO EXCEED FOUR YEARS; OTHERWISE, DELETE: the District shall have the unilateral option, at its sole discretion, to renew this Agreement for no more than [INSERT NUMBER] additional one-year terms. **]** OR USE: *****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, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. 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 sub-consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and sub-consultants 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. The District has obtained the general prevailing rate of wages, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the District’s office and shall be made available for viewing to any interested party 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 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 broader, 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, and/or Sub-Consultants, 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 Sub-Consultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the Sub-Consultant 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 Sub-Consultants. Consultant shall also require all of its Sub-Consultants 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 \$2,00 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 Sub-Consultants 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 Sub-Consultants. Consultant shall require all Sub-Consultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the Sub-Consultant 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 Sub-Consultants, 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/Sub-Consulting.

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 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: Angela Badham

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.

3.10.2 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.

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

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

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

3.10.6 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.

3.10.7 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 Sub-Consultants 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.

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

3.10.9 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.

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

3.10.11 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.

3.10.12 Prohibited Interests. Consultant maintains and 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.

3.10.13 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.

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

3.10.15 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.

3.10.16 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.

3.10.17 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.

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

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.

SIGNATURES ON THE FOLLOWING PAGES

SIGNATURE PAGE 1 OF 2 TO THE

**PROFESSIONAL SERVICES AGREEMENT FOR
CONSERVATION BUSINESS PLAN**

ELSINORE VALLEY MUNICIPAL WATER DISTRICT

By: _____
John D. Vega, General Manager

Dated: _____

Attest:

Terese Quintanar, District Secretary

Approved as to form:

John E. Brown, General Counsel

**SIGNATURE PAGE 2 OF 2 TO THE
PROFESSIONAL SERVICES AGREEMENT FOR
CONSERVATION BUSINESS PLAN**

****INSERT CONSULTANT NAME****

By: _____
(Authorized Representative of Vendor)

Printed Name: _____

Title: _____

Dated: _____

**EXHIBIT A
SCOPE OF SERVICES**

**EXHIBIT B
SCHEDULE OF SERVICES**

EXHIBIT C FEDERAL REQUIREMENTS

Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, color, religion, sex, 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.

(2) 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, color, religion, sex, or national origin.

(3) 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 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 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.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) 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 11246 of September 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 may be directed by the Secretary of Labor 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, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the Bureau of Reclamation and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by BOR.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the BOR and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by BOR.

Energy Conservation

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201) are incorporated herein.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the District. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.