



**Central Basin**  
Municipal Water District

**RFP No. \_\_\_\_\_**

**REQUEST FOR PROPOSALS**

**FOR**

**<Project Name>**

**RFP Issue: <Date>**

**RFP Due: <Date>, <Time>**

**TERM: \_\_\_\_\_**

**Issued by**

**Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040  
Telephone: (323) 201-5500  
Fax: (323) 201-5554  
[www.centralbasin.org](http://www.centralbasin.org)**

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## **SECTION 1 - BACKGROUND INFORMATION**

Central Basin Municipal Water District (Central Basin or District) is a public agency that purchases imported water from the Metropolitan Water District of Southern California (MWD). Central Basin wholesales the imported water to cities, mutual water companies, investor-owned utilities, and private companies in Southeast Los Angeles County. The District also supplies water for groundwater replenishment and recycled water for municipal, commercial, and industrial use. Additionally, Central Basin's award-winning education program, bilingual Speaker's Bureau, website, and groundbreaking conservation programs help to increase public awareness about key water issues. The Central Basin service area includes 24 cities and a population of more than 2 million. It is governed by five publicly elected directors. Additional information about the District may be found on [www.centralbasin.org](http://www.centralbasin.org).

## **SECTION 2 - STATEMENT OF PURPOSE**

The District is seeking proposals from qualified companies. The purpose of this Request for Proposals (RFP) is to demonstrate the background, qualification, competence, and capability of the company seeking to undertake these services with the District.

<Describe the extent of products and services the District is looking for, as well as, the overall objectives of the contract.>

## **SECTION 3 - SCOPE OF WORK/PROJECT TASK**

The qualified company is required to perform and complete the work and provide the services as set forth in Exhibit "D" of this RFP.

## **SECTION 4 - MINIMUM COMPANY QUALIFICATIONS**

- (1) The company must have been in business for a minimum of \_\_\_ (\_\_) years.
- (2) The company must have at least \_\_\_ (\_\_) years experience providing <project name> services.
- (3) The company must maintain an office in Southern California that is open during regular business hours.

## **SECTION 5 - PROPOSAL REQUIREMENTS**

All Proposals must include and will be evaluated based on the following criteria:

1. A detailed scope of services that reflects the company's understanding of the District's requirements.
2. Provide written responses to all the "Minimum Company Qualifications".

3. Personnel Qualifications: The Proposal shall identify the project manager and staff to be assigned to the District and include the project manager and staff's qualifications, training, and certifications to perform the services outlined in Exhibit "D" attached hereto.
4. List of Clients: A list of major clients served during the last five (5) years with contact information (i.e. name of the clients, addresses, phone numbers, and contact person). The District reserves the right to contact any of them for references.
5. Additional Company Qualifications: The Proposal shall include the size of the company as to number of clients, the size of the company's staff, the location of the administrative office, and the number and positions of staff who will work with the District regularly. Please identify if the company is veteran, minority, or women-owned.
6. Capability to Meet District's Requirements: This section should include experience and history of successful completion of projects.
  - (a) Discuss the company's capability to manage and schedule projects, the standard turnaround time, current relative workload, and staff's availability.
  - (b) Demonstrate the company's expertise and experience in the projects identified under Exhibit "D".
  - (c) Demonstrate any experience the company has had working with clients similar in size or industry as Central Basin, or experience working within the general service area.
7. Fee Schedule: If applicable, include a schedule of rates per hour for partners, principals, directors, specialists, project managers, and staff. The rates should contain all direct and overhead expenses, and premiums <if necessary, attach a Rate Schedule in your proposal> for any rush work. Indicate if the company follows the complied prevailing wage law.

## **SECTION 6 - TERMS AND CONDITIONS**

### Acknowledgement of District's Contract Provisions

Interested companies should review and acknowledge the following provisions in the proposed contract:

The company shall procure and maintain the insurance required, for the duration of the contract, insurance against claims for injuries to persons or damages to

property arising from or in connection with the performance of the work performed as set forth in Exhibit "C", Section 4 of the attached sample contract.

1. Insurance Requirements: The following are the District's standard insurance requirements.

(i) Commercial General Liability: coverage should include \$1,000,000 per occurrence, \$2,000,000 aggregate, as applicable. Prior to the start of work, the selected company shall provide to the District evidence of insurance from an insurer(s) certifying the coverage. The DISTRICT and its Board Members, officers, employees, agents and volunteers are added as insureds. Additional insured endorsements shall be provided on Commercial General Liability form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 37 10 01).

(ii) Business Automobile Liability: Business Automobile Liability insurance insuring all owned, non-owned and hired automobiles - coverage code 1 "any auto" (Insurance Service Office policy form CA 0001 or insurer's equivalent) in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

(iii) Workers' Compensation and Employer's Liability Insurance: shall be furnished in accordance with statutory requirements of the State of California and shall include Employer's Liability coverage of \$1,000,000 per accident for bodily injury or disease.

(iv) Commercial General Liability and Workers' Compensation and Employer's Liability Insurance: policies shall contain a waiver of transfer rights of recovery ("waiver of subrogation") against the DISTRICT, its Board Members, officers, employees, agents and volunteers for any claims arising out of the work of the Company.

(v) Additional Insured Requirements: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

2. Indemnification: Company shall, prior to completion and upon completion of the work, deliver possession thereof to the District ready for use and free and discharged from all claims for labor and material from subcontractors, suppliers or others. Company shall defend, indemnify and hold harmless the District to the fullest extent permitted by law, as set forth in Exhibit "C", Section 5 of the attached sample contract.

3. Term: The initial term of the contract is for a \_\_\_ year period.

A sample contract is attached as Exhibit "C" for your review. This contract is representative of the contract that will be executed upon award to the successful company. If the company does not agree with these provisions, the company should include all comments and proposed contract language in the Proposal. Submission of Proposal in response to this RFP constitutes acceptance of all terms and conditions set forth above, unless otherwise stated.

### **SECTION 7 - REQUEST FOR CLARIFICATION**

Company requesting clarification pertaining to this RFP shall submit all requests through written correspondence by 5:00 pm on <Date: MM/DD.YY>, to:

<Project Manager>  
Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040  
Tel no: (323) 201-55\_\_\_  
Fax no: (323) 201-5554  
<email>

### **SECTION 8 - SUBMITTING PROPOSAL**

To be considered, five (5) copies of the Proposal must be received no later than \_\_\_\_\_ p.m. on <proposal due date>. The following information is required by the deadline for the company to be considered:

1. Title Page and Table of Contents.
2. Letter of Introduction signed by the officer of the company and a summary highlighting the key points of the proposal.
3. Detailed Proposal.
4. Signed Acknowledgement Form - refer to Exhibit "A" attached hereto.
5. Signed Conflict of Interest Form - refer to Exhibit "B" attached hereto.

Submit your Proposal to:

Antonio Perez  
General Manager  
Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040

**SECTION 9 - SCHEDULE**

The following dates reflect the anticipated schedule for the Proposal and selection of the company:

<b><i>Events</i></b>	<b><i>Date</i></b>
RFP distribution to companies	MM/DD/YY
Questions from companies about scope or approach due	MM/DD/YY
Responses to companies about scope or approach due	MM/DD/YY
Proposal due date	MM/DD/YY
Target date for review of Proposals	MM/DD/YY
Final Company selection discussion(s)--week of	
Anticipated decision and selection of company(s)	MM/DD/YY
Anticipated commencement date of work	MM/DD/YY

**SECTION 10 - SELECTION PROCESS AND EVALUATION CRITERIA**

Proposals will be examined for compliance with all the requirements in the sections of this RFP. Proposals that do not comply will be subject to disqualification without further consideration.

District staff will evaluate each proposal submitted for completeness, company qualifications, company experience, capability to meet District requirements, and cost of services. Proposing companies should note that the pricing, while important, will not be the **only** deciding factor in the final selection but rather the ability of the company to provide and perform the required duties as outlined in Exhibit "D".

***Weighted Evaluation Criteria:***

Completeness of the Proposal	%
Company qualifications	%
Evaluation of experience	%
Capability to meet District requirements	%
Fee/Rates	%
<b>TOTAL</b>	<b>100%</b>

Oral presentations and written questions for further clarifications may be required of some or all companies. Final scoring will be based on a predefined method considering the proposal and interview.

District staff will present the recommendation for contract award to the Committee. The District's Board of Directors will make a final decision based on the Committee's recommendations. The District will provide all companies with a written notice of the recommendation the staff will present. The notice will provide a reasonable time period to allow each company a chance to address the Directors at the next Board meeting at which the Board of Directors plan to authorize the contract.

Any Proposal that does not include written/documented responses to all items of the "Proposal Requirements" will not be considered. Postmarks, facsimiles and e-mails will not be accepted.

It is anticipated that the qualified company will be selected by <month> <year>.

#### **SECTION 11 - CONFIDENTIALITY**

The District is subject to Public Records Act under the California Government Code Section 6250 et. seq. As such, all required submitted information is subject to disclosure to the general public.

Proposals submitted and terms and conditions specified in each company's bid response will remain the property of the District.

#### **SECTION 12 - PROPOSAL ACCUARC**

A proposal which is in any way incomplete, irregular, or conditional will not be accepted. By submitting a proposal, companies agree that any significant inaccuracy in information given by the company to the District will constitute good and sufficient cause for rejection of the proposal.

#### **SECTION 13 - DISCLAIMER**

Central Basin reserves the right:

1. To reject any or all Proposals;
2. Withdraw this solicitation at any time without prior notice, and furthermore makes no representations that any contract will be awarded to any respondent to this RFP;
3. Award its total requirements to one respondent or to apportion those requirements among two or more respondents as Central Basin may deem to be in its best interests;
4. Negotiate a final contract with any respondent(s) as necessary to serve the best interest of Central Basin;



5. Amend this RFP.

#### **SECTION 14 - CONFLICT OF INTEREST**

The District is subject to Political Reform Act, under California Government Code section 1090, et. seq. To protect the District Directors and staff, all potential contracting parties with the District shall be required to complete a Conflict of Interest Questionnaire prior to the award. Refer to Exhibit "B" attached hereto.

**EXHIBIT "A" ACKNOWLEDGMENT FORM**

RFP No. \_\_\_\_\_ for <project name>

**PART A**

The proposing company warrants the following:

- 1) That it will not delegate or subcontract its responsibilities under contract without the expressed, prior written permission from Central Basin Municipal Water District.
- 2) That all information provided in connection with this proposal is true and correct.
- 3) That it will acknowledge and agree with all terms and conditions stated in this request for proposal.

Company Name (Respondent to RFP):

\_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
Signature

**PART B**

The above listed company is responding to a Request for Proposals for a qualified and experienced company to provide <project>.

THIS COMPLETED FORM MUST BE RETURNED TO CENTRAL BASIN MUNICIPAL WATER DISTRICT BY THE RESPONDENT WITH THEIR PROPOSAL.

RETURN PRIOR TO <TIME> : <DATE>

**Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040  
Attn: Antonio Perez, General Manager**

**EXHIBIT "B" CONFLICT OF INTEREST FORM**

Central Basin Municipal Water District's (Central Basin) Code of Conduct prohibits its Directors and staff from making decision in which he/she has certain financial or personal relationships with a contracting party. The questions that follow are intended to alert Central Basin to potential code of conduct conflicts. If conflicts of only a remote interest exist, a contract may nonetheless be awarded as disclosure allows Central Basin to choose processes for negotiation, award, and administration of contracts to avoid such conflicts. However, Central Basin reserves the right to review and make a final determination regarding whether any actual or potential conflicts would violate Central Basin's policies or California law and thus preclude a contracting party's participation in this award. All contracting parties and proposed sub-consultants must respond to each of the following questions. For responses answered "yes" Central Basin may require additional information to evaluate potential conflicts prior to award. Failure to fully disclose conflicts will result in rejection of the proposal or immediate termination of any contract awarded therefrom.

1. To the best of your knowledge, do any current Central Basin Board members or employees have any of the following financial relationships with your company or with proposed sub-consultants?

Owner	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Member	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Partner	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Officer	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Employee	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Contractor; Consultant	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Broker	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]
Major Stockholder:	<input type="checkbox"/> [Yes] <input type="checkbox"/> [No]

(Major stockholder means ownership of 3% or more of company stock.)

If "Yes" to any of the above, did this Board member or employee participate in formulating your submittal?

[Yes]  [No]

2. Are you, or to the best of your knowledge, are any officers or key employees of your company or proposed sub-consultants an immediate family member of any current Central Basin Board member or employee?

[Yes]  [No]

3. To the best of your knowledge, is a Central Basin employee or Board member seeking or being considered for employment by your company or by proposed sub-consultants?

[Yes]  [No]

4. To the best of your knowledge, have you or any officers or key employees of your company or any proposed sub-consultants provided contributions directly or indirectly to a Board member while this potential new contract is pending before the District?

[Yes] [No]

5. To the best of your knowledge, have you or any officers or key employees of your company or any proposed sub-consultants ever served on Central Basin's Board?

[Yes] [No]

6. Have any of your current employees been employed by the District in the past 5 years?

[Yes] [No]

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

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

THIS COMPLETED FORM MUST BE RETURNED TO CENTRAL BASIN MUNICIPAL WATER DISTRICT BY THE RESPONDENT WITH THEIR PROPOSAL.

RETURN PRIOR TO <TIME> : <DATE>

**Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040  
Attn: Antonio Perez, General Manager**

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## EXHIBIT "C" SAMPLE AGREEMENT



PROFESSIONAL SERVICES AGREEMENT NO: \_\_\_\_\_  
Between  
CENTRAL BASIN MUNICIPAL WATER DISTRICT  
And  
\_\_\_\_\_  
For  
\_\_\_\_\_

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (hereinafter, the "Effective Date"), by and between the Central Basin Municipal Water District, a municipal water district organized under the Municipal Water District Law of 1911 (Water Code Section 71000 et seq.) ("DISTRICT") and \_\_\_\_\_ (hereinafter, "CONSULTANT"). The capitalized term "Parties" shall be a collective reference to both DISTRICT and CONSULTANT. The capitalized term "Party" shall refer to either DISTRICT or CONSULTANT interchangeably as appropriate.

### RECITALS

THIS AGREEMENT is made and entered into with respect to the following facts:

WHEREAS, the DISTRICT may make contracts, to do all acts necessary for the full exercise of its powers pursuant to Water Code Section 71592; and

WHEREAS, DISTRICT requires the performance of \_\_\_\_\_; and

WHEREAS, CONSULTANT represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals, employees and subcontractors; and

WHEREAS, the execution of this Agreement was approved by the DISTRICT's Interim Chief Operating Officer ("COO") in accordance with the DISTRICT's procurement and purchasing procedures through a written Justification Memo dated March 27, 2013; and

WHEREAS, CONSULTANT further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, DISTRICT and CONSULTANT agree as follows:

### SECTION 1 - SCOPE AND PROSECUTION OF WORK; COMPENSATION

1.1 SCOPE OF WORK: Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in "**Exhibit A**" (hereinafter the "Scope of Work") attached and incorporated hereto. CONSULTANT further agrees to furnish to DISTRICT all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Work. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Work shall hereinafter be referred to generally by the capitalized term "Work." The Work is inclusive of those tasks that may be identified as being optional under the Scope of Work and such optional work shall not constitute Extra Work under Section 1.5 of this Agreement, below. Neither CONSULTANT nor anyone acting on CONSULTANT's behalf shall commence with the performance of the Work or any other related tasks until DISTRICT issues a written notice to proceed (hereinafter, the "Notice to Proceed").

1.2 TERM: This Agreement shall have an initial term of \_\_\_\_\_ months commencing from the \_\_\_\_\_, 2013 and terminating \_\_\_\_\_, 2013 (hereinafter, the "Initial Term").

1.3 COMPENSATION AND COMPENSATION CONTROLS:

A. CONSULTANT shall perform and complete all of the services and tasks set forth in "**Exhibit A**" under the Scope of Work in accordance with the compensation schedule set forth in the Scope of Work under the heading "fee schedule" (hereinafter, the "Compensation Schedule"). As provided under the Compensation Schedule, CONSULTANT shall be paid a flat monthly fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per month.

- B. As provided under the Compensation Schedule, CONSULTANT may receive reimbursement for certain pass-through costs and expenses approved by DISTRICT prior to being incurred provided that CONSULTANT's total aggregate reimbursements shall be capped \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the entire term of this Agreement. All reimbursable cost shall require the prior written approval of the COO or Project Manager before they are incurred. For purposes of this Agreement, those pass-through costs or expenses identified as being reimbursable under the Compensation Schedule may hereinafter be referred to as "Reimbursable Costs". CONSULTANT shall provide copies of receipts and invoices corroborating all costs or expenses, including Reimbursable Costs, indicated in CONSULTANT's monthly invoice or statement. DISTRICT shall be under no obligation to reimburse CONSULTANT for unsubstantiated costs or expenses.
- C. CONSULTANT further agrees that the total aggregate amount of compensation and reimbursements CONSULTANT received under this Agreement shall not exceed the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (hereinafter, the "Contract Price"), unless any compensation or reimbursement in excess of the Contract Price is first approved by the DISTRICT acting in consultation with the Interim Chief Operating Officer ("COO") and the Project Manager. The Contract Price includes reimbursable pass-through costs identified in Section 1.3B, below.

1.4 PAYMENT OF COMPENSATION:

- A. Following the conclusion of each month during the Initial Term of this Agreement or any extension term, CONSULTANT shall submit an itemized invoice to DISTRICT on a monthly basis for the previous month's services that includes:
- i. A detailed description of the services performed to the satisfaction of the Project Manager.
  - ii. Date or period of services.
  - iii. DISTRICT's Agreement number.
  - iv. The name of the DISTRICT's Project Manager
  - v. CONSULTANT's remittance address and phone number.
  - vi. Support documentation sufficient to validate the charges for each invoice item.
  - vii. When applicable, reimbursable pass-through costs incurred by CONSULTANT during the recently concluded month.
  - viii. CONSULTANT shall submit invoices to the following address:  
Central Basin Municipal Water District  
Attn: Project Manager  
6252 Telegraph Road  
Commerce, CA 90040
  - ix. DISTRICT's payment terms are NET 30 days after the receipt of invoice.
- B. Within thirty (30) calendar days of receipt of each invoice, DISTRICT shall notify CONSULTANT of any disputed charges, costs or expenses included in the invoice.
- C. DISTRICT shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.

1.5 EXTRA WORK; COMPENSATION FOR EXTRA WORK: At any time during the term of this Agreement, DISTRICT may request that CONSULTANT perform Extra Work. For the purposes of this Agreement, the term "Extra Work" means any additional work, services or tasks not set forth in the Scope of Work but later determined by DISTRICT to be necessary. CONSULTANT shall not undertake nor shall CONSULTANT be entitled to compensation for Extra Work without the prior written authorization of the DISTRICT. Extra Work does not include any labor, materials, tools, supplies, equipment, services, tasks or incidental and customary work undertaken to competently perform and timely complete the Work and related tasks set forth in the Scope of Work.

1.6 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. DISTRICT shall have the right to access and examine such records, without charge, during normal business hours. DISTRICT shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

1.7 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONSULTANT shall deliver to DISTRICT immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which DISTRICT may incur as a result of CONSULTANT's cessation or abandonment.

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SECTION 2 - PERFORMANCE OF AGREEMENT

2.1 DISTRICT PROJECT MANAGER: The DISTRICT hereby designates a Project Manager, \_\_\_\_\_ (hereinafter, the "Project Manager") to act as its representatives for the performance of this Agreement. The Project Manager shall act on behalf of the DISTRICT for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the Project Manager.

2.2 CONSULTANT'S REPRESENTATIVE: CONSULTANT hereby designates \_\_\_\_\_ to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, 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 Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.

2.3 NOTICE: Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated:

- (i) by personal delivery;
- (ii) by overnight courier upon written verification of receipt;
- (iii) by certified or registered mail, return receipt requested, upon verification of receipt to the following:

**To the DISTRICT:**  
Central Basin Municipal Water District  
6252 Telegraph Road  
Commerce, CA 90040  
Attn: \_\_\_\_\_  
Phone: (323) 201-\_\_\_\_\_  
Fax: (323) 201-\_\_\_\_\_  
E-mail: \_\_\_\_\_

**If to the CONSULTANT:**  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

2.4 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with DISTRICT staff in the performance of the Work and this Agreement and shall be available to DISTRICT staff and the Project Manager at all reasonable times.

2.5 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all work skillfully, competently and to the highest standards applicable to the CONSULTANT's profession;
- B. CONSULTANT shall perform all work in a manner reasonably satisfactory to the DISTRICT;
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents (including but not limited to CONSULTANT's subcontractors and subconsultants) possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to CONSULTANT's subcontractors and subconsultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement.

The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from DISTRICT, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and subconsultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the DISTRICT Representatives in writing and absolute discretion. The Parties acknowledge and agree that DISTRICT's acceptance of any work performed by CONSULTANT or on

CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that DISTRICT has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work in a skillful and competent manner equivalent to, the standard of performance generally recognized as being employed by professionals performing the same type of work and services in the State of California.

- 2.6 **ASSIGNMENT:** The skills, training, knowledge and experience of CONSULTANT are material to DISTRICT's willingness to enter into this Agreement. Accordingly, DISTRICT has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written consent of the DISTRICT. In the absence of DISTRICT's prior written consent, any attempted assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.
- 2.7 **CONTROL AND PAYMENT OF SUBORDINATES:** The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. DISTRICT retains CONSULTANT on an independent contractor basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for others during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent performance under this Agreement or result in the unauthorized disclosure of DISTRICT's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not 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 and shall assume responsibility for all benefits, payroll taxes, social security and Medicare payments and the like. 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, workers' compensation insurance and the like.
- 2.8 **REMOVAL OF EMPLOYEE OR AGENTS:** If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants is determined by the DISTRICT Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants fail or refuse to perform the work in a manner acceptable to the DISTRICT, such officer, employee, agent, contractor, subcontractor or subconsultant shall be promptly removed by Consultant and shall not be re-assigned to perform any of the work.
- 2.9 **COMPLIANCE WITH LAWS:** Consultant shall keep itself fully informed of and in compliance with all applicable laws, statutes, codes, rules, regulations and ordinances of the federal government of the United States of America, the State of California, the County of Los Angeles or any other local governmental entity to the extent such laws, statutes, codes, rules, regulations or ordinances governing or affecting the performance of the Work.
- 2.10. **SAFETY:** CONSULTANT shall perform its work so as to avoid injury or damage to any person or property. In performing the Work, 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 any work is to be performed.
- 2.11. **NON-DISCRIMINATION:** In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, subconsultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 2.12. **INDEPENDENT CONTRACTOR:** The Parties acknowledge, understand and agree that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of DISTRICT. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subconsultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind DISTRICT in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, DISTRICT, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by DISTRICT in writing.

### SECTION 3 - TERMINATION

- 3.1 **TERMINATION WITHOUT CAUSE:** DISTRICT may immediately terminate this Agreement at any time for convenience and without cause by giving written notice to CONSULTANT specifying the effective date of such termination. Upon termination for convenience, CONSULTANT shall be compensated only for the Work which has been adequately rendered to DISTRICT up to the effective date of the termination, and CONSULTANT shall be



entitled to no further compensation. CONSULTANT may not terminate this Agreement except for breach of this Agreement. If this Agreement is terminated as provided herein, DISTRICT may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such documents and other information within ten (10) calendar days of the request. 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, Work similar to those terminated.

### 3.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

- A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement, including Exhibit A (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 3.2.B and 3.2.C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- B. CONSULTANT shall cure the following Events of Defaults within the following time periods:
- i. Within three (3) business days of DISTRICT's issuance of a Default Notice for any failure of CONSULTANT to timely provide DISTRICT or DISTRICT's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to DISTRICT or DISTRICT's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 3.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
  - ii. Within fourteen (14) calendar days of DISTRICT's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, DISTRICT shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 3.2 B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vi) DISTRICT's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. DISTRICT shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, DISTRICT may submit a written request for additional time to cure the Event of Default upon a showing that DISTRICT has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with DISTRICT's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by DISTRICT within five (5) calendar days from the date of CONSULTANT's Default Notice to DISTRICT.
- D. DISTRICT, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of DISTRICT's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). DISTRICT may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such

suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of DISTRICT up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of DISTRICT shall operate to prohibit or otherwise restrict DISTRICT's ability to suspend this Agreement as provided herein.

- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. 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.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to DISTRICT at law or under this Agreement in the event of any breach of this Agreement, DISTRICT, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
  - i. Upon written notice to CONSULTANT, the DISTRICT may immediately terminate this Agreement in whole or in part;
  - ii. Upon written notice to CONSULTANT, the DISTRICT may extend the time of performance;
  - iii. The DISTRICT may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or
  - iv. The DISTRICT may exercise any other available and lawful right or remedy.

CONSULTANT shall be liable for all legal fees plus other costs and expenses that DISTRICT incurs upon a breach of this Agreement or in the DISTRICT's exercise of its remedies under this Agreement.

- G. In the event DISTRICT is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.
- 3.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. 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.
- 3.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

#### SECTION 4 - INSURANCE

- 4.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: As more specifically set forth below under this Article, CONSULTANT agrees that it shall procure and maintain throughout the Initial Term of this Agreement and any extension term (or for such extended period of time as may be required under this Article) insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with CONSULTANT's performance of this Agreement. CONSULTANT shall also procure and maintain such other types of insurance as may be required under this Article, below. DISTRICT shall not, and shall be under no obligation to, issue a Notice to Proceed until CONSULTANT has provided evidence satisfactory to DISTRICT that it has procured all insurance required under this Article.
- 4.2 REQUIRED COVERAGES: CONSULTANT agrees that it shall procure and maintain the following insurance coverage, at its own expense, for the duration for this Agreement or any extended period set forth herein. The CONSULTANT shall provide the following coverage:
- A. Commercial General Liability Insurance: Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001 or equivalent). Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability and Two Million Dollars (\$2,000,000.00) in the aggregate.
  - B. Automobile Liability Insurance: Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall

have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

- C. Workers' Compensation Insurance/ Employer's Liability Insurance: CONSULTANT shall procure and maintain Workers' Compensation Insurance affording coverage at least as broad as that required by the State of California with Employer's Liability Insurance with minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. The Workers' Compensation insurer shall also agree to waive all rights of subrogation against DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy.

4.3 The insurance policies required above shall contain or be endorsed to contain the following specific provisions:

- A. ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers as additional insured. Additional insured endorsements shall be provided on Commercial General Liability form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 37 10 01).
- B. PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- C. WAIVER OF SUBROGATION: The policies shall contain a waiver of transfer rights of recovery ("waiver of subrogation") against the DISTRICT, its Board members, officers, employees, agents and volunteers for any claims arising out of the work of the CONSULTANT.
- D. The policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the DISTRICT under such policies. The CONSULTANT shall be solely responsible for deductible and/or self-insured retention and the DISTRICT, at its option, may require the CONSULTANT to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of the DISTRICT.
- E. Prior to start of work under the contract, the CONSULTANT shall file with the DISTRICT evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on an ACCORD Certificate of Insurance form (latest version) and be signed by an authorized representative of the insurer(s). A copy of form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 37 10 01) required in above shall be attached to the Certificate of Insurance at the time that it is filed with the DISTRICT. Should the required coverage be furnished under more than one policy of insurance, the CONSULTANT may submit as many certificates of insurance as needed to provide the required amounts. The DISTRICT reserves the right to require certified complete copies of any insurance coverage required by this contract but the receipt of such policy or policies shall not confer responsibility upon the DISTRICT as to sufficiency of coverage.

4.4 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers licensed in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers, who according to the latest edition of the Best's Insurance Guide have an A.M. Best's rating of no less than A:VII. DISTRICT may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the District Representatives are authorized to authorize lower ratings than those set forth in this Section.

4.5 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees that DISTRICT's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding the DISTRICT's financial well-being. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish DISTRICT with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to DISTRICT in its sole and absolute discretion. **The certificates of insurance 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 of insurance and endorsements shall be received and approved by DISTRICT as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon DISTRICT's written request,

CONSULTANT shall also provide DISTRICT with certified copies of all required insurance policies as a condition precedent to the commencement of any work or any of the Work. DISTRICT shall not, and shall be under no obligation to, issue a Notice to Proceed until CONSULTANT fully complies with this Section. The requirements of this Section cannot be waived and any attempted waiver shall be void, invalid and non-binding upon DISTRICT.

- 4.6 FAILURE TO ADHERE TO INSURANCE PROVISIONS: In addition to any other remedies DISTRICT may have under this Agreement or at law or in equity, if CONSULTANT fails to comply with any of the requirements set forth in this Article, DISTRICT may, but shall not be obligated to: (i) Order CONSULTANT to stop any and all work under this Agreement or withhold any payment, which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof; or (ii) terminate this Agreement. DISTRICT's exercise of any of the foregoing remedies, shall be in addition to any other remedies DISTRICT may have and is not the exclusive remedy for CONSULTANT's failure to comply with the insurance requirements set forth under this Article.
- 4.7 SUBCONTRACTORS INSURANCE COVERAGE: CONSULTANT shall include all persons and entities performing work on its behalf as insureds (including all contractors, subcontractors and subconsultants) or, in the alternative, shall furnish separate certificates of insurance and endorsements for each such persons or entities evidencing their independent procurement of insurance. All coverages for such persons or entities shall be identical to the requirements imposed upon CONSULTANT under this Article.
- 4.8 NO LIMITATION ON LIABILITY: CONSULTANT's procurement of insurance shall not be construed as a limitation of CONSULTANT's liability or as full performance of CONSULTANT's indemnification duties set forth of this Agreement.

#### SECTION 5 - INDEMNIFICATION

- 5.1 The Parties agree that DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "District Indemnitees") should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the District Indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that DISTRICT would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect the DISTRICT as set forth herein.
- 5.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the District Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance under this Agreement, including but not limited to the negligent acts, errors or omissions of CONSULTANT or CONSULTANT's officers, employees, agents, contractors, subcontractors or subconsultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this Article shall not encompass a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, cost caused by the sole negligence or willful misconduct of any or all of the District Indemnitees.
- 5.3 DISTRICT shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due DISTRICT from CONSULTANT as a result of CONSULTANT's failure to pay DISTRICT promptly any indemnification arising under this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 5.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to the District Indemnitees.
- 5.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend DISTRICT, DISTRICT's governing board of directors and DISTRICT's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of DISTRICT's choice.
- 5.6 DISTRICT does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by DISTRICT, or the deposit with DISTRICT, of any insurance policy or certificate required pursuant to

this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

- 5.7 This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the DISTRICT may have at law or in equity.

#### SECTION 6 - MISCELLANEOUS PROVISIONS

- 6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of DISTRICT without restriction or limitation upon their use or dissemination by DISTRICT. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, studies, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored on paper, digitally, magnetically and/or electronically. CONSULTANT shall require all subcontractors and subconsultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that DISTRICT shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subconsultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.
- 6.2 CONFIDENTIALITY: All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input recorded data, written information, and other like information either created by or provided to CONSULTANT in connection with the performance of this Agreement shall be held confidentially by CONSULTANT. Such materials shall not, without the prior written consent of DISTRICT, be used by CONSULTANT for any purposes other than the performance of the Work. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Work. Nothing furnished to CONSULTANT which 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, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of DISTRICT.
- 6.3 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.4 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of DISTRICT. Subcontracts (including without limitation subcontracts with subconsultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.5 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains 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 and represents 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. 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.
- 6.6 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.7 FORCE MAJEURE: Any prevention, delay, nonperformance or stoppage due to any of the following causes shall excuse nonperformance for a period equal to such obligations imposed by this Agreement. The causes referred to above are strikes, walkouts, labor disputes, failure of power, irresistible superhuman cause, acts of public enemies of the State or United States, riots, insurrections, civil commotion, inability to obtain labor or material or reasonable substitutes for either, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Agreement), casualties not contemplated by insurance provisions of this agreement, or other causes beyond the reasonable control of the party obligated to perform.
- 6.8 GOVERNING LAW; VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.

- 6.9 **ATTORNEY'S FEES:** If either Party commences an action against the other Party, 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 attorney's fees and all other costs of such action.
- 6.10 **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding on the successors and assigns of the Parties.
- 6.11 **NO THIRD PARTY BENEFIT:** There are any intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.12 **CONSTRUCTION OF AGREEMENT:** This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.13 **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.
- 6.14 **AMENDMENT; MODIFICATION:** No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to DISTRICT approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.15 **CAPTIONS:** The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.16 **INCONSISTENCIES OR CONFLICTS:** In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.17 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between DISTRICT and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which is not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.
- 6.18 **COUNTERPARTS:** This Agreement shall be executed in two (2) original counterparts each of which shall be of equal force and effect. One counterpart shall be delivered to CONSULTANT and the other shall be retained by DISTRICT. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the date first written above.

**APPROVED:**

**DISTRICT**

Central Basin Municipal Water District

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

Date \_\_\_\_\_

General Manager

**APPROVED AS TO FORM:**

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

Date \_\_\_\_\_

District General Legal Counsel

**APPROVED:  
CONSULTANT**

\_\_\_\_\_

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

Date \_\_\_\_\_

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

**EXHIBIT “D” SCOPE OF WORK/PROJECT TASK**

<Enumerate the specific duties to be performed by the company and the expected outcomes. Include a detailed listing of responsibilities, particularly when sub-consultants are involved.>

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