

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

307 B



**SUBMITTAL DATE:**  
October 5, 2010

**FROM:** General Manager-Chief Engineer

**SUBJECT:** Custom Software Modifications  
Consulting Services Agreement

**RECOMMENDED MOTION:**

1. Approve the multi-year sole source Consulting Services Agreement (Agreement) between the District and Kisters North America, Inc. (Kisters);
2. Authorize the Chairman to execute the Agreement on behalf of the District; and
3. Authorize and direct the Auditor Controller to make the necessary budget adjustments applicable to the District's Hydrology Fund specified on Attachment A.

**BACKGROUND:**

Continued on Page 2.

FISCAL PROCEDURES APPROVED  
 ROBERT E. BYRD, AUDITOR-CONTROLLER  
 BY Samuel Wong 9/21/10  
 SAMUEL WONG

Steve Thomas  
 FOR **WARREN D. WILLIAMS**  
 General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost: \$50,000.00	In Current Year Budget:	Yes
	Current F.Y. County Cost: \$	Budget Adjustment:	Yes
	Annual Net District Cost: \$25,000.00	For Fiscal Year:	10/11,11/12,12/13

SOURCE OF FUNDS : 48000 947240 525440		Positions To Be Deleted Per A-30	<input type="checkbox"/>
Professional Services / Hydrology Services		Requires 4/5 Vote	<input checked="" type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE  
 BY: Alex Gann  
 Alex Gann

County Executive Office Signature

FISCAL PROCEDURES APPROVED  
 BY M. CHANG, FINANCE DIRECTOR  
 9/16/10  
 CHAIRMAN  
 Departmental Concurrence  
 NEAL R. KIPNIS  
 DATE 9/16/10  
 BY NEAL R. KIPNIS

Dep't Recomm.:  Consent  Policy  
 Per Exec. Ofc.:  Consent  Policy

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**SUBJECT:** Custom Software Modifications  
Consulting Services Agreement

**SUBMITTAL DATE:** October 5, 2010

**Page 2**

**BACKGROUND:**

The Agreement sets forth the terms and conditions by which Kisters will provide custom software development and modifications in support of the District's hydrometeorological database (Hydstra). Kisters is the only U.S. Company that is authorized to provide custom software modifications and applications development for the Hydstra database application. County Counsel has approved the Agreement as to legal form.

**FINANCIAL:**

Partial funds are included in District's Budget for Fiscal Year 2010-2011. A budget adjustment is necessary to increase Fund 48000 Class 2 appropriation to accommodate the added cost of the consulting services agreement for FY 2010-2011 as noted on Attachment A. Additional funds will be included in the District Fiscal Years 2011-2012 and 2012-2013 budgets.

**Attachment A**

Increase Appropriations:

48000-947240-525440	Professional Services	\$25,000.00
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Increase Estimated Revenue:

48000-947240-771800	Engineering Services	\$25,000.00
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CONSULTING SERVICES AGREEMENT  
HYDSTRA CUSTOM SOFTWARE

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2 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION  
3 DISTRICT, hereinafter called "DISTRICT", and KISTERS NORTH AMERICA, INC.,  
4 hereinafter called "CONSULTANT", hereby agree as follows:

- 5 1. PROJECT – As directed by DISTRICT, CONSULTANT shall develop custom  
6 software modifications to DISTRICT'S Hydron hydrometeorological and water  
7 quality database software.
- 8 2. SCOPE OF SERVICES – CONSULTANT shall furnish tools, equipment,  
9 facilities, materials and labor necessary to perform in a complete, skillful and  
10 professional manner those consulting services required by DISTRICT.
- 11 3. TIME FOR PERFORMANCE – CONSULTANT shall commence performance of  
12 services upon receipt by CONSULTANT of a written notice to proceed from  
13 DISTRICT and shall diligently perform the assigned task(s) to full completion in a  
14 timely manner. The terms and conditions of this Agreement shall terminate on  
15 June 30, 2013.
- 16 4. COMPENSATION – DISTRICT shall pay CONSULTANT for services  
17 performed and expenses incurred in accordance with the rates as set forth on  
18 Attachment "A" attached hereto and made a part hereof. The total annual amount  
19 of compensation paid to CONSULTANT shall not exceed the sum of fifty  
20 thousand dollars (\$50,000.00) for Fiscal Year 2010-2011 and twenty-five  
21 thousand dollars (\$25,000.00) per fiscal year thereafter. The total aggregate  
22 amount paid to CONSULTANT under this Agreement shall not exceed one  
23 hundred thousand dollars (\$100,000.00).
- 24 5. PAYMENT – DISTRICT shall pay CONSULTANT following satisfactory  
25 performance of the services, as set forth herein and within thirty (30) days after  
26 DISTRICT'S receipt of appropriate invoice(s) from CONSULTANT.  
27 CONSULTANT shall keep employee and expense records according to customary  
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1 accounting methods and such records shall be available for inspection by  
2 DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize  
3 charges to conform with the rates and expenses as set forth on Attachment "A".

4 6. LICENSES – CONSULTANT, its employees, agents, contractors and  
5 subcontractors shall maintain professional licenses required by the laws of the  
6 State of California at all times while performing services under this Agreement.

7 7. NOTICES – Any and all notices sent or required to be sent to the parties of this  
8 Agreement will be mailed by first class mail, postage prepaid, to the following  
9 addresses:

10 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
11 1995 Market Street  
12 Riverside, CA 92501

KISTERS NORTH AMERICA, INC.  
7777 Greenback Lane, Suite 209  
Citrus Heights, CA 95610  
Attn: Jennifer Durda

13 8. REQUIRED INSURANCE –Without limiting or diminishing CONSULTANT'S  
14 obligation to indemnify or hold DISTRICT harmless, CONSULTANT shall  
15 procure and maintain or cause to be maintained, at its sole cost and expense, the  
16 following insurance coverage's during the term of this Agreement:

17 A. Workers' Compensation:

18 If CONSULTANT has employees as defined by the State of California,  
19 CONSULTANT shall maintain statutory Workers' Compensation Insurance  
20 (Coverage A) as prescribed by the laws of the State of California. Policy  
21 shall include Employers' Liability (Coverage B) including Occupational  
22 Disease with limits not less than \$1,000,000 per person per accident. Policy  
23 shall be endorsed to waive subrogation in favor of DISTRICT and, if  
24 applicable, to provide a Borrowed Servant/Alternate Employer  
25 Endorsement.  
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27 B. Commercial General Liability:  
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1 Commercial General Liability insurance coverage, including but not limited  
2 to, premises liability, unmodified contractual liability, products and  
3 completed operations liability, personal and advertising injury, and cross  
4 liability coverage, covering claims which may arise from or out of  
5 CONSULTANT'S performance of its obligations hereunder. Policy shall  
6 name the Riverside County Flood Control and Water Conservation District,  
7 the County of Riverside, its agencies, districts, special districts, and  
8 departments, their respective directors, officers, Board of Supervisors,  
9 employees, elected or appointed officials, agents or representatives as  
10 additional insureds. Policy's limit of liability shall not be less than  
11 \$1,000,000 per occurrence combined single limit. If such insurance  
12 contains a general aggregate limit, it shall apply separately to this  
13 Agreement or be no less than two (2) times the occurrence limit.

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15 C. Vehicle Liability:

16 If CONSULTANT'S vehicles or mobile equipment are used in the  
17 performance of the obligations under this Agreement, then CONSULTANT  
18 shall maintain liability insurance for all owned, non-owned or hired vehicles  
19 so used in an amount not less than \$1,000,000 per occurrence combined  
20 single limit. If such insurance contains a general aggregate limit, it shall  
21 apply separately to this Agreement or be no less than two (2) times the  
22 occurrence limit. Policy shall name the Riverside County Flood Control  
23 and Water Conservation District, the County of Riverside, its agencies,  
24 districts, special districts, and departments, their respective directors,  
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1 officers, Board of Supervisors, employees, elected or appointed officials,  
2 agents or representatives as additional insureds.

3 D. Professional Liability:

4 CONSULTANT shall maintain Professional Liability Insurance providing  
5 coverage for CONSULTANT'S performance of work included within this  
6 Agreement, with a limit of liability of not less than \$1,000,000 per  
7 occurrence and \$2,000,000 annual aggregate. If CONSULTANT'S  
8 Professional Liability Insurance is written on a claims made basis rather  
9 than an occurrence basis, such insurance shall continue through the term of  
10 this Agreement and CONSULTANT shall purchase at his sole expense  
11 either: 1) an Extended Reporting Endorsement (also known as Tail  
12 Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive  
13 date back to the date of, or prior to, the inception of this Agreement; or 3)  
14 demonstrate through Certificates of Insurance that CONSULTANT has  
15 maintained continuous coverage with the same or original insurer.  
16 Coverage provided under items: 1), 2) or 3) will continue as long as the law  
17 allows.  
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20 E. General Insurance Provisions – All Lines:

- 21 a. Any insurance carrier providing insurance coverage hereunder shall  
22 be admitted to the State of California and have an A.M. BEST  
23 rating of not less than an A: VIII (A: 8) unless such requirements  
24 are waived, in writing, by the County Risk Manager. If the County  
25 Risk Manager waives a requirement for a particular insurer such  
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1 waiver is only valid for that specific insurer and only for one policy  
2 term.

3 b. The CONSULTANT must declare its insurance self-insured  
4 retention for each coverage required herein. If any such self-  
5 insured retention exceeds \$500,000 per occurrence each such  
6 retention shall have the prior written consent of the County Risk  
7 Manager before the commencement of operations under this  
8 Agreement. Upon notification of self-insured retention deemed  
9 unacceptable to the DISTRICT, and at the election of the County  
10 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or  
11 eliminate such self-insured retention with respect to this Agreement  
12 with DISTRICT, or 2) procure a bond which guarantees payment of  
13 losses and related investigations, claims administration, and defense  
14 costs and expenses.

15  
16 c. CONSULTANT shall cause their insurance carrier(s) to furnish  
17 DISTRICT with: 1) a properly executed original Certificate(s) of  
18 Insurance and certified original copies of Endorsements effecting  
19 coverage as required herein; and 2) if requested to do so orally or in  
20 writing by the County Risk Manager, provide original certified  
21 copies of policies including all Endorsements and all attachments  
22 thereto, showing such insurance is in full force and effect. Further,  
23 said Certificate(s) and policies of insurance shall contain the  
24 covenant of the insurance carrier(s) that thirty (30) days written  
25 notice shall be given to DISTRICT prior to any material  
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modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of Endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. *CONSULTANT shall not commence operations until DISTRICT has been furnished with original Certificate(s) of Insurance and certified original copies of Endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

- d. It is understood and agreed by the parties hereto that CONSULTANT'S insurance shall be construed as primary insurance, and DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material

1 change in the equipment to be used in the performance of the scope  
2 of work which will add additional exposures (such as the use of  
3 aircraft, watercraft, cranes, etc.); or the term of this Agreement,  
4 including any extensions thereof, exceeds five (5) years, DISTRICT  
5 reserves the right to adjust the types of insurance required under  
6 this Agreement and the monetary limits of liability for the insurance  
7 coverages currently required herein, if, in the County Risk  
8 Manager's reasonable judgment, the amount or type of insurance  
9 carried by CONSULTANT has become inadequate.

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11 f. CONSULTANT shall pass down the insurance obligations  
12 contained herein to all tiers of subcontractors working under this  
13 Agreement.

14 g. The insurance requirements contained in this Agreement may be  
15 met with a program(s) of self-insurance acceptable to DISTRICT.

16 h. CONSULTANT agrees to notify DISTRICT of any claim by a third  
17 party or any incident or event that may give rise to a claim arising  
18 from the performance of this Agreement.  
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20 9. INDEMNIFICATION – CONSULTANT shall indemnify and hold harmless  
21 DISTRICT (including its officers, Board of Supervisors, elected and appointed  
22 officials, employees, agents and representatives) from any and all liability, claim,  
23 damage, proceeding or action, present or future, based upon, arising out of or in  
24 any way relating to CONSULTANT'S (including its officers, employees,  
25 subcontractors and agents) actual or alleged negligent, reckless or willful  
26 misconduct, acts or omissions related to this Agreement, performance under this  
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1 Agreement, or failure to comply with the requirements of this Agreement,  
2 including but not limited to: (a) property damage; (b) bodily injury or death; or (c)  
3 any other element of any kind or nature whatsoever.

4 CONSULTANT shall defend, at its sole expense, including all costs and fees  
5 (including but not limited to attorney fees, cost of investigation, defense and  
6 settlements or awards), DISTRICT (its officers, Board of Supervisors, elected and  
7 appointed officials, employees, agents and representatives) in any claim,  
8 proceeding or action for which indemnification is required.

9 With respect to any of CONSULTANT'S indemnification requirements,  
10 CONSULTANT shall, at its sole cost, have the right to use counsel of their own  
11 choice and shall have the right to adjust, settle, or compromise any such claim,  
12 proceeding or action without the prior consent of DISTRICT; provided, however,  
13 that such adjustment, settlement or compromise in no manner whatsoever limits  
14 or circumscribes CONSULTANT'S indemnification obligations to DISTRICT.

15 CONSULTANT'S indemnification obligations shall be satisfied when  
16 CONSULTANT has provided to DISTRICT the appropriate form of dismissal (or  
17 similar document) relieving DISTRICT from any liability for the claim,  
18 proceeding or action involved.

19 The specified insurance limits required in this Agreement shall in no way limit or  
20 circumscribe CONSULTANT'S obligations to indemnify and hold harmless  
21 DISTRICT from third party claims.

22 In the event there is conflict between this section and California Civil Code  
23 Section 2782, this section shall be interpreted to comply with California Civil  
24 Code Section 2782. Such interpretation shall not relieve CONSULTANT from  
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1 indemnifying DISTRICT or the County of Riverside to the fullest extent allowed  
2 by law.

3 10. WORK PRODUCT – CONSULTANT shall provide DISTRICT with a copy of  
4 the software modifications and installation instructions. All drawings, logs and  
5 reports shall be and remain the sole property of DISTRICT. CONSULTANT  
6 shall not publish or transfer any material produced or resulting from activities  
7 supported by this Agreement without the written consent of the General Manager-  
8 Chief Engineer. If any such material is subject to copyright or trademark, the  
9 parties agree that the right to any and all copyright and/or trademark in and to the  
10 material is expressly reserved to DISTRICT. If any such material is copyrighted,  
11 the parties hereto understand and agree that DISTRICT reserves a royalty-free,  
12 non-exclusive, and irrevocable license to reproduce, publish, and use such  
13 material, in whole or in part, and to authorize others to do so, provided written  
14 credit is given the author.

15  
16 11. CONFIDENTIALITY OF DATA – All financial, statistical, personal, technical or  
17 other data and information which is designated confidential by DISTRICT and  
18 subsequently made available to CONSULTANT shall not be disclosed (in whole  
19 or in part) by CONSULTANT to any third parties and shall be protected by  
20 CONSULTANT from unauthorized use and disclosure. The only exception to this  
21 shall be if disclosure is approved in advance in writing by DISTRICT or if the  
22 disclosure is made to CONSULTANT'S subcontractors as anticipated by this  
23 Agreement.  
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25 CONSULTANT shall not issue any news release or public relations item  
26 regarding designated confidential information or CONSULTANT'S work under  
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1 this Agreement, without prior review of the contents and written approval by  
2 DISTRICT.

3 These same requirements shall be applicable to any of CONSULTANT'S  
4 subcontractors. CONSULTANT shall include the requirements stated in this  
5 section in the agreements with any of its subcontractors.

6 12. TERMINATION – At any time during the term of this Agreement, DISTRICT  
7 may:

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- 9 a. Terminate this Agreement without cause upon providing CONSULTANT  
10 thirty (30) days written notice stating the extent and effective date of  
11 termination; or
- 12 b. Upon five (5) days written notice, terminate this Agreement for  
13 CONSULTANT default, if CONSULTANT refuses or fails to comply with  
14 the provisions of this Agreement or fails to make progress so as to endanger  
15 performance and does not cure such failure within a reasonable period of  
16 time. In the event of such termination, the DISTRICT may proceed with  
17 the work in any manner deemed proper to DISTRICT.

18 In the event DISTRICT issues a Notice of Termination pursuant to  
19 paragraph a or b above, CONSULTANT shall:

- 20 i) Stop all work under this Agreement on the date specified in the  
21 Notice of Termination; and
- 22 ii) Transfer to DISTRICT and deliver in the manner, and to the  
23 extent, if any, as directed by DISTRICT, any equipment, data or  
24 reports which, if the Agreement had been completed, would have  
25 been required to furnish to DISTRICT.

26 In the event DISTRICT terminates this Agreement pursuant to paragraph a or b  
27 above, DISTRICT shall make payment for all services performed in accordance  
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1 with this Agreement to the date of termination, a total amount which bears the  
2 same ratio to the total maximum fee otherwise payable under this Agreement as  
3 the services actually bear to the total services necessary for performance of this  
4 Agreement. Notwithstanding any of the other provisions of this Agreement,  
5 CONSULTANT'S rights under this Agreement shall terminate (except for fees  
6 accrued prior to the date of termination) upon dishonesty, or a willful or material  
7 breach of this Agreement by CONSULTANT; or in the event CONSULTANT'S  
8 unwillingness or inability for any reason whatsoever to perform the duties  
9 hereunder; or if the Agreement is terminated pursuant to Section 17 (NON-  
10 DISCRIMINATION). In such event, CONSULTANT shall not be entitled to any  
11 further compensation under this Agreement. The rights and remedies of  
12 DISTRICT provided in this section shall not be exclusive and are in addition to  
13 any other rights and remedies provided by law or under this Agreement.

- 14 13. ASSIGNMENT - Neither this Agreement nor any part thereof shall be assigned by  
15 CONSULTANT without the prior written consent of DISTRICT.
- 16 14. CONFLICT OF INTEREST – CONSULTANT covenants that it presently has no  
17 interest in, including but not limited to, other projects or independent contracts,  
18 and shall not acquire any such interest, direct or indirect, which would conflict in  
19 any manner or degree with the performance of services required to be performed  
20 under this Agreement. CONSULTANT further covenants that in the performance  
21 of this Agreement, no person having any such interest shall be employed or  
22 retained by it under this Agreement.
- 23 15. JURISDICTIONAL/LAW/SEVERABILITY – This Agreement is to be construed  
24 in accordance with the laws of the State of California. If any provision of this  
25 Agreement is held by a court of competent jurisdiction to be invalid, void or  
26 unenforceable, the remaining provisions shall be declared severable and shall be  
27 given full force and effect to the extent possible.
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1 Any legal action, in law or equity related to the performance or interpretation of  
2 this Agreement shall be filed only in the Superior Court for the State of California  
3 located in Riverside, California, and the parties waive any provision of law  
4 providing for a change of venue to another location. Prior to the filing of any  
5 legal action, the parties shall be obligated to attend a mediation session with a  
6 neutral mediator to try to resolve the dispute.

7 16. WAIVER – Any waiver by DISTRICT of any breach of any one or more of the  
8 terms of this Agreement shall not be construed to be a waiver of any subsequent or  
9 other breach of the same or any other term thereof. Failure on the part of  
10 DISTRICT to require exact, full and complete compliance with any terms of this  
11 Agreement shall not be construed as in any manner changing the terms hereof, or  
12 estopping DISTRICT from enforcement hereof.

13 17. NON-DISCRIMINATION - In the performance of the terms of this Agreement,  
14 CONSULTANT shall not engage in nor permit others he may employ to engage in  
15 discrimination in the employment of persons because of the race, color, national  
16 origin or ancestry, religion, physical handicap, disability as defined by the  
17 Americans with Disabilities Act (ADA), medical condition, marital status or sex  
18 of such persons, in accordance with the provision of California Labor Code  
19 Section 1735.

20 18. NON-APPROPRIATION OF FUNDS – It is mutually agreed and understood that  
21 the obligation(s) of DISTRICT are limited by and contingent upon the availability  
22 of DISTRICT funds for the reimbursement of CONSULTANT'S fees. In the  
23 event that such funds are not forthcoming for any reason, DISTRICT shall  
24 immediately notify CONSULTANT in writing. This Agreement shall be deemed  
25 terminated and have no further force and effect immediately on receipt of  
26 DISTRICT'S notification by CONSULTANT. In the event of such termination,  
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CONSULTANT shall be entitled to reimbursement of its costs in accordance with  
Section 4 (COMPENSATION).

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IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on \_\_\_\_\_  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By Steve Thomas  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel  
By [Signature]  
NEAL R. KIPNIS  
Deputy County Counsel

KECIA HARPER-IHEM  
Clerk of the Board  
By \_\_\_\_\_  
Deputy

(SEAL)

Consulting Services Agreement: Kisters Software Modifications  
TMC:blj  
9/16/10

KISTERS North America, Inc.  
1401 El Camino Avenue  
Suite 370  
Sacramento, CA 95815, USA  
Telephone: +1 (916) 643-1260  
Facsimile: +1 (916) 643-4620  
E-mail: KNA@kisters.net  
Internet: www.kisters.net

Mr. Steve Clark  
Riverside County Flood Control District  
1995 Market Street  
Riverside, CA 92501



**Regarding: KISTERS North America Inc. Rates for Hydstra and  
WISKI Customers**

July 14, 2010

Dear Mr. Clark,

Kisters North America, Inc. proposes to make software modifications to the Hydstra software used by Riverside County Flood Control District. Such modifications will be done at a cost of:

Senior Systems Engineer - \$200/hour off site, \$1,750/day on site  
Associate Systems Engineer - \$150/hour off site, \$1,500/day on site

Senior Hydrological Engineer - \$200/hour off site, \$1,750/day on site  
Associate Hydrological Engineer - \$150/hour off site, \$1,500/day on site

All transportation, lodging and meals will be billed as a direct expense. Expenses are only for travel within the Continental United States.

Regards,

A handwritten signature in cursive script that reads 'A Clarke'.

Amelia Clarke, Controller

KISTERS North America, Inc.

**ATTACHMENT A**