

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

412B



**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**  
November 6, 2012

**SUBJECT:** Prequalification for On-Call Environmental and Regulatory Support Services

**RECOMMENDED MOTION:**

1. Approve the On-Call Environmental and Regulatory Support Services Providers List (Attachment "A") for use on an as needed basis, for Fiscal Years 2012-2013, 2013-2014, 2014-2015 and 2015-2016;
2. Approve three (3) multi-year Consulting Services Agreements between the District and the following On-Call Environmental and Regulatory Support Services providers: Chambers Group, Inc., Lilburn Corporation, and URS Corporation;
3. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
4. Authorize the District's General Manager-Chief Engineer to sign any necessary amendments to the Agreements that do not increase the cost to the District and do not materially change the scope of services.

Continued on Page 2

**WARREN D. WILLIAMS**  
General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	<b>Current F.Y. District Cost:</b>	\$750,000	<b>In Current Year Budget:</b>	Yes
	<b>Current F.Y. County Cost:</b>	N/A	<b>Budget Adjustment:</b>	N/A
	<b>Annual Net District Cost:</b>	\$750,000	<b>For Fiscal Year:</b>	12/13; 13/14; 14/15; 15/16

<b>SOURCE OF FUNDS:</b> 25110-25170 947400 525440 Zone 1 through Zone 7 Funds Professional Services	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

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

APPROVE

BY:   
Michael R. Shetler

**County Executive Office Signature**

Policy

Consent

Dep't Recomm.:

Per Exec. Ofc.:

Prev. Agn. Ref.:

District: All  
ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

Agenda Number:

11.8

FORM APPROVED COUNTY COUNSEL  
BY: Neal R. Kipnis DATE: 11/14/12  
FISCAL PROCEDURES APPROVED  
JEANINE J. REY, FINANCE DIRECTOR  
BY: Jeanine J. Rey 11/05/2012  
JEANINE J. REY

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

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**BACKGROUND:**

The primary purpose of the pre-qualified On-Call Environmental and Regulatory Support Services Providers List (On-Call Providers List) is to provide expedited access to specialized technical expertise necessary to support the District's ongoing Planning, Capital Improvement and Maintenance Programs.

To allow the District to implement its Planning, Capital Improvement and Maintenance Programs more effectively, District staff is recommending that the contract limits set forth in Board Policy H-7 (\$100,000 per project with a further \$100,000 cap in a single year) be increased. The subject On-Call Providers List would authorize individual contract limits of \$250,000 in any fiscal year with a further cap of \$750,000 for the entire term of the contract.

Pursuant to County Board Policy H-7, on May 7, 2012, the District mailed a Request for Qualifications to various environmental consulting and regulatory compliance firms with the intent to establish a pre-qualified list of environmental and regulatory professional service providers. A Notice of Availability was also published in The Press Enterprise on May 22, 2012. The Request for Qualifications was also made available to the public on the District's website from May 22, 2012 through June 26, 2012.

A selection committee comprised of District staff was established to review each firm's qualifications relative to the following service areas:

- Cultural and/or paleontological resources assessment;
- Biological resources assessment;
- Hazardous waste sites and soil contamination assessment;
- California Environmental Quality Act/National Environmental Policy Act compliance;
- Biological, cultural and/or paleontological resources construction monitoring;
- Regulatory permitting (CDFG 1602, COE 404, CWA 401, etc.);
- Habitat Mitigation/Restoration and Monitoring Plans (HMMP);
- Federal Endangered Species Act and California Endangered Species Act compliance; and
- Compliance with habitat conservation plans.

The On-Call Providers List (Attachment "A") was developed as a result of this Request for Qualifications. The On-Call Providers List is valid for three years. Prior to its expiration on November 30, 2015, the District will issue another Request for Qualifications.

Under the three (3) multi-year Consulting Services Agreements (Agreements) recommended for approval via this action, the District will have the ability but no obligation, to utilize the services of Chambers Group, Inc. Lilburn Corporation, and URS Corporation for environmental and regulatory support services on an as-needed basis for fiscal years 2012-2013, 2013-2014, 2014-2015 and 2015-2016. These Agreements are for a "not-to-exceed" amount of \$250,000 in any fiscal year with a further cap of \$750,000 for the entire term of the Agreement for each firm as described in the respective Agreements. The District will apportion the work among these three firms based on a number of factors such as work load, continuity, special expertise and strength specific to the project.

County Counsel has approved the Agreements as to legal form.

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

**SUBJECT:** Prequalification for On-Call Environmental and Regulatory Support Services

**SUBMITTAL DATE:** November 6, 2012  
**Page 3**

**FINANCIAL:**

Sufficient funding is available in the District's Zone 1 through Zone 7 budget(s) for Fiscal Year 2012-2013 and will be included in the proposed budget(s) for Fiscal Years 2013-2014, 2014-2015 and 2015-2016, as appropriate.

**Attachment "A"**

Pre-qualified List Of On-call Environmental and Regulatory Support Services Providers  
(For individual contract limits of \$250,000 in any fiscal year with a further cap of \$750,000 for the entire term of the contract from Fiscal Years 2012-2013 through 2015-2016)

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**CHAMBERS GROUP, INC.**

**LILBURN CORPORATION**

**URS CORPORATION AMERICAS**

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

1  
2 The Riverside County Flood Control and Water Conservation District, hereinafter called  
3 "DISTRICT", and Chambers Group, Inc., hereinafter called "CONSULTANT", hereby agree as  
4 follows:

5 1. PROJECT

6 CONSULTANT shall provide on-call environmental and regulatory support services in  
7 accordance with applicable federal, state and local laws and regulations as requested by  
8 DISTRICT.  
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10 2. SCOPE OF SERVICES

11 As requested by DISTRICT, CONSULTANT shall provide project specific  
12 environmental/regulatory support and ancillary professional services as described in the  
13 "Scope of Services", attached hereto as Attachment "A" and made a part hereof, for  
14 DISTRICT projects on an "on-call" basis. During the term of this Agreement, the  
15 CONSULTANT may be invited to submit budget proposals for some of the various  
16 services listed in Attachment "A" as requested by DISTRICT and be assigned  
17 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT  
18 understands and expressly agrees that the execution of this Agreement by  
19 CONSULTANT and/or the submission of any budget proposal to furnish services does  
20 not guarantee the assignment or approval of any subsequent Task Order(s).  
21

22 3. PERSONNEL23 A. Project Manager

24 For each Task Order, the DISTRICT shall designate a representative who shall  
25 act as DISTRICT'S Project Manager ("Project Manager"). The Project Manager  
26 shall have authority to act on behalf of DISTRICT for all purposes under this  
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Task Order. DISTRICT shall provide written notice to CONSULTANT of any change in Project Manager assignment for a given Task Order.

B. CONSULTANT'S Representative

CONSULTANT shall appoint a designated Representative for each assigned Task Order who shall be responsible for coordinating all aspects of the assigned Task Order. CONSULTANT'S Representative shall be available to DISTRICT'S Project Manager at reasonable times. CONSULTANT may appoint another person as Representative upon written notice to DISTRICT.

C. Substitution of Key Personnel

At the time of Task Order approval, CONSULTANT shall identify its Key Personnel who will perform each assigned Task Order to DISTRICT'S Project Manager. Should one or more of the identified Key Personnel become unavailable, CONSULTANT may substitute other personnel of equal or greater competence upon written approval by DISTRICT. In the event that DISTRICT and CONSULTANT cannot agree as to the substitution of the Key Personnel, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the required date for completion of an assigned Task Order, provided that such Task Order was approved prior to and completed by June 30, 2016.

5. COMPENSATION

1 CONSULTANT shall receive compensation for all services satisfactorily performed  
2 under this Agreement in accordance with the terms of the approved Task Order(s). The  
3 total amount to be paid to CONSULTANT for the performance of all Task Orders  
4 approved pursuant to this Agreement shall not exceed two hundred fifty thousand dollars  
5 (\$250,000) in any fiscal year and shall not exceed the sum of seven hundred fifty  
6 thousand dollars (\$750,000) the entire term of this Agreement.  
7

8 6. PAYMENTS

9 Progress payments shall be made in accordance with the Compensation/Fee Rate  
10 Schedule attached to the approved Task Order. Progress payments shall be processed no  
11 more than once per month. Upon satisfactory performance of CONSULTANT'S  
12 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT  
13 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate  
14 invoices. DISTRICT shall not pay interest or finance charges on any outstanding  
15 balance(s). CONSULTANT shall keep employee and expense records according to  
16 customary accounting methods and such records shall, upon request, be available for  
17 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall  
18 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the  
19 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice  
20 within thirty (30) days of receipt.  
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22 7. PROJECT PERFORMANCE

23 A. Commencement of Services

24 CONSULTANT shall commence performance of the services for each Task  
25 Order upon receipt of DISTRICT'S approved Task Order.  
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B. Time of Completion

Time is of the essence in the performance of this Agreement. CONSULTANT shall complete services in accordance with the schedule(s) set forth in the approved Task Order(s).

8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors shall possess appropriate federal and/or state permits and maintain professional licenses required by the applicable Federal, State and local regulations at all times while performing services under this Agreement.

9. STANDARD OF CARE

While performing the services, CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of CONSULTANT'S profession practicing in the State of California, and shall use reasonable diligence and best judgment while exercising CONSULTANT'S professional skill and expertise. By executing this Agreement, CONSULTANT represents and maintains that CONSULTANT has the necessary experience and expertise to skillfully perform all services, duties and obligations required by this Agreement and to fully and adequately complete each approved Task Order.

10. ERRORS AND OMISSIONS

In the event CONSULTANT'S reports or work products contain any errors or omissions that cause DISTRICT to incur additional expense beyond what would have otherwise resulted if there were no errors or omissions in CONSULTANT'S reports or work products, such additional expense shall be borne solely by CONSULTANT.



11. PERMITS AND RIGHTS OF ENTRY

1 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT  
 2 to perform the proposed consulting services within and upon privately-owned property.  
 3 All permits and rights of entry as may be required from any and all affected public  
 4 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained  
 5 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,  
 6 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as  
 7 to minimize public inconvenience and possible hazard, and will restore the streets and  
 8 other work areas to their original condition and former usefulness as soon as practicable.  
 9 CONSULTANT shall be responsible for the protection of public and private property  
 10 adjacent to the work and shall exercise due caution to avoid damage to such property.  
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12. NOTICES

14 Any and all notices sent or required to be sent to the parties of this Agreement will be  
 15 mailed by first class mail, postage prepaid, to the following addresses:

16 RIVERSIDE COUNTY FLOOD CONTROL	CHAMBERS GROUP, INC.
17 AND WATER CONSERVATION DISTRICT	1200 California Street, Suite 240
18 1995 Market Street	Redlands, CA 92374
19 Riverside, CA 92501	Attn: Timothy Day
20 Attn: Environmental Regulatory Services Section	

21. REQUIRED INSURANCE

21 CONSULTANT shall not commence operations until DISTRICT has been furnished  
 22 with original certificate(s) of insurance and original certified copies of endorsements and  
 23 if requested, certified original policies of insurance including all endorsements and any  
 24 and all other attachments as required in this Section.

25 Without limiting or diminishing CONSULTANT'S obligation to indemnify or hold  
 26 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be  
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maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

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3 A. Workers' Compensation

4 If CONSULTANT has employees as defined by the State of California,  
5 CONSULTANT shall maintain statutory Workers' Compensation Insurance  
6 (Coverage A) as prescribed by the laws of the State of California. Policy shall  
7 include Employer's Liability (Coverage B) including Occupational Disease with  
8 limits not less than \$1,000,000 per person per accident. Policy shall be endorsed  
9 to waive subrogation in favor of DISTRICT and, if applicable, to provide a  
10 Borrowed Servant/Alternate Employer endorsement.

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12 B. Commercial General Liability

13 Commercial General Liability insurance coverage, including but not limited to,  
14 premises liability, unmodified contractual liability, products and completed  
15 operations liability, personal and advertising injury, and cross liability coverage,  
16 covering claims which may arise from or out of CONSULTANT'S performance  
17 of its obligations hereunder. Policy shall name the Riverside County Flood  
18 Control and Water Conservation District, the County of Riverside, its agencies,  
19 districts, special districts, and departments, their respective directors, officers,  
20 Board of Supervisors, employees, elected or appointed officials, employees,  
21 agents or representatives as additional insureds. Policy's limit of liability shall  
22 not be less than \$1,000,000 per occurrence combined single limit. If such  
23 insurance contains a general aggregate limit, it shall apply separately to this  
24 Agreement or be no less than two (2) times the occurrence limit.  
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13 C. Vehicle Liability

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

14 D. Professional Liability

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

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1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

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such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to DISTRICT prior to any material 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 original certified policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

4. 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.

5. 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 change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the

types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by CONSULTANT has become inadequate.

6. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
7. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
8. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CONSULTANT'S (including its officers, employees, subcontractors and agents) actual or alleged negligent, reckless or willful misconduct, acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; or (c) any other element of any kind or nature whatsoever.

CONSULTANT shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed

officials, employees, agents and representatives) in any claim, proceeding or action for which indemnification is required.

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

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

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

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve CONSULTANT from indemnifying DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) or the County of Riverside to the fullest extent allowed by law.

15. WORK PRODUCT

CONSULTANT shall provide DISTRICT with all plans, technical studies, reports or other materials as set forth in the approved Task Order(s). All materials produced by CONSULTANT in the performance of the services as set forth in the approved Task

1 Order(s) shall be and remain the sole property of DISTRICT. CONSULTANT shall not  
2 publish or transfer any material produced or resulting from activities supported by this  
3 Agreement without the written consent of the General Manager-Chief Engineer of  
4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree  
5 that the right to any and all copyright and/or trademark in and to the material is expressly  
6 reserved to DISTRICT. If any such material is copyrighted, the parties hereto  
7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and  
8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and  
9 to authorize others to do so, provided written credit is given the author.

10 16. TERMINATION

11 At any time during the term of this Agreement, DISTRICT may:

12 A. Agreement

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

23  
24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)  
25 stop all work under this Agreement on the date specified in the Notice of  
26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the  
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1 extent, if any, as directed by DISTRICT, any equipment, data or reports which, if  
2 the Agreement had been completed, would have been required to be furnished to  
3 DISTRICT.

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

22 Terminate an approved Task Order or portion thereof without cause upon  
23 providing CONSULTANT fourteen (14) days written notice stating the extent  
24 and effective date of termination. In the event DISTRICT issues a Notice of  
25 Termination for an approved Task Order, CONSULTANT shall: i) stop all work  
26 under the Task Order on the date specified in the Notice of Termination; and ii)  
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1 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as  
2 directed by DISTRICT, any equipment, data, reports or other documents which,  
3 if the Task Order had been completed, would have been required to be furnished  
4 to DISTRICT.

5 In the event DISTRICT terminates an approved Task Order, DISTRICT shall  
6 make payment for all services satisfactorily performed in accordance with the  
7 negotiated Task Order to the date of termination, a total amount which bears the  
8 same ratio to the total maximum fee otherwise payable under the Task Order as  
9 the services actually bear to the total services necessary for performance of the  
10 Task Order.

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12 17. BASIC SERVICES OF CONSULTANT

13 The scope of services associated with the performance of any specific Task Order under  
14 this Agreement shall be expressly defined and agreed upon prior to the approval of the  
15 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the  
16 approved scope of services must be authorized by DISTRICT'S General Manager-Chief  
17 Engineer, and shall be made in writing.

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19 A. Right to Preliminary Review

20 All work prepared by CONSULTANT shall be subject to the approval of the  
21 Project Manager. CONSULTANT shall allow Project Manager to inspect and  
22 review CONSULTANT'S work in progress at any reasonable time. All reports,  
23 working papers, and similar work products prepared for submission in the course  
24 of providing services under this Agreement shall be submitted to the Project  
25 Manager in draft form. In the event that Project Manager, in his or her sole  
26 discretion, determines the formally submitted work product to be inadequate,  
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1 CONSULTANT may be required to revise and resubmit the work at no  
 2 additional cost to DISTRICT. Should CONSULTANT fail to make requested  
 3 corrections in a timely manner, such corrections may be made by DISTRICT,  
 4 and the cost thereof charged to CONSULTANT. The responsibility for accuracy  
 5 and completeness of such items remains solely that of CONSULTANT. Neither  
 6 DISTRICT'S review nor approval shall give rise to any liability or responsibility  
 7 on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve  
 8 CONSULTANT of its professional responsibilities or obligations under this  
 9 Agreement.

10 B. Progress Reports

11 Attached with CONSULTANT'S periodic invoice(s), CONSULTANT shall  
 12 submit a Progress Report indicating the project status in relation to the approved  
 13 Project Schedule and, as DISTRICT deems necessary, an updated Project  
 14 Schedule for review and approval. Failure to submit the Progress Report or  
 15 updated Project Schedule shall be cause for DISTRICT to withhold payment of  
 16 CONSULTANT'S invoice.

17 18. INDEPENDENT CONTRACTOR

18 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times  
 19 in an independent capacity during the term of this Agreement and in the performance of  
 20 the services to be rendered hereunder and shall not act as or shall not be and shall not in  
 21 any manner be considered to be employees or agents of DISTRICT.

22 19. SUBCONTRACTING

23 A list of sub-consultants (Sub-consultants), as identified by the CONSULTANT, is  
 24 attached hereto as Attachment "C". CONSULTANT may, at CONSULTANT'S own  
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1 expense, retain or employ Sub-consultants from Attachment "C" to accomplish certain  
2 portions of the work covered by this Agreement.

3 Should one or more of the Sub-consultants, as identified in Attachment "C", become  
4 unavailable, CONSULTANT may substitute other Sub-consultants of equal or greater  
5 competence upon written approval by DISTRICT. In the event that DISTRICT and  
6 CONSULTANT cannot agree as to the substitution of the Sub-consultant, DISTRICT  
7 may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

8 In the event CONSULTANT subcontracts any portion of CONSULTANT'S duties under  
9 this Agreement, CONSULTANT shall require its Sub-consultants to comply with the  
10 terms of this Agreement in the same manner as required of CONSULTANT. The fact  
11 that CONSULTANT employs Sub-consultants not in his regular employ shall not relieve  
12 CONSULTANT of any responsibility regarding the adequacy of the Sub-consultant's  
13 work performed or services provided pursuant to this Agreement.

14  
15 20. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of  
17 an approved Task Order without the prior written approval of DISTRICT'S General  
18 Manager-Chief Engineer. If at any time during the performance of an approved Task  
19 Order, CONSULTANT believes that it is necessary to include certain work or services  
20 which are not clearly covered under the scope of an approved Task Order,  
21 CONSULTANT shall immediately notify the Project Manager in writing of  
22 CONSULTANT'S assertion that the work is out of scope. Said notification by  
23 CONSULTANT to the Project Manager shall not in any way be construed as proving  
24 that the work or services in question are outside the scope of the Task Order. The  
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the  
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1 event the Project Manager determines that CONSULTANT is correct, the additional  
2 work or services shall be authorized by a new or revised Task Order that covers the new  
3 scope, cost and schedule. In the event that such notification is not given or if the Project  
4 Manager is not afforded an opportunity to negotiate the appropriate fee for such  
5 additional services prior to CONSULTANT'S commencement of such additional  
6 services, then CONSULTANT shall be deemed to have agreed to perform the work or  
7 services without any additional compensation and to have accepted sole responsibility  
8 for the performance of said work or services. Extra work done or services performed  
9 without a new or revised Task Order from DISTRICT'S General Manager-Chief  
10 Engineer shall be considered unauthorized and shall not be paid for by DISTRICT.

11 At any time during the performance of an approved Task Order, DISTRICT may request  
12 that CONSULTANT perform extra services. Any work which is determined by  
13 DISTRICT to be necessary for the proper completion of the approved Task Order, but  
14 which neither CONSULTANT nor DISTRICT reasonably anticipated would be  
15 necessary at the time the scope of services for the assigned Task Order was approved,  
16 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or  
17 revised Task Order.

18 At any time during the performance of the Task Order, the Project Manager, upon  
19 providing five (5) days written notice to CONSULTANT, may delete services and the  
20 associated fees from the Task Order. In the event DISTRICT requests deletion of  
21 services from the Task Order, DISTRICT shall make payment for all services  
22 satisfactorily performed in accordance with the negotiated Task Order up to the effective  
23 date of deletion; the amount of the payment shall be prorated to the total services  
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necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

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3 21. DISPUTES

4 A. In the event CONSULTANT considers any work demanded of CONSULTANT  
5 to be outside the requirements of this Agreement, or if CONSULTANT considers  
6 any order, instruction or decision of DISTRICT to be unfair, CONSULTANT  
7 shall promptly, upon receipt of such order, instruction or decision, ask for a  
8 written confirmation of the same whereupon CONSULTANT shall proceed  
9 without delay to perform the work or to conform to the order, instruction, or  
10 decision. However, if CONSULTANT finds such order, instruction or decision  
11 unsatisfactory, CONSULTANT shall, within twenty-one (21) calendar days after  
12 receipt of same, file a written protest with DISTRICT stating clearly and in detail  
13 its objections and reasons therefor. Except for such protests or objections as are  
14 made of record in the manner specified and within the time stated herein, and  
15 except for such instances where the basis of a protest could not reasonably have  
16 been foreseen by CONSULTANT within the time limit specified for protest,  
17 CONSULTANT hereby waives all grounds for protests or objections to orders,  
18 instruction, or decisions of DISTRICT and hereby agrees that, as to all matters  
19 not included in such protests, the orders, instructions and decisions of DISTRICT  
20 will be limited to matters properly falling within DISTRICT'S authority.

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23 B. Any controversy or claim arising out of or relating to this Agreement which  
24 cannot be resolved by mutual agreement may be settled by arbitration, provided  
25 that the parties hereto mutually agree to submit to arbitration.  
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C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

22. ASSIGNMENT

Neither this Agreement nor any part thereof shall be assigned by CONSULTANT without the prior written consent of DISTRICT.

23. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

24. JURISDICTION/LAW/SEVERABILITY

This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.

Any legal action, in law or equity related to the performance or interpretation of this Agreement shall be filed only in the Superior Court for the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. Prior to the filing of any legal action, the parties shall be obligated to attend a mediation session with a neutral mediator to try to resolve the dispute.

25. WAIVER

1 Any waiver by DISTRICT of any breach of any one or more of the terms of this  
2 Agreement shall not be construed to be a waiver of any subsequent or other breach of the  
3 same or any other term thereof. Failure on the part of DISTRICT to require exact, full  
4 and complete compliance with any terms of this Agreement shall not be construed as in  
5 any manner changing the terms hereof, or estopping DISTRICT from enforcement  
6 hereof.  
7

26. NON-DISCRIMINATION

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

27. NON-APPROPRIATION OF FUNDS

15 It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by  
16 and contingent upon the availability of DISTRICT funds for the reimbursement of  
17 CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason,  
18 DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall  
19 be deemed terminated and have no further force and effect immediately upon receipt of  
20 DISTRICT'S notification by CONSULTANT. In the event of such termination,  
21 CONSULTANT shall be entitled to reimbursement of its costs in accordance with  
22 Sections 5 and 6 (COMPENSATION and PAYMENTS).  
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By:   
WARREN D. WILLIAMS  
General Manager-Chief Engineer

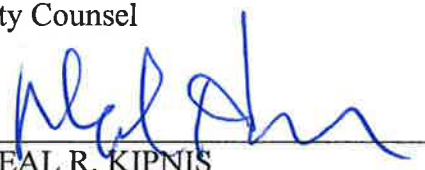
By: \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS  
County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

By:   
NEAL R. KIPNIS  
Deputy County Counsel

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

(SEAL)

**CHAMBERS GROUP, INC.**

By:   
SHERMAN SMITH  
President

(NOTARY)



Consulting Services Agreement  
FY 2012/13 to FY 2015/16  
09/19/12  
TT:blj

  
10-17-12

## ATTACHMENT "A"

### SCOPE OF SERVICES

**CONSULTANT may be asked to perform one or more of the following types of services as specifically directed in Task Orders issued to CONSULTANT:**

1. Prepare a Cultural Resources Report that addresses all potential issues related to archaeological, traditional and built environment resources in accordance with applicable Federal, State and local laws and regulations regarding cultural resources in the environmental review and/or regulatory permitting process including, but not limited to Section 106 of the National Historic Preservation Act.
2. Prepare a Paleontological Resources assessment that addresses all potential issues related to paleontological resources in accordance with applicable Federal, State and local laws and regulations in the environmental review and/or regulatory permitting process.
3. Prepare a Biological Resources Assessment that addresses all potential biological issues and concerns for the project area, including, but not limited to:
  - Reconnaissance surveys, habitat assessments, and focused surveys for sensitive or listed plant and wildlife species.
  - Federal and State Jurisdictional Area Delineation.
  - Designated Critical Habitat Areas with Federal Endangered Species Act (FESA).
  - Applicable Habitat Conservation Plans consistency assessment (i.e. Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Coachella Valley MSHCP and Tribal Habitat Conservation Plan (HCP)).
4. Prepare a Jurisdictional Area Delineation Report and Impact Analysis, including significant nexus evaluation, that addresses all potential issues related to "Waters of the U.S." and wetlands (Clean Water Act), "Waters of the State" and wetlands (Porter-Cologne Water Quality Control Act), and areas under the jurisdiction of the California Department of Fish and Game Code (Section 1600 et seq.).
5. Prepare a native Habitat Mitigation and Monitoring Plan (HMMP).
6. Implement a HMMP.
7. Prepare a Preliminary Environmental Assessment Report (PEAR) for proposed District projects. The PEAR identifies potential environmental concerns (biological, cultural, historical, paleontological, jurisdictional, geological, or regulatory permitting, etc.) that could pose significant hurdles to a project based on preliminary design data. A PEAR may be needed at the early stage of a project to ensure that project alternatives (e.g., types of facility, facility size, alignment, etc.) are fully evaluated by the District.
8. Prepare as appropriate a separate or joint California Environmental Quality Act (CEQA) Initial Study and/or National Environmental Policy Act (NEPA) Environmental Assessment, if applicable, including but not limited to technical appendices, exhibits, and mitigation and monitoring plan to determine if the project may have a significant impact on the environment.
9. Prepare as appropriate a CEQA Negative Declaration, Mitigated Negative Declaration,

and Notice of Determination.

10. Prepare as appropriate a separate or joint CEQA Draft Environmental Impact Report (DEIR)/Final Environmental Impact Report (FEIR) and/or NEPA Draft Environmental Impact Statement (DEIS)/Final Environmental Impact Statement (FEIS) including, but not limited to technical appendices, exhibits, finding of any significance, mitigation, and monitoring plan to avoid or reduce potentially significant adverse impacts.
11. Prepare written responses to comments received during the CEQA and/or NEPA process.
12. Make presentations as needed to the public, government agencies, or others related to project review and its associated environmental documents.
13. Participate in public hearings and meetings as necessary.
14. Provide technical assistance and participate in permit negotiation as needed for the District to secure all necessary regulatory permits (e.g. FESA/CESA Incidental Take Permit, Department of Fish and Game Consistency Determination, Section 404 Individual/Nationwide Permit, 401 Water Quality Certification, 1602 Streambed Alteration Agreement, Waste Discharge Requirements, etc.) for flood control projects.
15. Conduct protocol level pre-construction biological surveys and provide written reports summarizing survey results.
16. Provide biological monitoring and reporting services.
17. Provide cultural and/or paleontological resources monitoring and reporting services.
18. Prepare a MSHCP/HCP consistency assessment that demonstrates project compliance with all applicable provisions of the appropriate habitat conservation plans (i.e. Western Riverside County MSHCP, Coachella Valley MSHCP and Tribal HCP).
19. Provide Hazardous Materials report to determine the presence/absence of any hazardous materials in accordance with the California Government Code Section 65962.5.
20. Provide a Determination of Biological Equivalent or Superior Preservation (DBESP) report in accordance with Section 6.1.2 of the Western Riverside County MSHCP for impacts to Riparian/Riverine Area/Vernal Pools which would be submitted for review to the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG).

ATTACHMENT "B"

**TASK ORDER APPROVAL FORM**

CONSULTANT: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

The Scope of Services for \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall constitute an approved Task Order pursuant to the Agreement between the DISTRICT and CONSULTANT dated \_\_\_\_\_ ("AGREEMENT"). CONSULTANT agrees to perform the services described in Exhibit "A" within the time set forth in the Project Schedule as described in Exhibit "B" attached hereto and incorporated herein, for a fee amount of \$\_\_\_\_\_, unless otherwise modified by the DISTRICT'S Project Manager in a subsequent Task Order Approval Form. All charges shall be consistent with the Compensation/Fee Rate Schedule which is attached as Exhibit "C" and incorporated herein by this reference.

Performance of the services shall be subject to the terms and conditions contained in the AGREEMENT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_  
(To be filled in by General Manager-Chief Engineer)

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

**CONSULTANT**

By: \_\_\_\_\_  
Printed Name and Title

**ATTACHMENT "C"**

**LIST OF SUB-CONSULTANTS**

- **SJM Biological Consultants, Inc.**
- **Leighton**

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

1  
2 The Riverside County Flood Control and Water Conservation District, hereinafter called  
3 "DISTRICT", and Lilburn Corporation, hereinafter called "CONSULTANT", hereby agree as  
4 follows:

5 1. PROJECT

6 CONSULTANT shall provide on-call environmental and regulatory support services in  
7 accordance with applicable federal, state, and local laws and regulations as requested by  
8 DISTRICT.  
9

10 2. SCOPE OF SERVICES

11 As requested by DISTRICT, CONSULTANT shall provide project specific  
12 environmental/regulatory support and ancillary professional services as described in the  
13 "Scope of Services", attached hereto as Attachment "A" and made a part hereof, for  
14 DISTRICT projects on an "on-call" basis. During the term of this Agreement,  
15 CONSULTANT may be invited to submit budget proposals for some of the various  
16 services listed in Attachment "A" as requested by DISTRICT and be assigned  
17 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT  
18 understands and expressly agrees that the execution of this Agreement by  
19 CONSULTANT and/or the submission of any budget proposal to furnish services does  
20 not guarantee the assignment or approval of any subsequent Task Order(s).  
21

22 3. PERSONNEL23 A. Project Manager

24 For each Task Order, DISTRICT shall designate a representative who shall act as  
25 DISTRICT'S Project Manager ("Project Manager"). The Project Manager shall  
26 have authority to act on behalf of DISTRICT for all purposes under this Task  
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Order. DISTRICT shall provide written notice to CONSULTANT of any change in Project Manager assignment for a given Task Order.

B. CONSULTANT'S Representative

CONSULTANT shall appoint a designated Representative for each assigned Task Order who shall be responsible for coordinating all aspects of the assigned Task Order. CONSULTANT'S Representative shall be available to DISTRICT'S Project Manager at reasonable times. CONSULTANT may appoint another person as Representative upon written notice to DISTRICT.

C. Substitution of Key Personnel

At the time of Task Order approval, CONSULTANT shall identify its Key Personnel who will perform each assigned Task Order to the DISTRICT'S Project Manager. Should one or more of the identified Key Personnel become unavailable, CONSULTANT may substitute other personnel of equal or greater competence upon written approval by DISTRICT. In the event that DISTRICT and CONSULTANT cannot agree as to the substitution of the Key Personnel, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the required date for completion of an assigned Task Order, provided that such Task Order was approved prior to and completed by June 30, 2016.

5. COMPENSATION

CONSULTANT shall receive compensation for all services satisfactorily performed under this Agreement in accordance with the terms of the approved Task Order(s). The total amount to be paid to CONSULTANT for the performance of all Task Orders approved pursuant to this Agreement shall not exceed two hundred fifty thousand dollars (\$250,000) in any fiscal year and shall not exceed the sum of seven hundred fifty thousand dollars (\$750,000) the entire term of this Agreement.

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. DISTRICT shall not pay interest or finance charges on any outstanding balance(s). CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

7. PROJECT PERFORMANCE

A. Commencement of Services

CONSULTANT shall commence performance of the services for each Task Order upon receipt of DISTRICT'S approved Task Order.



B. Time of Completion

1 Time is of the essence in the performance of this Agreement. CONSULTANT  
2 shall complete services in accordance with the schedule(s) set forth in the  
3 approved Task Order(s).  
4

5 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors  
6 shall possess appropriate federal and/or state permits and maintain professional licenses  
7 required by the applicable Federal, State and local regulations at all times while  
8 performing services under this Agreement.

9 9. STANDARD OF CARE

10 While performing the services, CONSULTANT shall exercise the reasonable  
11 professional care and skill customarily exercised by reputable members of  
12 CONSULTANT'S profession practicing in the State of California, and shall use  
13 reasonable diligence and best judgment while exercising CONSULTANT'S professional  
14 skill and expertise. By executing this Agreement, CONSULTANT represents and  
15 maintains that CONSULTANT has the necessary experience and expertise to skillfully  
16 perform all services, duties and obligations required by this Agreement and to fully and  
17 adequately complete each approved Task Order.  
18

19 10. ERRORS AND OMISSIONS

20 In the event CONSULTANT'S reports or work products contain any errors or omissions  
21 that cause DISTRICT to incur additional expense beyond what would have otherwise  
22 resulted if there were no errors or omissions in CONSULTANT'S reports or work  
23 products, such additional expense shall be borne solely by CONSULTANT.  
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11. PERMITS AND RIGHTS OF ENTRY

1 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT  
 2 to perform the proposed consulting services within and upon privately-owned property.  
 3 All permits and rights of entry as may be required from any and all affected public  
 4 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained  
 5 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,  
 6 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as  
 7 to minimize public inconvenience and possible hazard, and will restore the streets and  
 8 other work areas to their original condition and former usefulness as soon as practicable.  
 9 CONSULTANT shall be responsible for the protection of public and private property  
 10 adjacent to the work and shall exercise due caution to avoid damage to such property.  
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12. NOTICES

14 Any and all notices sent or required to be sent to the parties of this Agreement will be  
 15 mailed by first class mail, postage prepaid, to the following addresses:

16 RIVERSIDE COUNTY FLOOD CONTROL	LILBURN CORPORATION
17 AND WATER CONSERVATION DISTRICT	1905 Business Center Drive
18 1995 Market Street	San Bernardino, CA 92408
19 Riverside, CA 92501	Attn: Cheryl A. Tubbs
Attn: Environmental Regulatory Services Section	

20 13. REQUIRED INSURANCE

21 CONSULTANT shall not commence operations until DISTRICT has been furnished  
 22 with original certificate(s) of insurance and original certified copies of endorsements and  
 23 if requested, certified original policies of insurance including all endorsements and any  
 24 and all other attachments as required in this Section.

25 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold  
 26 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be  
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maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

A. Workers' Compensation

If CONSULTANT has employees as defined by the State of California, CONSULTANT shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and, if applicable, to provide a Borrowed Servant/Alternate Employer endorsement.

B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name the Riverside County Flood Control and Water Conservation District, the County of Riverside, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, employees, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability

1 If vehicles or mobile equipment are used in the performance of the obligations  
 2 under this Agreement, then CONSULTANT shall maintain liability insurance for  
 3 all owned, non-owned or hired vehicles so used in an amount not less than  
 4 \$1,000,000 per occurrence combined single limit. If such insurance contains a  
 5 general aggregate limit, it shall apply separately to this Agreement or be no less  
 6 than two (2) times the occurrence limit. Policy shall name the Riverside County  
 7 Flood Control and Water Conservation District, the County of Riverside, its  
 8 agencies, districts, special districts, and departments, their respective directors,  
 9 officers, Board of Supervisors, employees, elected or appointed officials,  
 10 employees, agents or representatives as additional insureds.

D. Professional Liability

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

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1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

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such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to DISTRICT prior to any material 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 original certified policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

4. 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.

5. 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 change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the

types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by CONSULTANT has become inadequate.

6. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

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

8. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) from any liability, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CONSULTANT'S (including its officers, employees, subcontractors and agents) actual or alleged negligent, reckless or willful misconduct, acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; or (c) any other element of any kind or nature whatsoever.

CONSULTANT shall defend, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed

1 officials, employees, agents and representatives) in any claim, proceeding or action for  
2 which indemnification is required.

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

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

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

15 In the event there is conflict between this section and California Civil Code Section  
16 2782, this section shall be interpreted to comply with Civil Code Section 2782. Such  
17 interpretation shall not relieve CONSULTANT from indemnifying DISTRICT  
18 (including its directors, officers, Board of Supervisors, elected and appointed officials,  
19 employees, agents and representatives) or the County of Riverside to the fullest extent  
20 allowed by law.

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23 15. WORK PRODUCT

24 CONSULTANT shall provide DISTRICT with all plans, technical studies, reports or  
25 other materials as set forth in the approved Task Order(s). All materials produced by  
26 CONSULTANT in the performance of the services as set forth in the approved Task  
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1 Order(s) shall be and remain the sole property of DISTRICT. CONSULTANT shall not  
 2 publish or transfer any material produced or resulting from activities supported by this  
 3 Agreement without the written consent of the General Manager-Chief Engineer of  
 4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree  
 5 that the right to any and all copyright and/or trademark in and to the material is expressly  
 6 reserved to DISTRICT. If any such material is copyrighted, the parties hereto  
 7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and  
 8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and  
 9 to authorize others to do so, provided written credit is given the author.

10 16. TERMINATION

11 At any time during the term of this Agreement, DISTRICT may:

12 A. Agreement

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

23

24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)  
 25 stop all work under this Agreement on the date specified in the Notice of  
 26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the  
 27

1 extent, if any, as directed by DISTRICT, any equipment, data or reports which, if  
2 the Agreement had been completed, would have been required to be furnished to  
3 DISTRICT.

4 In the event DISTRICT terminates this Agreement, DISTRICT shall make  
5 payment for all services performed in accordance with this Agreement to the date  
6 of termination, a total amount which bears the same ratio to the total maximum  
7 fee otherwise payable under this Agreement as the services actually bear to the  
8 total services necessary for performance of this Agreement. Notwithstanding any  
9 of the other provision of this Agreement, CONSULTANT rights under this  
10 Agreement shall terminate (except for fees accrued prior to the date of  
11 termination) upon dishonesty, or a willful or material breach of this Agreement  
12 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or  
13 inability for any reason whatsoever to perform the duties hereunder; or if the  
14 Agreement is terminated pursuant to Section 26 (NON-DISCRIMINATION). In  
15 such event, CONSULTANT shall not be entitled to any further compensation  
16 under this Agreement. The rights and remedies of DISTRICT provided in this  
17 section shall not be exclusive and are in addition to any other rights and remedies  
18 provided by law or under this Agreement.  
19  
20

21 B. Approved Task Order

22 Terminate an approved Task Order or portion thereof without cause upon  
23 providing CONSULTANT fourteen (14) days written notice stating the extent  
24 and effective date of termination. In the event DISTRICT issues a Notice of  
25 Termination for an approved Task Order, CONSULTANT shall: i) stop all work  
26 under the Task Order on the date specified in the Notice of Termination; and ii)  
27  
28

1 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as  
2 directed by DISTRICT, any equipment, data, reports or other documents which,  
3 if the Task Order had been completed, would have been required to be furnished  
4 to DISTRICT.

5 In the event DISTRICT terminates an approved Task Order, DISTRICT shall  
6 make payment for all services satisfactorily performed in accordance with the  
7 negotiated Task Order to the date of termination, a total amount which bears the  
8 same ratio to the total maximum fee otherwise payable under the Task Order as  
9 the services actually bear to the total services necessary for performance of the  
10 Task Order.

11  
12 17. BASIC SERVICES OF CONSULTANT

13 The scope of services associated with the performance of any specific Task Order under  
14 this Agreement shall be expressly defined and agreed upon prior to the approval of the  
15 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the  
16 approved scope of services must be authorized by DISTRICT'S General Manager-Chief  
17 Engineer, and shall be made in writing.

18  
19 A. Right to Preliminary Review

20 All work prepared by CONSULTANT shall be subject to the approval of the  
21 Project Manager. CONSULTANT shall allow Project Manager to inspect and  
22 review CONSULTANT'S work in progress at any reasonable time. All reports,  
23 working papers, and similar work products prepared for submission in the course  
24 of providing services under this Agreement shall be submitted to the Project  
25 Manager in draft form. In the event that Project Manager, in his or her sole  
26 discretion, determines the formally submitted work product to be inadequate,  
27  
28

CONSULTANT may be required to revise and resubmit the work at no additional cost to DISTRICT. Should CONSULTANT fail to make requested corrections in a timely manner, such corrections may be made by DISTRICT, and the cost thereof charged to CONSULTANT. The responsibility for accuracy and completeness of such items remains solely that of CONSULTANT. Neither DISTRICT'S review nor approval shall give rise to any liability or responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve CONSULTANT of its professional responsibilities or obligations under this Agreement.

B. Progress Reports

Attached with CONSULTANT'S periodic invoice(s), CONSULTANT shall submit a Progress Report indicating the project status in relation to the approved Project Schedule and, as DISTRICT deems necessary, an updated Project Schedule for review and approval. Failure to submit the Progress Report or updated Project Schedule shall be cause for DISTRICT to withhold payment of CONSULTANT'S invoice.

18. INDEPENDENT CONTRACTOR

CONSULTANT and the agents and employees of CONSULTANT, shall act at all times in an independent capacity during the term of this Agreement and in the performance of the services to be rendered hereunder and shall not act as or shall not be and shall not in any manner be considered to be employees or agents of DISTRICT.

19. SUBCONTRACTING

A list of sub-consultants (Sub-consultants), as identified by the CONSULTANT, is attached hereto as Attachment "C". CONSULTANT may, at CONSULTANT'S own

1 expense, retain or employ Sub-consultants from Attachment "C" to accomplish certain  
2 portions of the work covered by this Agreement.

3 Should one or more of the Sub-consultants, as identified in Attachment "C", become  
4 unavailable, CONSULTANT may substitute other Sub-consultants of equal or greater  
5 competence upon written approval by DISTRICT. In the event that DISTRICT and  
6 CONSULTANT cannot agree as to the substitution of the Sub-consultant, DISTRICT  
7 may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

8 In the event CONSULTANT subcontracts any portion of CONSULTANT'S duties under  
9 this Agreement, CONSULTANT shall require its Sub-consultants to comply with the  
10 terms of this Agreement in the same manner as required of CONSULTANT. The fact  
11 that CONSULTANT employs Sub-consultants not in his regular employ shall not relieve  
12 CONSULTANT of any responsibility regarding the adequacy of the Sub-consultant's  
13 work performed or services provided pursuant to this Agreement.  
14

15 20. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of  
17 an approved Task Order without the prior written approval of DISTRICT'S General  
18 Manager-Chief Engineer. If at any time during the performance of an approved Task  
19 Order, CONSULTANT believes that it is necessary to include certain work or services  
20 which are not clearly covered under the scope of an approved Task Order,  
21 CONSULTANT shall immediately notify the Project Manager in writing of  
22 CONSULTANT'S assertion that the work is out of scope. Said notification by  
23 CONSULTANT to the Project Manager shall not in any way be construed as proving  
24 that the work or services in question are outside the scope of the Task Order. The  
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the  
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1 event the Project Manager determines that CONSULTANT is correct, the additional  
2 work or services shall be authorized by a new or revised Task Order that covers the new  
3 scope, cost and schedule. In the event that such notification is not given or if the Project  
4 Manager is not afforded an opportunity to negotiate the appropriate fee for such  
5 additional services prior to CONSULTANT'S commencement of such additional  
6 services, then CONSULTANT shall be deemed to have agreed to perform the work or  
7 services without any additional compensation and to have accepted sole responsibility  
8 for the performance of said work or services. Extra work done or services performed  
9 without a new or revised Task Order from DISTRICT'S General Manager-Chief  
10 Engineer shall be considered unauthorized and shall not be paid for by DISTRICT.

11 At any time during the performance of an approved Task Order, DISTRICT may request  
12 that CONSULTANT perform extra services. Any work which is determined by  
13 DISTRICT to be necessary for the proper completion of the approved Task Order, but  
14 which neither CONSULTANT nor DISTRICT reasonably anticipated would be  
15 necessary at the time the scope of services for the assigned Task Order was approved,  
16 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or  
17 revised Task Order.  
18

19 At any time during the performance of the Task Order, the Project Manager, upon  
20 providing five (5) days written notice to CONSULTANT, may delete services and the  
21 associated fees from the Task Order. In the event DISTRICT requests deletion of  
22 services from the Task Order, DISTRICT shall make payment for all services  
23 satisfactorily performed in accordance with the negotiated Task Order up to the effective  
24 date of deletion; the amount of the payment shall be prorated to the total services  
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necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

21. DISPUTES

A. In the event CONSULTANT considers any work demanded of CONSULTANT to be outside the requirements of this Agreement, or if CONSULTANT considers any order, instruction or decision of DISTRICT to be unfair, CONSULTANT shall promptly, upon receipt of such order, instruction or decision, ask for a written confirmation of the same whereupon CONSULTANT shall proceed without delay to perform the work or to conform to the order, instruction, or decision. However, if CONSULTANT finds such order, instruction or decision unsatisfactory, CONSULTANT shall, within twenty-one (21) calendar days after receipt of same, file a written protest with DISTRICT stating clearly and in detail its objections and reasons therefor. Except for such protests or objections as are made of record in the manner specified and within the time stated herein, and except for such instances where the basis of a protest could not reasonably have been foreseen by CONSULTANT within the time limit specified for protest, CONSULTANT hereby waives all grounds for protests or objections to orders, instruction, or decisions of DISTRICT and hereby agrees that, as to all matters not included in such protests, the orders, instructions and decisions of DISTRICT will be limited to matters properly falling within DISTRICT'S authority.

B. Any controversy or claim arising out of or relating to this Agreement which cannot be resolved by mutual agreement may be settled by arbitration, provided that the parties hereto mutually agree to submit to arbitration.

C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

22. ASSIGNMENT

Neither this Agreement nor any part thereof shall be assigned by CONSULTANT without the prior written consent of DISTRICT.

23. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

24. JURISDICTION/LAW/SEVERABILITY

This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.

Any legal action, in law or equity related to the performance or interpretation of this Agreement shall be filed only in the Superior Court for the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. Prior to the filing of any legal action, the parties shall be obligated to attend a mediation session with a neutral mediator to try to resolve the dispute.



25. WAIVER

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

26. NON-DISCRIMINATION

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

27. NON-APPROPRIATION OF FUNDS

It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by and contingent upon the availability of DISTRICT funds for the reimbursement of CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall be deemed terminated and have no further force and effect immediately upon receipt of DISTRICT'S notification by CONSULTANT. In the event of such termination, CONSULTANT shall be entitled to reimbursement of its costs in accordance with Sections 5 and 6 (COMPENSATION and PAYMENTS).

//


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By:   
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


KECIA HARPER-IHEM  
Clerk of the Board

By:   
NEAL R. KIPNIS  
Deputy County Counsel

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

(SEAL)

LILBURN CORPORATION

By:   
CHERYL A. TUBBS  
Vice President

(NOTARY)

Consulting Services Agreement  
FY 2012/13 to FY 2015/16  
09/20/12  
TT:blj

## ATTACHMENT "A"

### SCOPE OF SERVICES

**CONSULTANT may be asked to perform one or more of the following types of services as specifically directed in Task Orders issued to CONSULTANT:**

1. Prepare a Cultural Resources Report that addresses all potential issues related to archaeological, traditional and built environment resources in accordance with applicable Federal, State and local laws and regulations regarding cultural resources in the environmental review and/or regulatory permitting process including, but not limited to Section 106 of the National Historic Preservation Act.
2. Prepare a Paleontological Resources assessment that addresses all potential issues related to paleontological resources in accordance with applicable Federal, State and local laws and regulations in the environmental review and/or regulatory permitting process.
3. Prepare a Biological Resources Assessment that addresses all potential biological issues and concerns for the project area, including, but not limited to:
  - Reconnaissance surveys, habitat assessments, and focused surveys for sensitive or listed plant and wildlife species.
  - Federal and State Jurisdictional Area Delineation.
  - Designated Critical Habitat Areas with Federal Endangered Species Act (FESA).
  - Applicable Habitat Conservation Plans consistency assessment (i.e. Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Coachella Valley MSHCP and Tribal Habitat Conservation Plan (HCP)).
4. Prepare a Jurisdictional Area Delineation Report and Impact Analysis, including significant nexus evaluation, that addresses all potential issues related to "Waters of the U.S." and wetlands (Clean Water Act), "Waters of the State" and wetlands (Porter-Cologne Water Quality Control Act), and areas under the jurisdiction of the California Department of Fish and Game Code (Section 1600 et seq.).
5. Prepare a native Habitat Mitigation and Monitoring Plan (HMMP).
6. Implement a HMMP.
7. Prepare a Preliminary Environmental Assessment Report (PEAR) for proposed District projects. The PEAR identifies potential environmental concerns (biological, cultural, historical, paleontological, jurisdictional, geological, or regulatory permitting, etc.) that could pose significant hurdles to a project based on preliminary design data. A PEAR may be needed at the early stage of a project to ensure that project alternatives (e.g., types of facility, facility size, alignment, etc.) are fully evaluated by the District.
8. Prepare as appropriate a separate or joint California Environmental Quality Act (CEQA) Initial Study and/or National Environmental Policy Act (NEPA) Environmental Assessment, if applicable, including but not limited to technical appendices, exhibits, and mitigation and monitoring plan to determine if the project may have a significant impact on the environment.
9. Prepare as appropriate a CEQA Negative Declaration, Mitigated Negative Declaration,

and Notice of Determination.

10. Prepare as appropriate a separate or joint CEQA Draft Environmental Impact Report (DEIR)/Final Environmental Impact Report (FEIR) and/or NEPA Draft Environmental Impact Statement (DEIS)/Final Environmental Impact Statement (FEIS) including, but not limited to technical appendices, exhibits, finding of any significance, mitigation, and monitoring plan to avoid or reduce potentially significant adverse impacts.
11. Prepare written responses to comments received during the CEQA and/or NEPA process.
12. Make presentations as needed to the public, government agencies, or others related to project review and its associated environmental documents.
13. Participate in public hearings and meetings as necessary.
14. Provide technical assistance and participate in permit negotiation as needed for the District to secure all necessary regulatory permits (e.g. FESA/CESA Incidental Take Permit, Department of Fish and Game Consistency Determination, Section 404 Individual/Nationwide Permit, 401 Water Quality Certification, 1602 Streambed Alteration Agreement, Waste Discharge Requirements, etc.) for flood control projects.
15. Conduct protocol level pre-construction biological surveys and provide written reports summarizing survey results.
16. Provide biological monitoring and reporting services.
17. Provide cultural and/or paleontological resources monitoring and reporting services.
18. Prepare a MSHCP/HCP consistency assessment that demonstrates project compliance with all applicable provisions of the appropriate habitat conservation plans (i.e. Western Riverside County MSHCP, Coachella Valley MSHCP and Tribal HCP).
19. Provide Hazardous Materials report to determine the presence/absence of any hazardous materials in accordance with the California Government Code Section 65962.5.
20. Provide a Determination of Biological Equivalent or Superior Preservation (DBESP) report in accordance with Section 6.1.2 of the Western Riverside County MSHCP for impacts to Riparian/Riverine Area/Vernal Pools which would be submitted for review to the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG).

ATTACHMENT "B"

**TASK ORDER APPROVAL FORM**

CONSULTANT: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

The Scope of Services for \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall constitute an approved Task Order pursuant to the Agreement between the DISTRICT and CONSULTANT dated \_\_\_\_\_ ("AGREEMENT"). CONSULTANT agrees to perform the services described in Exhibit "A" within the time set forth in the Project Schedule as described in Exhibit "B" attached hereto and incorporated herein, for a fee amount of \$ \_\_\_\_\_, unless otherwise modified by the DISTRICT'S Project Manager in a subsequent Task Order Approval Form. All charges shall be consistent with the Compensation/Fee Rate Schedule which is attached as Exhibit "C" and incorporated herein by this reference.

Performance of the services shall be subject to the terms and conditions contained in the AGREEMENT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_  
(To be filled in by General Manager-Chief Engineer)

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

**CONSULTANT**

By: \_\_\_\_\_  
Printed Name and Title

**ATTACHMENT "C"**

**LIST OF SUB-CONSULTANTS**

- CHJ Consultants
- McKenna, et. al
- Natural Resources Assessment, Inc.

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

1  
2 The Riverside County Flood Control and Water Conservation District, hereinafter called  
3 "DISTRICT", and URS Corporation, doing business in California as URS Corporation  
4 Americas, hereinafter called "CONSULTANT", hereby agree as follows:

5 1. PROJECT

6 CONSULTANT shall provide on-call environmental and regulatory support services in  
7 accordance with applicable federal, state, and local laws and regulations as requested by  
8 DISTRICT.  
9

10 2. SCOPE OF SERVICES

11 As requested by DISTRICT, CONSULTANT shall provide project specific  
12 environmental/regulatory support and ancillary professional services as described in the  
13 "Scope of Services", attached hereto as Attachment "A" and made a part hereof, for  
14 DISTRICT projects on an "on-call" basis. During the term of this Agreement, the  
15 CONSULTANT may be invited to submit budget proposals for some of the various  
16 services listed in Attachment "A" as requested by DISTRICT and be assigned  
17 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT  
18 understands and expressly agrees that the execution of this Agreement by  
19 CONSULTANT and/or the submission of any budget proposal to furnish services does  
20 not guarantee the assignment or approval of any subsequent Task Order(s).  
21  
22

23 3. PERSONNEL24 A. Project Manager

25 For each Task Order, DISTRICT shall designate a representative who shall act as  
26 DISTRICT'S Project Manager ("Project Manager"). The Project Manager shall  
27 have authority to act on behalf of DISTRICT for all purposes under this Task  
28

Order. DISTRICT shall provide written notice to CONSULTANT of any change in Project Manager assignment for a given Task Order.

B. CONSULTANT'S Representative

CONSULTANT shall appoint a designated Representative for each assigned Task Order who shall be responsible for coordinating all aspects of the assigned Task Order. CONSULTANT'S Representative shall be available to DISTRICT'S Project Manager at reasonable times. CONSULTANT may appoint another person as Representative upon written notice to DISTRICT.

C. Substitution of Key Personnel

At the time of Task Order approval, CONSULTANT shall identify its Key Personnel who will perform each assigned Task Order to DISTRICT'S Project Manager. Should one or more of the identified Key Personnel become unavailable, CONSULTANT may substitute other personnel of equal or greater competence upon written approval by DISTRICT. In the event that DISTRICT and CONSULTANT cannot agree as to the substitution of the Key Personnel, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the required date for completion of an assigned Task Order, provided that such Task Order was approved prior to and completed by June 30, 2016.



5. COMPENSATION

1 CONSULTANT shall receive compensation for all services satisfactorily performed  
2 under this Agreement in accordance with the terms of the approved Task Order(s). The  
3 total amount to be paid to CONSULTANT for the performance of all Task Orders  
4 approved pursuant to this Agreement shall not exceed two hundred fifty thousand dollars  
5 (\$250,000) in any fiscal year and shall not exceed the sum of seven hundred fifty  
6 thousand dollars (\$750,000) the entire term of this Agreement.  
7

8 6. PAYMENTS

9 Progress payments shall be made in accordance with the Compensation/Fee Rate  
10 Schedule attached to the approved Task Order. Progress payments shall be processed no  
11 more than once per month. Upon satisfactory performance of CONSULTANT'S  
12 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT  
13 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate  
14 invoices. DISTRICT shall not pay interest or finance charges on any outstanding  
15 balance(s). CONSULTANT shall keep employee and expense records according to  
16 customary accounting methods and such records shall, upon request, be available for  
17 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall  
18 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the  
19 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice  
20 within thirty (30) days of receipt.  
21

22 7. PROJECT PERFORMANCE

23 A. Commencement of Services

24 CONSULTANT shall commence performance of the services for each Task  
25 Order upon receipt of DISTRICT'S approved Task Order.  
26  
27  
28

B. Time of Completion

Time is of the essence in the performance of this Agreement. CONSULTANT shall complete services in accordance with the schedule(s) set forth in the approved Task Order(s).

8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors shall possess appropriate federal and/or state permits and maintain professional licenses required by the applicable Federal, State and local regulations at all times while performing services under this Agreement.

9. STANDARD OF CARE

While performing the services, CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of CONSULTANT'S profession practicing in the State of California, and shall use reasonable diligence and best judgment while exercising CONSULTANT'S professional skill and expertise. By executing this Agreement, CONSULTANT represents and maintains that CONSULTANT has the necessary experience and expertise to skillfully perform all services, duties and obligations required by this Agreement and to fully and adequately complete each approved Task Order.

10. ERRORS AND OMISSIONS

In the event CONSULTANT'S reports or work products contain any errors or omissions that cause DISTRICT to incur additional expense beyond what would have otherwise resulted if there were no errors or omissions in CONSULTANT'S reports or work products, such additional expense shall be borne solely by CONSULTANT.

11. PERMITS AND RIGHTS OF ENTRY

1 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT  
 2 to perform the proposed consulting services within and upon privately-owned property.  
 3 All permits and rights of entry as may be required from any and all affected public  
 4 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained  
 5 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,  
 6 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as  
 7 to minimize public inconvenience and possible hazard, and will restore the streets and  
 8 other work areas to their original condition and former usefulness as soon as practicable.  
 9 CONSULTANT shall be responsible for the protection of public and private property  
 10 adjacent to the work and shall exercise due caution to avoid damage to such property.  
 11

12. NOTICES

14 Any and all notices sent or required to be sent to the parties of this Agreement will be  
 15 mailed by first class mail, postage prepaid, to the following addresses:

16 RIVERSIDE COUNTY FLOOD CONTROL	URS CORPORATION AMERICAS
17 AND WATER CONSERVATION DISTRICT	3500 Porsche Way, Suite 300
18 1995 Market Street	Ontario, CA 91764
19 Riverside, CA 92501	Attn: Virginia Viado
20 Attn: Environmental Regulatory Services Section	

20 13. REQUIRED INSURANCE

21 CONSULTANT shall not commence operations until DISTRICT has been furnished  
 22 with original certificate(s) of insurance and original certified copies of endorsements and  
 23 if requested, certified original policies of insurance including all endorsements and any  
 24 and all other attachments as required in this Section.

25 Without limiting or diminishing CONSULTANT'S obligation to indemnify or hold  
 26 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be  
 27

maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

1  
2  
3 A. Workers' Compensation

4 If CONSULTANT has employees as defined by the State of California,  
5 CONSULTANT shall maintain statutory Workers' Compensation Insurance  
6 (Coverage A) as prescribed by the laws of the State of California. Policy shall  
7 include Employer's Liability (Coverage B) including Occupational Disease with  
8 limits not less than \$1,000,000 per person per accident. Policy shall be endorsed  
9 to waive subrogation in favor of DISTRICT and, if applicable, to provide a  
10 Borrowed Servant/Alternate Employer endorsement.

11  
12 B. Commercial General Liability

13 Commercial General Liability insurance coverage, including but not limited to,  
14 premises liability, unmodified contractual liability, products and completed  
15 operations liability, personal and advertising injury, and cross liability coverage,  
16 covering claims which may arise from or out of CONSULTANT'S performance  
17 of its obligations hereunder. Policy shall name the Riverside County Flood  
18 Control and Water Conservation District, the County of Riverside, its agencies,  
19 districts, special districts, and departments, their respective directors, officers,  
20 Board of Supervisors, employees, elected or appointed officials, employees,  
21 agents or representatives as additional insureds. Policy's limit of liability shall  
22 not be less than \$1,000,000 per occurrence combined single limit. If such  
23 insurance contains a general aggregate limit, it shall apply separately to this  
24 Agreement or be no less than two (2) times the occurrence limit.  
25  
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C. Vehicle Liability

1 If vehicles or mobile equipment are used in the performance of the obligations  
2 under this Agreement, then CONSULTANT shall maintain liability insurance for  
3 all owned, non-owned or hired vehicles so used in an amount not less than  
4 \$1,000,000 per occurrence combined single limit. If such insurance contains a  
5 general aggregate limit, it shall apply separately to this Agreement or be no less  
6 than two (2) times the occurrence limit. Policy shall name the Riverside County  
7 Flood Control and Water Conservation District, the County of Riverside, its  
8 agencies, districts, special districts, and departments, their respective directors,  
9 officers, Board of Supervisors, employees, elected or appointed officials,  
10 employees, agents or representatives as additional insureds.

D. Professional Liability

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

1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

1 such insurance is in full force and effect. Further, said certificate(s) and  
2 policies of insurance shall contain the covenant of the insurance carrier(s)  
3 that thirty (30) days written notice shall be given to DISTRICT prior to  
4 any material modification, cancellation, expiration, or reduction in  
5 coverage of such insurance. In the event of a material modification,  
6 cancellation, expiration, or reduction in coverage, this Agreement shall  
7 terminate forthwith, unless DISTRICT receives, prior to such effective  
8 date, another properly executed original certificate of insurance and  
9 original copies of endorsements or original certified policies, including all  
10 endorsements and attachments thereto, evidencing coverages set forth  
11 herein and the insurance required herein is in full force and effect.  
12 Individual(s) authorized by the insurance carrier to do so on its behalf  
13 shall sign the original endorsements for each policy and the certificate of  
14 insurance.  
15

16 4. It is understood and agreed by the parties hereto that CONSULTANT'S  
17 insurance shall be construed as primary insurance, and DISTRICT'S  
18 insurance and/or deductibles and/or self-insured retentions or self-insured  
19 programs shall not be construed as contributory.  
20

21 5. If, during the term of this Agreement or any extension thereof, there is a  
22 material change in the scope of services; or there is a material change in  
23 the equipment to be used in the performance of the scope of work which  
24 will add additional exposures (such as the use of aircraft, watercraft,  
25 cranes, etc.); or the term of this Agreement, including any extensions  
26 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the  
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1 types of insurance required under this Agreement and the monetary limits  
2 of liability for the insurance coverage currently required herein, if, in the  
3 County Risk Manager's reasonable judgment, the amount or type of  
4 insurance carried by CONSULTANT has become inadequate.

5 6. CONSULTANT shall pass down the insurance obligations contained  
6 herein to all tiers of subcontractors working under this Agreement.

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

9 8. CONSULTANT agrees to notify DISTRICT of any claim by a third party  
10 or any incident or event that may give rise to a claim arising from the  
11 performance of this Agreement.  
12

13 14. INDEMNIFICATION

14 CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors,  
15 officers, Board of Supervisors, elected and appointed officials, employees, agents and  
16 representatives) from any liability, claim, damage, proceeding or action, present or  
17 future, based upon, arising out of or in any way relating to CONSULTANT'S (including  
18 its officers, employees, subcontractors and agents) actual or alleged negligent, reckless  
19 or willful misconduct, acts or omissions related to this Agreement, performance under  
20 this Agreement, or failure to comply with the requirements of this Agreement, including  
21 but not limited to: (a) property damage; (b) bodily injury or death; or (c) any other  
22 element of any kind or nature whatsoever.  
23

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

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

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

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

In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve CONSULTANT from indemnifying DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) or the County of Riverside to the fullest extent allowed by law.

15. WORK PRODUCT

CONSULTANT shall provide DISTRICT with all plans, technical studies, reports or other materials as set forth in the approved Task Order(s). All materials produced by CONSULTANT in the performance of the services as set forth in the approved Task

1 Order(s) shall be and remain the sole property of DISTRICT. CONSULTANT shall not  
 2 publish or transfer any material produced or resulting from activities supported by this  
 3 Agreement without the written consent of the General Manager-Chief Engineer of  
 4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree  
 5 that the right to any and all copyright and/or trademark in and to the material is expressly  
 6 reserved to DISTRICT. If any such material is copyrighted, the parties hereto  
 7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and  
 8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and  
 9 to authorize others to do so, provided written credit is given the author.

10 16. TERMINATION

11 At any time during the term of this Agreement, DISTRICT may:

12 A. Agreement

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

23

24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)

25 stop all work under this Agreement on the date specified in the Notice of

26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the

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1 extent, if any, as directed by DISTRICT, any equipment, data or reports which, if  
2 the Agreement had been completed, would have been required to be furnished to  
3 DISTRICT.

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

19  
20  
21 B. Approved Task Order

22 Terminate an approved Task Order or portion thereof without cause upon  
23 providing CONSULTANT fourteen (14) days written notice stating the extent  
24 and effective date of termination. In the event DISTRICT issues a Notice of  
25 Termination for an approved Task Order, CONSULTANT shall: i) stop all work  
26 under the Task Order on the date specified in the Notice of Termination; and ii)  
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1 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as  
2 directed by DISTRICT, any equipment, data, reports or other documents which,  
3 if the Task Order had been completed, would have been required to be furnished  
4 to DISTRICT.

5 In the event DISTRICT terminates an approved Task Order, DISTRICT shall  
6 make payment for all services satisfactorily performed in accordance with the  
7 negotiated Task Order to the date of termination, a total amount which bears the  
8 same ratio to the total maximum fee otherwise payable under the Task Order as  
9 the services actually bear to the total services necessary for performance of the  
10 Task Order.

11  
12 17. BASIC SERVICES OF CONSULTANT

13 The scope of services associated with the performance of any specific Task Order under  
14 this Agreement shall be expressly defined and agreed upon prior to the approval of the  
15 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the  
16 approved scope of services must be authorized by DISTRICT'S General Manager-Chief  
17 Engineer, and shall be made in writing.

18  
19 A. Right to Preliminary Review

20 All work prepared by CONSULTANT shall be subject to the approval of the  
21 Project Manager. CONSULTANT shall allow Project Manager to inspect and  
22 review CONSULTANT'S work in progress at any reasonable time. All reports,  
23 working papers, and similar work products prepared for submission in the course  
24 of providing services under this Agreement shall be submitted to the Project  
25 Manager in draft form. In the event that Project Manager, in his or her sole  
26 discretion, determines the formally submitted work product to be inadequate,  
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1 CONSULTANT may be required to revise and resubmit the work at no  
2 additional cost to DISTRICT. Should CONSULTANT fail to make requested  
3 corrections in a timely manner, such corrections may be made by DISTRICT,  
4 and the cost thereof charged to CONSULTANT. The responsibility for accuracy  
5 and completeness of such items remains solely that of CONSULTANT. Neither  
6 DISTRICT'S review nor approval shall give rise to any liability or responsibility  
7 on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve  
8 CONSULTANT of its professional responsibilities or obligations under this  
9 Agreement.

10 B. Progress Reports

11 Attached with CONSULTANT'S periodic invoice(s), CONSULTANT shall  
12 submit a Progress Report indicating the project status in relation to the approved  
13 Project Schedule and, as DISTRICT deems necessary, an updated Project  
14 Schedule for review and approval. Failure to submit the Progress Report or  
15 updated Project Schedule shall be cause for DISTRICT to withhold payment of  
16 CONSULTANT'S invoice.

17 18. INDEPENDENT CONTRACTOR

18 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times  
19 in an independent capacity during the term of this Agreement and in the performance of  
20 the services to be rendered hereunder and shall not act as or shall not be and shall not in  
21 any manner be considered to be employees or agents of DISTRICT.

22 23 24 19. SUBCONTRACTING

25 A list of sub-consultants (Sub-consultants), as identified by CONSULTANT, is attached  
26 hereto as Attachment "C". CONSULTANT may, at CONSULTANT'S own expense,  
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retain or employ Sub-consultants from Attachment "C" to accomplish certain portions of the work covered by this Agreement.

Should one or more of the Sub-consultants, as identified in Attachment "C", become unavailable, CONSULTANT may substitute other Sub-consultants of equal or greater competence upon written approval by DISTRICT. In the event that DISTRICT and CONSULTANT cannot agree as to the substitution of the Sub-consultant, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

In the event CONSULTANT subcontracts any portion of CONSULTANT'S duties under this Agreement, CONSULTANT shall require its Sub-consultants to comply with the terms of this Agreement in the same manner as required of CONSULTANT. The fact that CONSULTANT employs Sub-consultants not in his regular employ shall not relieve CONSULTANT of any responsibility regarding the adequacy of the Sub-consultant's work performed or services provided pursuant to this Agreement.

20. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONSULTANT shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of DISTRICT'S General Manager-Chief Engineer. If at any time during the performance of an approved Task Order, CONSULTANT believes that it is necessary to include certain work or services which are not clearly covered under the scope of an approved Task Order, CONSULTANT shall immediately notify the Project Manager in writing of CONSULTANT'S assertion that the work is out of scope. Said notification by CONSULTANT to the Project Manager shall not in any way be construed as proving that the work or services in question are outside the scope of the Task Order. The Project Manager must approve or reject CONSULTANT'S assertion in writing. In the

1 event the Project Manager determines that CONSULTANT is correct, the additional  
2 work or services shall be authorized by a new or revised Task Order that covers the new  
3 scope, cost and schedule. In the event that such notification is not given or if the Project  
4 Manager is not afforded an opportunity to negotiate the appropriate fee for such  
5 additional services prior to CONSULTANT'S commencement of such additional  
6 services, then CONSULTANT shall be deemed to have agreed to perform the work or  
7 services without any additional compensation and to have accepted sole responsibility  
8 for the performance of said work or services. Extra work done or services performed  
9 without a new or revised Task Order from DISTRICT'S General Manager-Chief  
10 Engineer shall be considered unauthorized and shall not be paid for by DISTRICT.

11 At any time during the performance of an approved Task Order, DISTRICT may request  
12 that CONSULTANT perform extra services. Any work which is determined by  
13 DISTRICT to be necessary for the proper completion of the approved Task Order, but  
14 which neither CONSULTANT nor DISTRICT reasonably anticipated would be  
15 necessary at the time the scope of services for the assigned Task Order was approved,  
16 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or  
17 revised Task Order.  
18

19 At any time during the performance of the Task Order, the Project Manager, upon  
20 providing five (5) days written notice to CONSULTANT, may delete services and the  
21 associated fees from the Task Order. In the event DISTRICT requests deletion of  
22 services from the Task Order, DISTRICT shall make payment for all services  
23 satisfactorily performed in accordance with the negotiated Task Order up to the effective  
24 date of deletion; the amount of the payment shall be prorated to the total services  
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necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

21. DISPUTES

A. In the event CONSULTANT considers any work demanded of CONSULTANT to be outside the requirements of this Agreement, or if CONSULTANT considers any order, instruction or decision of DISTRICT to be unfair, CONSULTANT shall promptly, upon receipt of such order, instruction or decision, ask for a written confirmation of the same whereupon CONSULTANT shall proceed without delay to perform the work or to conform to the order, instruction, or decision. However, if CONSULTANT finds such order, instruction or decision unsatisfactory, CONSULTANT shall, within twenty-one (21) calendar days after receipt of same, file a written protest with DISTRICT stating clearly and in detail its objections and reasons therefor. Except for such protests or objections as are made of record in the manner specified and within the time stated herein, and except for such instances where the basis of a protest could not reasonably have been foreseen by CONSULTANT within the time limit specified for protest, CONSULTANT hereby waives all grounds for protests or objections to orders, instruction, or decisions of DISTRICT and hereby agrees that, as to all matters not included in such protests, the orders, instructions and decisions of DISTRICT will be limited to matters properly falling within DISTRICT'S authority.

B. Any controversy or claim arising out of or relating to this Agreement which cannot be resolved by mutual agreement may be settled by arbitration, provided that the parties hereto mutually agree to submit to arbitration.



C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

22. ASSIGNMENT

Neither this Agreement nor any part thereof shall be assigned by CONSULTANT without the prior written consent of DISTRICT.

23. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

24. JURISDICTION/LAW/SEVERABILITY

This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be declared severable and shall be given full force and effect to the extent possible.

Any legal action, in law or equity related to the performance or interpretation of this Agreement shall be filed only in the Superior Court for the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. Prior to the filing of any legal action, the parties shall be obligated to attend a mediation session with a neutral mediator to try to resolve the dispute.

25. WAIVER

1 Any waiver by DISTRICT of any breach of any one or more of the terms of this  
2 Agreement shall not be construed to be a waiver of any subsequent or other breach of the  
3 same or any other term thereof. Failure on the part of DISTRICT to require exact, full  
4 and complete compliance with any terms of this Agreement shall not be construed as in  
5 any manner changing the terms hereof, or estopping DISTRICT from enforcement  
6 hereof.  
7

8 26. NON-DISCRIMINATION

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

16 27. NON-APPROPRIATION OF FUNDS

17 It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by  
18 and contingent upon the availability of DISTRICT funds for the reimbursement of  
19 CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason,  
20 DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall  
21 be deemed terminated and have no further force and effect immediately upon receipt of  
22 DISTRICT'S notification by CONSULTANT. In the event of such termination,  
23 CONSULTANT shall be entitled to reimbursement of its costs in accordance with  
24 Sections 5 and 6 (COMPENSATION and PAYMENTS).  
25

26 //

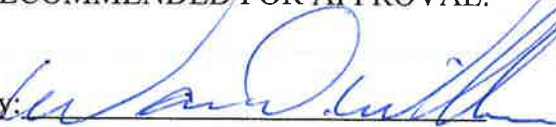
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By:   
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

KECIA HARPER-IHEM  
Clerk of the Board

By:   
NEAL R. KIPNIS  
Deputy County Counsel

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

(SEAL)

URS CORPORATION AMERICAS

By:   
~~RICHARD HART~~ BRIAN E. WYNNE  
Vice President

(NOTARY)

Consulting Services Agreement  
FY 2012/13 to FY 2015/16  
09/20/12  
TT:blj

## ATTACHMENT "A"

### SCOPE OF SERVICES

**CONSULTANT may be asked to perform one or more of the following types of services as specifically directed in Task Orders issued to CONSULTANT:**

1. Prepare a Cultural Resources Report that addresses all potential issues related to archaeological, traditional and built environment resources in accordance with applicable Federal, State and local laws and regulations regarding cultural resources in the environmental review and/or regulatory permitting process including, but not limited to Section 106 of the National Historic Preservation Act.
2. Prepare a Paleontological Resources assessment that addresses all potential issues related to paleontological resources in accordance with applicable Federal, State and local laws and regulations in the environmental review and/or regulatory permitting process.
3. Prepare a Biological Resources Assessment that addresses all potential biological issues and concerns for the project area, including, but not limited to:
  - Reconnaissance surveys, habitat assessments, and focused surveys for sensitive or listed plant and wildlife species.
  - Federal and State Jurisdictional Area Delineation.
  - Designated Critical Habitat Areas with Federal Endangered Species Act (FESA).
  - Applicable Habitat Conservation Plans consistency assessment (i.e. Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Coachella Valley MSHCP and Tribal Habitat Conservation Plan (HCP)).
4. Prepare a Jurisdictional Area Delineation Report and Impact Analysis, including significant nexus evaluation, that addresses all potential issues related to "Waters of the U.S." and wetlands (Clean Water Act), "Waters of the State" and wetlands (Porter-Cologne Water Quality Control Act), and areas under the jurisdiction of the California Department of Fish and Game Code (Section 1600 et seq.).
5. Prepare a native Habitat Mitigation and Monitoring Plan (HMMP).
6. Implement a HMMP.
7. Prepare a Preliminary Environmental Assessment Report (PEAR) for proposed District projects. The PEAR identifies potential environmental concerns (biological, cultural, historical, paleontological, jurisdictional, geological, or regulatory permitting, etc.) that could pose significant hurdles to a project based on preliminary design data. A PEAR may be needed at the early stage of a project to ensure that project alternatives (e.g., types of facility, facility size, alignment, etc.) are fully evaluated by the District.
8. Prepare as appropriate a separate or joint California Environmental Quality Act (CEQA) Initial Study and/or National Environmental Policy Act (NEPA) Environmental Assessment, if applicable, including but not limited to technical appendices, exhibits, and mitigation and monitoring plan to determine if the project may have a significant impact on the environment.
9. Prepare as appropriate a CEQA Negative Declaration, Mitigated Negative Declaration,

and Notice of Determination.

10. Prepare as appropriate a separate or joint CEQA Draft Environmental Impact Report (DEIR)/Final Environmental Impact Report (FEIR) and/or NEPA Draft Environmental Impact Statement (DEIS)/Final Environmental Impact Statement (FEIS) including, but not limited to technical appendices, exhibits, finding of any significance, mitigation, and monitoring plan to avoid or reduce potentially significant adverse impacts.
11. Prepare written responses to comments received during the CEQA and/or NEPA process.
12. Make presentations as needed to the public, government agencies, or others related to project review and its associated environmental documents.
13. Participate in public hearings and meetings as necessary.
14. Provide technical assistance and participate in permit negotiation as needed for the District to secure all necessary regulatory permits (e.g. FESA/CESA Incidental Take Permit, Department of Fish and Game Consistency Determination, Section 404 Individual/Nationwide Permit, 401 Water Quality Certification, 1602 Streambed Alteration Agreement, Waste Discharge Requirements, etc.) for flood control projects.
15. Conduct protocol level pre-construction biological surveys and provide written reports summarizing survey results.
16. Provide biological monitoring and reporting services.
17. Provide cultural and/or paleontological resources monitoring and reporting services.
18. Prepare a MSHCP/HCP consistency assessment that demonstrates project compliance with all applicable provisions of the appropriate habitat conservation plans (i.e. Western Riverside County MSHCP, Coachella Valley MSHCP and Tribal HCP).
19. Provide Hazardous Materials report to determine the presence/absence of any hazardous materials in accordance with the California Government Code Section 65962.5.
20. Provide a Determination of Biological Equivalent or Superior Preservation (DBESP) report in accordance with Section 6.1.2 of the Western Riverside County MSHCP for impacts to Riparian/Riverine Area/Vernal Pools which would be submitted for review to the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG).

ATTACHMENT "B"

**TASK ORDER APPROVAL FORM**

CONSULTANT: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

The Scope of Services for \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall constitute an approved Task Order pursuant to the Agreement between the DISTRICT and CONSULTANT dated \_\_\_\_\_ ("AGREEMENT"). CONSULTANT agrees to perform the services described in Exhibit "A" within the time set forth in the Project Schedule as described in Exhibit "B" attached hereto and incorporated herein, for a fee amount of \$\_\_\_\_\_, unless otherwise modified by the DISTRICT'S Project Manager in a subsequent Task Order Approval Form. All charges shall be consistent with the Compensation/Fee Rate Schedule which is attached as Exhibit "C" and incorporated herein by this reference.

Performance of the services shall be subject to the terms and conditions contained in the AGREEMENT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_  
(To be filled in by General Manager-Chief Engineer)

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

**CONSULTANT**

By: \_\_\_\_\_  
Printed Name and Title

**ATTACHMENT "C"**

**LIST OF SUB-CONSULTANTS**

- **Laguna Mountain Environmental, Inc.**
- **Tim Glenner**
- **SJM Biological Consultants, Inc.**
- **Konecney Biological Services**