

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

603 A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
February 13, 2013

SUBJECT: Approval of a Professional Service Agreement for Fossil Fuel Filter Maintenance Services for the Transportation Department - L&LMD 89-1-C Zones

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the Professional Service Agreement (PSA) from the lowest responsive/responsible vendor, Drainage Protection Systems, based on competitive bids for fossil fuel filter maintenance services administered by the Transportation Department, and;
2. Authorize the Chairman of the Board of Supervisors to execute the agreement on behalf of the County with the option to renew annually for up to two (2) additional one-year periods at the discretion of the County of Riverside, and;

Juan C. Perez
Director of Transportation

MPH
(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 150,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	No
	Annual Net County Cost:	\$ -0-	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: L&LMD 89-1-C (100%) There are no General Funds used in this project.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: MARSHALL VICTOR
DATE: 1/18/13
Departmental Concurrence

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

Prev. Agn. Ref. | District: ALL | Agenda Number:

The Honorable Board of Supervisors

RE: Approval of a Professional Service Agreement for Fossil Fuel Filter Maintenance Services for the Transportation Department - L&LMD 89-1-C Zones

February 13, 2013

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3. Approve the annual amount of \$150,000 for FY 2012-2013 through FY 2014-2015.

BACKGROUND: The service required and to be performed is for the maintenance of fossil fuel filters attached to the inside of catch basins for the removal of hydrocarbons, trash, and other pollutants from storm water runoff. The fossil fuel filters are serviced at three (3) equally spaced intervals throughout the year. Service and maintenance records are provided to the County and become part of the annual County NPDES report. The filters are located within the County maintained road right-of-way and within designated developments annexed into the Landscaping and Lighting Maintenance District No. 89-1-Consolidated (L&LMD No. 89-1-C) Countywide.

The Transportation Department issued a formal Request for Quote (RFQ), and solicitations were sent to six (6) vendors and advertised on the Transportation Department's website. Four (4) vendors met with County staff onsite for at least one (1) of two (2) mandatory pre-bid meetings. Two (2) responses were received with a cost range from \$141 to \$174 per annual service per catch basin. KriStar Enterprises, Inc. DBA Drainage Protection Services (DPS) based in Santa Rosa was the lowest responsive/responsible bidder at \$141 per annual service per catch basin. Drainage Protection Services (DPS) provided a quote to fulfill the necessary requirements mandatory for landscaping services. Local Preference was applied and did not change the outcome of the bid results. This bid includes prevailing wage rates. Representatives from the Transportation Department reviewed all quotes and recommended the lowest vendor, Drainage Protection Services (DPS), receive the award.

The annual amount of \$150,000 includes a contractual contingency amount not to exceed \$25,000 annually for costs outside the scope of regular maintenance, including but not limited to: replacement of ripped filters, replacement filters, upgrades, and vandalism.

Contractor shall submit a written request to the County for any costs outside the regular scope of maintenance described in Exhibit A within the PSA. Contractor understands and agrees that the costs shall not be incurred against the contingency, and the County will not be liable for such costs without prior written authorization from the County.

The period of performance shall be for three (3) years with the option to renew up to two (2) additional years (in one (1) year increments) for a total of five (5) years with the final completion date of June 30, 2018. There shall be no obligation by the County of Riverside to purchase any specified amount of services. The County has the option to terminate this contract upon thirty (30) days written notice to the Contractor without cause.

County Counsel has approved the Agreement as to form.

TLMA Purchasing RFQ# 44-155-2012

RFQ #44-155-2012 Preliminary Bid Results

Project: Countywide Fossil Filter Service

Bids Due: October 11, 2012

Contractor	Attended Pre-Bid	Bid	Local Vendor (5% preference)	Revised by Local Preference	Rank
Contractor/Vendor	Yes/No	\$	Yes/No	5%	1 to 6
Kristar/DPS	YES	\$ 141.00	No		1
Bio Clean Environmental	YES	\$ 174.00	No		2
Transportation - Mark Hughes					
Transportation - Brigitte Hahn					

PROFESSIONAL SERVICE AGREEMENT

for

Fossil Fuel Filter Maintenance Service

between

COUNTY OF RIVERSIDE

and

DRAINAGE PROTECTION SYSTEMS



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This Agreement, made and entered into this ____ day of _____, 2013, by and between DRAINAGE PROTECTION SYSTEMS, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of five (5) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page, attached hereto and by this reference incorporated herein.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through June 30, 2015, with the option to renew for two (2) years, renewable in one year increments at the discretion of the County, unless terminated earlier. Period of Performance shall not exceed five (5) years total. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed One-Hundred Fifty Thousand dollars and no cents (\$150,000.00) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified

amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.1.1 This Agreement includes a contractual contingency of 20% (\$25,000) for costs outside the scope of regular maintenance, including but not limited to: replacement of ripped filters, replacement filters, upgrades, and vandalism. CONTRACTOR shall submit a written request to COUNTY for any costs outside the regular maintenance described in Exhibit B. **CONTRACTOR UNDERSTANDS AND AGREES THAT COSTS SHALL NOT BE INCURRED AGAINST THE CONTINGENCY, AND COUNTY WILL NOT BE LIABLE FOR SUCH COSTS, WITHOUT PRIOR WRITTEN AUTHORIZATION FROM COUNTY.**

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

RIVERSIDE COUNTY TRANSPORTATION DEPARTMENT

ATTN: MARK HUGHES, 8TH FL

P.O. BOX 1090

RIVERSIDE, CA 92502-1090

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division;

Agreement number (TLARC#); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.

b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no

employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY TLMA Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Riverside County Transportation
P.O. Box 1605
Riverside, CA 92502-1605
Attn: Mark Hughes
(951) 955-6767

CONTRACTOR

Drainage Protection Services
360 Sutton Place
Santa Rosa, CA 95407
Attn: Loretta Deltessandro
(888) 950-8826

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein. CONTRACTOR'S

obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.4 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

21.5 CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

22.2 Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

22.3 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 CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. 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.

22.4 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR 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 COUNTY as Additional Insureds.

22.5 Professional Liability: Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

22.6 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 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 that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$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 unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original 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 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 the County of Riverside 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 the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's 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; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR 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 the COUNTY.

8) CONTRACTOR agrees to notify COUNTY 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.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY 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 of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of 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. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

County of Riverside
4080 Lemon Street
Riverside, CA 92501

Signature: _____

Print Name: JOHN J. BENOIT

Title: Chairman, of the Board of Supervisors

Dated: _____

CONTRACTOR:

Drainage Protection Systems
360 Sutton Place
Santa Rosa, CA 95407

Signature: 

Print Name: Craig R. Beatty

Title: President

Dated: 1/30/2013

**EXHIBIT A
SCOPE OF SERVICE**

2.01 Scope of Service

Bidders are expected to meet and exceed the Scope of Service in its entirety.

2.02 Prevailing Wage

Pursuant to the labor code, the governing board of the owner has obtained from the Director of the Department of Industrial Relations, State of California, his/her determination of general prevailing rates of per diem wages applicable to the work, and for holiday and overtime work, including employer payments for health and welfare, pension, vacation, and similar purposes, as set forth on the schedule which is on file at the principal office of the Owner, and which will be made available to any interested person upon request.

Contractor's Requirements: For all repair/new installation/maintenance work at these locations, the successful contractor must adhere to the following:

- A. Contractor and/or Sub-contractors (upon County approval) must possess the proper Contractors license issued by the State of California for each craft or type of workman or mechanic needed to execute the contract.
- B. Provide to the TLMA Purchasing Department and/or The Transportation Department a certificate of liability insurance form listing "the County of Riverside" as additional insured and proof of Worker's Compensation Insurance for their employees.
- C. Pay their employees the general prevailing rate of wages for each craft or type of workman or mechanic needed to execute the contract.
- D. Submit certified payroll per form DLSE Form A-1-131
available at: <http://www.dir.ca.gov/dlse/DLSEFormA-1-131.pdf>
(A form may be created to meet existing payroll period such as: every two weeks, twice monthly, and must include all the information on the State Form. However signed State certification page must be submitted.)
- E. Certified payroll may not lag more than 40 days behind current calendar day (30 day buffer to submit certified payroll).

2.03 General Requirements and Notes

Federal, State and Local Clean Water Act regulations require stormwater filtration systems be maintained and serviced on a recurring basis. The intent of the regulations is to ensure the systems, on a continuing basis, efficiently remove pollutants from stormwater runoff thereby preventing pollution of the nation's water resources. These specifications apply to catch basin fossil fuel filter inserts.

- A. Meet prevailing wage requirements as set forth in Section 2.02
- B. Furnish all necessary legal transportation, permits, insurance and taxes, in their performance of the scope of services.
- C. Provide all labor, materials, tools, equipment, traffic control, fuel, and supervision necessary to maintain the landscaping and irrigation systems as required.
- D. Schedule work during normal working hours, Monday thru Friday, 7:00 A.M. to 5:00 P.M. Prior approval by the appropriate Transportation Department staff is required for any and all work outside normal working hours, with the exception of emergency situations. Do not schedule or plan maintenance on Saturdays or Sundays.

- E. JOB SITE – It shall be the bidder’s responsibility to visit the job site to check any conditions that may affect their bid. The bidder shall carefully examine the site and shall familiarize themselves with all existing conditions, factors and items within, the scope of the work. Claims for allowances due to Contractor’s error or negligence, in acquainting themselves with the site, shall not be recognized. By the Contractor’s act of submitting a bid, the contractor acknowledges that they have informed themselves of all conditions. By the act of signing the bid, the bidder will be deemed to have made such an examination and to have accepted such conditions, and to have made allowance therefore in preparing their figure to provide a complete and operable system as shown and/or specified.
- F. RESPONSE TIME – Contractor shall complete a preliminary service schedule within 2 weeks of award of contract and delivery of maintenance maps from the County. The preliminary service schedule shall be submitted to the County for review and approval prior to the start of any work. A revised and updated service schedule shall be submitted to the County after each service interval. Maintenance work shall proceed in a timely fashion, without major interruptions. The Contractor shall start the performance of unscheduled service within 48 hours of notification from County.
- G. DRESS CODE AND APPEARANCE – The Contractor shall be required to provide uniforms, with the company name imprinted on them, for the contracted personnel. Contracted personnel shall wear uniforms, at all times, when on Landscaping and Lighting Maintenance District 89-1-C (L&LMD 89-1-C) projects.
- H. TRAFFIC CONTROL - Traffic Control is the sole responsibility of the Contractor. Additional traffic control may be required if existing traffic control is deemed insufficient.
- I. VEHICLE LABELING – The Contractor shall provide company name, telephone number, and Contractor’s License number on all vehicles working on L&LMD 89-1-C projects. Labeling maybe permanent or temporary.
- J. VEHICLE SAFETY – The Contractor shall provide on their onsite vehicles a ‘backup warning device’ that operates automatically while the vehicle is backing, such as a buzzard, bell, horn, etc. Vehicles should be parked in such a manner as not to create confusion, a hazard, or block signage. The Contractor shall provide on all of their vehicles a high-intensity rotating, flashing, oscillating or strobe light on their vehicles. Vehicle hazard warning signals may be used to supplement the above required lighting, but not as a replacement. Vehicles shall be in good working order, safe, legally registered to the Company, well maintained, and good in appearance.
- K. VEHICLE OCCUPANCY – Contractor shall not exceed passenger vehicle occupancy safety ratings.
- L. LICENSING – MUST PROVIDE COPIES OF EACH OF THE FOLLOWING LICENSES: The Contractor shall have a current and valid General Engineering (type A) California Contractor’s License, or other C-type or D-type Contractors license relating to Storm Water construction and maintenance practices; A copy of the employees’ confined-space certificate.
- M. CONFINED SPACE INSTRUCTION - The Contractor and their employees shall be well versed in Recognizing, Evaluating, and Controlling Confined Space Hazards. Initial and on-going Education is the sole responsibility of the Contractor.
http://www.dir.ca.gov/dosh/dosh_publications/ConfSpa.pdf
- N. INSURANCE – SHALL MAINTAIN AND SHALL PROVIDE A COPY OF EACH OF THE FOLLOWING CERTIFICATES:
 - 1. Provide a copy of a Certificate of Current Liability Insurance (min \$1,000,000 per occurrence);

2. Provide a copy of a Certificate of Current Automobile Liability Insurance (min \$1,000,000 per occurrence);
 3. Provide a copy of a Certificate of Current Workers Comp. and Employers Liability Insurance (min \$1,000,000 per occurrence).
 4. Contractor shall indemnify and hold harmless the County of Riverside as noted in General Conditions - Personal/Professional Service.
- O. SPECIFICATIONS – All Items noted with Scope of Service.
- P. EMERGENCY SERVICES – The Contractor shall make available emergency service on a 24 hour a day, seven day per week basis.

2.04 Quality Assurance/Inspection

- A. All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Scope of Service) shall be subject to inspection and test by the County or other regulatory agencies at all times. The Contractor shall provide adequate cooperation to any inspector or other County representative to permit him/her to determine the Contractor's conformity with the terms of this Scope of Service. If any services performed or products provided by Contractor are not in conformance with this Scope of Service, the County shall have the right to require the Contractor to perform the services or provide the products in conformance with the terms of this Scope of Service at no additional cost to the County. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the County shall have the right to: (1) require the Contractor immediately to take all necessary steps to ensure future performance in conformity with the terms of this Scope of Service; and/or (2) reduce the price (including monthly maintenance cost) to reflect the reduced value of the services performed or products provided. The County may also terminate the Contract as a result of default and charge to Contractor any costs incurred by the County because of the Contractor's failure to perform.
- B. Contractor shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Scope of Service; and shall permit a County representative or other regulatory official to monitor, assess or evaluate Contractor's performance under this Scope of Service at any time with/without reasonable notice to Contractor.
- C. The Contractor shall use an adequate number of skilled workmen who are thoroughly trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and the methods needed for proper performance of all work contained in these specifications. County may request Contractor's personnel be removed from the site without explanation or reason. Such personnel shall be allowed to work the rest of the day, but must be replaced by the next day or next service day, whichever is sooner.

2.05 Safety

- A. Contractor shall be solely responsible for the condition of the premises on which the work is performed and for safety of the premises on which the work is performed. This requirement shall not be limited to normal working hours, but shall apply continuously.
- B. Contractor shall conform to all governing safety regulations.
- C. Contractor is not authorized to block a traffic lane unless all legal traffic control measures are in place, and the County has been notified of the intended closure 72 hours in advance.
- D. Contractor shall not trespass, perform illegal activities, or trespass.
- E. Contractor shall use ladders in a safe and responsible manner.

- F. Contractor shall be responsible for the proper education of their employees on all equipment used by the employees. Contractor shall perform annual safety instruction.
- G. Contractor shall focus on spill prevention, spill control, and spill cleanup at all times while on L&LMD maintenance activities. Contractor shall practice safe storage practices of all chemicals and landscape products at all times while on L&LMD maintenance activities. Contractor shall readily cleanup any spills associated with their maintenance activities including: preventing fuel spillage during refueling activities; seal leaking containers, etc.

2.06 Catch Basin Fossil Fuel Filter Maintenance

- A. Contractor must enter catch access basin through manhole, at each catch basin. Contractor shall remove and reinstall “Allen” type screws (Locking Lug) to secure manhole lids, if applicable. Screws damaged during maintenance shall be replaced at Contractor’s expense. Screws (Locking Lug) shall be coated with an anti-seize based lubricant.
- B. Contractor will remove sediment (dirt, silt, impediment, etc.) and debris (litter, leaves, papers, cans, etc.) and broom sweep around catch basin inlet. Accumulated materials shall be placed in a DOT approved container for later legal disposal by the Contractor at no additional charge to the County.
- C. Contractor shall visually inspect catch basin for defects and possible illegal dumping. If evidence of illegal dumping is apparent, Contractor shall immediately contact County.
- D. Contractor shall clean catch basin fossil fuel filter inserts three (3) times a year, equally spaced throughout the year, with a minimum of a 115 days and a maximum of 130 days between each service, weather permitting safe access to the catch basin.
- E. Contractor shall change absorbent filter medium as needed (visual inspection) up to three (3) times a year, a minimum of one (1) time per a year, at no additional cost to the County.
- F. Minor damage or defects found shall be corrected on-the-spot and a notation made on the maintenance report. Contractor shall notify the County immediately of any extensive damage or defects that affect the efficiency of the filter for the County.
- G. Prior to leaving the catch basin, the Contractor shall attach a plastic padlock to the outer galvanized steel guard with the following information: Company name and number hot stamped printed on one side, and the date of service in permanent marker on the other side. The previous tag shall be removed. This will allow the County inspector to insure all catch basins were serviced in accordance with the contract. Plastic padlocks are available at www.AmericanCasting.com or at 1-800-342-0333, model number 8001. Yellow is the approved color.
- H. Currently installed and approved for use within the County maintained road rights-of-way catch basins are the following fossil fuel filters: “Kristar’s FloGard +Plus”, “Revel Environmental Manufacturing, Inc’s. (REM) Triton Filter with Storm Web”, “Bio Clean Environmental Services’ Curb Inlet Basket with Shelf System”, and “West Coast Storm, Inc’s Curb Inlet Filter Screen and Frame”. Currently products by United Storm Water, Inc are installed per plan, but not approved for use Countywide. Products by Ocean Protection Technology (OPT) are not approved for use.

2.07 Disposal of Collected Pollutant Material

- A. Contractor shall dispose of collected Class II pollutant material in accordance with federal, state, and/or local agency requirements (per EPA specifications).
- B. The Contractor shall maintain the necessary licenses, certifications, and/or any other needed credentials to transport said pollutant materials.

2.08 Maintenance Record

- A. Contractor shall provide the County a maintenance record of work performed following each cleaning, with no less than the following information: "Site Information Section" with project name, site address, contact information, and brief description of treatment system, manufacturer, and quantity and length of each Fossil Fuel Filter. The "Service Information Section" with service date, service technician(s), services performed, with a brief description of materials removed. This record shall be submitted within ten (10) days of service completion.
- B. A Certificate of Compliance shall be provided to the County by the Contractor following each cleaning. The Zone number and Location number (if equipped) should be clearly visible on the certificate along with the service date, and signed by the Contractor. This certificate shall be submitted within ten (10) days of service completion.
- C. The Contractor shall include the copy of certified payroll documentation, a copy of the Maintenance Record, a copy of the Certificate of Compliance with any and all invoices for work performed. Invoice payment will be delayed until all supportive documentation is provided to the County.
- D. Invoices shall be prepared by Zone. Maintenance records and Certificate of Compliance shall be Zone and Location based. Each Zone and Location will have independent information for the location, based upon maintenance maps provided by the County.

2.09 Extra Work and Warranty Period

- A. All extra work must have written approval prior to the work being performed.
- B. Any products or services not otherwise specified in this specification shall be negotiated between the Contractor and the County at a price agreed upon by both parties.
- C. A one-year unconditional warranty shall be in effect for any extra work completed by the Contractor. The warranty shall cover all materials and workmanship.

2.10 Performance Evaluation

- A. The performance of the maintenance work will be reviewed and monitored by the County on an ongoing basis.
- B. The County may review individual locations at any given time with or without the presence of the Contractor.
- C. During these reviews, the County will utilize an Evaluation Checklist to document the findings.
- D. Implementing a rating scale for designated catch basin fossil fuel filter inserts maintenance tasks and overall performance will be evaluated on a point system. A rating falling below 75% of all possible points will be deemed unsatisfactory.
- E. **A 10% reduction of the payment amount will be assessed for each service period the evaluation rating is defined unsatisfactory. Two consecutive ratings may, at the discretion of the County, result in termination of the entire contract.**

**EXHIBIT B
PAYMENT PROVISION
Landscaping & Lighting Maintenance District NO. 89-1-CONSOLIDATED**

NORMAL WORK		
Description	Unit Price (per a Catch Basin)	Unit Description
Annual Cleaning <u>three (3) times</u> and Inspection of Catch Basin Inserts (Fossil Fuel Filters), any size or length curb inlet, combination inlet, or drop inlet Catch Basin, minimum replacement of absorbent 1 time annually, up to 3 times if necessary	\$ 141.00	Annual Service Charge including 3 Filter Cleanings, Site Visit, and 1 absorbent replacement, Per a Catch Basin

EXTRA WORK		
Description	Unit Price (per a Catch Basin)	Unit Description
One (1) Cleaning (<u>1 time</u>) and Inspection of Catch Basin Inserts (Fossil Fuel Filters), any size or length curb inlet or drop inlet Catch Basin.	\$ 47.00	1 Time Service Charge including Filter Cleanings and Site Visit.
1 Cleaning (<u>1 time</u>) and Inspection of Catch Basin Inserts (Fossil Fuel Filters), any size or length curb inlet or drop inlet Catch Basin, replace absorbent.	\$ 57.00	1 Time Service Charge including Filter Cleanings, Site Visit, and absorbent replacement.