

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



616B

**FROM:** General Manager-Chief Engineer

**SUBMITTAL DATE:**

January 6, 2015

**SUBJECT:** Approve sole source Multi-Year Consulting Services Agreement for Hydstra Custom Software, 3 years, [\$75,000 total]; District Funds 100%

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the sole source Multi-Year Consulting Services Agreement (Agreement) between the District and Kisters North America, Inc. (Consultant); and
2. Authorize the Chairman to execute the Agreement documents on behalf of the District.

**BACKGROUND:**

Summary

The Agreement sets forth the terms and conditions by which Consultant will provide custom software development and modifications in support of the District's hydrometeorological database (Hydstra).

(Continued on page 2)

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

AMR:blm  
P8/165793

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 25,000	\$ 25,000	\$ 75,000	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET DISTRICT COST	\$ 25,000	\$ 25,000	\$ 75,000	\$ N/A	

<b>SOURCE OF FUNDS:</b> 48000 947240 525440 Hydrology Professional Services	<b>Budget Adjustment:</b> No
	<b>For Fiscal Year:</b> 14/15 – 16/17

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

APPROVE

BY:   
Imelda Delos Santos

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM APPROVED COUNTY COUNSEL  
 DATE: 11/25/14  
 BY: GREGORY P. PRIAMOS  
 FISCAL PROCEDURES APPROVED  
 JEANINE J. REY, FINANCE DIRECTOR  
 BY: JEANINE J. REY  
 Departmental Concurrence  
 11/20/14

- A-30
- 4/5 Vote
- Positions Added
- Change Order

**Prev. Agn. Ref.:** 11.1 of 1/24/06; 11.1 of 12/11/07;  
11.7 of 10/05/10

**District:** All

**Agenda Number:**

**11-7**

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**  
**FORM 11: Approve sole source Multi-Year Consulting Services Agreement for Hydstra Custom  
Software, 3 years, [\$75,000 total]; District Funds 100%**

**DATE:** January 6, 2015

**PAGE:** Page 2 of 2

**BACKGROUND:**

**Summary (continued)**

On January 24, 2006 (Agenda Item No. 11.1), December 11, 2007 (Agenda Item No. 11.1) and October 5, 2010 (Agenda Item No. 11.7), the Board of Supervisors approved consulting services agreements with Kisters North America, Inc. to provide support and maintenance of the Hydstra Hydrologic Database. Hydstra allows the District to manage, perform quality control and analyze large amounts of water quality and hydrologic data to meet the requirements of the National Pollutant Discharge Elimination System (NPDES) permits.

Kisters North America, Inc. is the only U.S. company that is authorized to provide custom software modifications and applications development for the Hydstra database application. The District must make pertinent modifications to the existing Hydstra database in order to facilitate efficient compliance with the NPDES permits. As such, Kisters North America, Inc. was selected on a sole source basis to provide the above mentioned services. This Consulting Services Agreement is for a not-to-exceed amount of \$25,000 per fiscal year with a further cap of \$75,000 for the entire term of the Agreement. County Purchasing has approved the attached sole source procurement justification.

County Counsel has approved the Agreement as to legal form and the Consultant has executed the Agreement.

**Impact on Residents and Businesses**

Costs incurred under this Agreement will be funded by ad-valorem property tax revenue and entails no new fees, taxes or bonded indebtedness to residents and businesses.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

Sufficient funding is available in the District's budget for Fiscal Year 2014-2015 and will be included in the proposed budget(s) for Fiscal Years 2015-2016 through 2016-2017, as appropriate and necessary.

AMR:blm  
P8/165793



# M E M O R A N D U M

## RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

**DATE:** September 24, 2014

**TO:** Board of Supervisors  
**VIA:** Purchasing Agent  
**FROM:** Warren D. Williams, General Manager-Chief Engineer  
**RE:** Sole Source Procurement – Kisters North America, Inc.  
Request for Custom Software Revisions

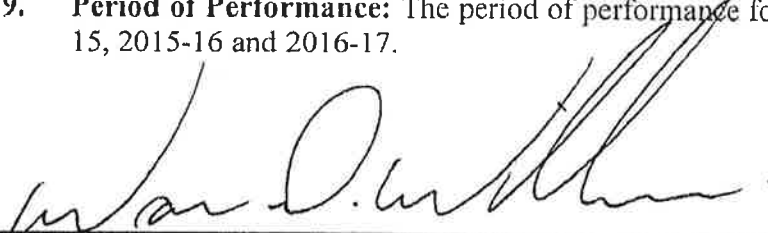
A handwritten signature in black ink, appearing to read "W.D. Williams", is written over the "FROM:" line of the memorandum.

The information provided below is in support of the District requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

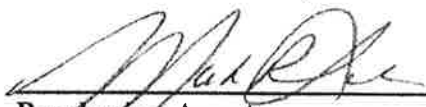
1. **Supply/Service being requested:** Custom software revisions to the Hydstra Hydrologic Database
2. **Supplier being requested:** Kisters North America, Inc.
3. **Alternative suppliers that can or might be able to provide supply/service:** Kisters developed and markets the Hydstra database. They have exclusive knowledge of the computer code and exclusive rights to modify the computer code per their current license agreement. No other supplier can update the computer code.
4. **Extent of market search conducted:** This is a niche use and there are no other providers of a similarly functioned tool for local management and analysis of water quality and hydrologic data.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Only Kisters is allowed to make changes to the computer code. The software allows us to quality control, manage, and analyze large amounts of water quality and hydrologic data. Feature sets have been incorporated to make the software specific to the needs of the District.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** On October 5, 2010, the Board of Supervisors approved Item No. 11.7 with Kisters North America, Inc. That 3-year agreement set forth the terms and conditions by which Kisters would provide custom software development and modifications in support of the District's hydrometeorological database (Hydstra). It is the District's intent to enter into another 3-year agreement for the same services and support to meet the requirements of the NPDES permits that the District was issued by the three Regional Water Quality Control Boards regulating Riverside County. The three permits were recently renewed and included significant modifications to water quality data management programs, including new quality control, data collection, and reporting requirements. The District must make the pertinent modifications to the existing Hydstra database to facilitate efficient compliance with the permits.

**TO:** Board of Supervisors  
**RE:** Sole Source Procurement – Kisters North America, Inc.  
 Request for Custom Software Revisions

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The services are on-call at a fixed rate. There has been no change to the cost of these services from the original agreement. FY 2014-15 includes \$25,000 in on-call services. FY 2015-16 includes \$25,000 in on-call services. FY 2016-17 includes \$25,000 in on-call services. Not to exceed \$75,000 for a 3-year period. The District will go to the Board of Supervisors for approval.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** No.
9. **Period of Performance:** The period of performance for this agreement is Fiscal Years 2014-15, 2015-16 and 2016-17.

  
 \_\_\_\_\_  
**Department Head Signature** **Date** 9/24/14

Purchasing Department Comments:

<u>Approve</u>	Approve with Condition(s)	Disapprove
Not to exceed: \$ <u>25,000</u>	One time	Annual Amount through <u>6-30-17</u>
	<u>10-1-14</u>	<u>15-228</u>
<b>Purchasing Agent</b>	<b>Date</b>	<b>Approval Number</b> <i>(Reference on Purchasing Documents)</i>

RN:mc  
P8\164061



**RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM**  
To be completed for all departmental purchases of IT systems, services or renewals

PR2014-01947  
Tracking Number for Internal Use Only

<b>REQUESTED PURCHASE:</b> CUSTOMIZATION FOR KISTERS HYDSTRA HYDROLOGIC SYSTEM	
<b>DEPARTMENT/AGENCY:</b> RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT	
<b>CONTACT NAME/PHONE:</b> LETICIA VILLELA/951 955-1256	
<b>PURCHASE REQUEST:</b> <input type="checkbox"/> NEW EQUIPMENT/SERVICES <input type="checkbox"/> UPGRADE <input type="checkbox"/> REPLACEMENT	
<b>PURCHASE TYPE:</b> <input checked="" type="checkbox"/> PROFESSIONAL SERVICES <input checked="" type="checkbox"/> SOFTWARE <input type="checkbox"/> HARDWARE <input type="checkbox"/> RENEWAL	
<b>DESCRIBE REQUESTED PURCHASE</b>	Custom software revisions to the Hydstra Hydrologic Database System provided by Kisters. The Hydstra system is a unique rainfall and water quality data management tool that has been customized to the needs of the District. The District is in need of significant modifications to the Hydstra system as a result of new regulations. The modifications will be carried out by system and hydrological engineers and charged on an hourly basis. The total cost will not exceed \$25,000.
<b>BUSINESS NEEDS ADDRESSED</b>	<p>The Hydstra system by Kisters assists the Hydrologic Data Collection staff in recording the daily precipitation as well as recording the water quality data we generate. This is an integral part of our frequency analysis updates and annual reports for our three National Pollutant and Discharge Elimination System (NPDES) permits.</p> <p>We are in need of significant customizations to meet the new requirements of the NPDES Permits issued by the three Regional Water Quality Control Boards that regulate Riverside County. Two of the three Permits were recently renewed and included significant modifications to water quality data management programs, including new quality control, data collection and reporting requirements. The District must make the pertinent modifications to the existing Hydstra database to facilitate efficient compliance with the Permits.</p>
<b>ARE THERE ANY OTHER COUNTY SYSTEMS THAT PROVIDE THE SAME FUNCTIONALITY?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNKNOWN
<b>BUSINESS CRITICALITY</b>	<b>BUSINESS IMPACT (SELECT ALL THAT APPLY)</b>
<input checked="" type="checkbox"/> Run the business	<input checked="" type="checkbox"/> Support current operations
<input type="checkbox"/> Grow the business	<input checked="" type="checkbox"/> Reduce Expenses
<input type="checkbox"/> Transform the business	<input checked="" type="checkbox"/> Improve Customer Service
	<input checked="" type="checkbox"/> Improve Operational Efficiencies
<b>BUSINESS RISKS</b>	Financial: Sufficient funds have been budgeted for these software modifications. Operational: None. Customer: None.
<b>ALTERNATIVE SOLUTIONS</b>	1. None 2. [Solution] 3. [Solution]
<b>TRANSACTION</b>	<input checked="" type="checkbox"/> Cash Purchase <input type="checkbox"/> Lease Purchase Lease Years: _____
<b>PURCHASE COSTS</b>	<b>COST BENEFIT ANALYSIS</b>

9/26



**RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM**  
 To be completed for all departmental purchases of IT systems, services or renewals

Tracking Number for  
Internal Use Only

Hardware: \$  Software: \$  Labor: \$ Not to exceed 25,000.00  <b>TOTAL COST: NOT TO EXCEED \$25,000</b>		ALTERNATIVE STATUS QUO	ALTERNATIVE	ALTERNATIVE
	Current Annual Cost			
	Ongoing Annual Cost			
	Annual Cost Savings			
	Net Annual Savings			
	Project Implementation Cost			
	Project Payback Period? yrs			
Department Head Signature: <i>Steve [unclear]</i>		Date: <i>9/25/14</i>		

**RCIT RECOMMENDATION -- for purchases and renewals under \$100,000**

Recommended:  Yes  No (Non-recommended requests submit to TSOC)

By: **RCIT - APPROVED** Date: *9/30/14*

Chief Information Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**RCIT explanation for non-recommended requests:**

**TSOC RECOMMENDATION: for purchases and renewals over \$100,000 and RCIT non-recommended purchases or renewals**

Recommended:  Yes  No (In no, provide explanation below)

TSOC Chair Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**TSOC explanation for denied requests:**

MULTI-YEAR CONSULTING SERVICES AGREEMENT  
for HYDSTRA CUSTOM SOFTWARE  
(FY 2014/15 through FY 2016/17)

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and Kisters North America, Inc., hereinafter called "CONSULTANT", hereby agree as follows:

1. PROJECT – As directed by DISTRICT, CONSULTANT shall develop custom software modifications to DISTRICT'S Hydron hydrometeorological and water quality database software.
2. SCOPE OF SERVICES – DISTRICT hereby retains CONSULTANT, as an independent contractor, to furnish tools, equipment, facilities, materials, labor and other incidental services necessary to perform in a complete, skillful and professional manner those services required by DISTRICT. CONSULTANT shall not perform any work, except as directed by DISTRICT in writing.
3. TIME FOR PERFORMANCE – CONSULTANT shall not commence performance of any work or services, for any reason whatsoever, until DISTRICT has provided CONSULTANT with a written Notice to Proceed authorizing CONSULTANT to initiate work pursuant to this Agreement. No payment will be made for any work or services performed prior to the issuance of said Notice to Proceed. The term of this Agreement shall commence on the date it is executed by DISTRICT'S Board of Supervisors and shall terminate at midnight on June 30, 2017.
4. COMPENSATION – DISTRICT shall pay CONSULTANT for actual services satisfactorily performed and expenses incurred in accordance with the rates as set forth on Attachment "A" attached hereto and made a part hereof. The amount of compensation paid to CONSULTANT for developing custom software modifications approved pursuant

1 to this Agreement shall not exceed: (i) twenty-five thousand dollars (\$25,000) in any given  
2 fiscal year; and (ii) the total sum of seventy-five thousand dollars (\$75,000) over the entire  
3 term of this Agreement.  
4

- 5 5. PAYMENT – CONSULTANT shall submit invoice(s) to DISTRICT (Attention: Business  
6 Office – Accounts Payable) following completion of requested services. Upon  
7 satisfactory performance of CONSULTANT'S services as set forth herein, DISTRICT  
8 shall pay CONSULTANT within thirty (30) days after DISTRICT'S receipt of  
9 CONSULTANT'S appropriate monthly invoice(s). Progress payments, if permitted, shall  
10 be processed no more than once per month. DISTRICT shall not pay interest or finance  
11 charges on any outstanding balance(s). CONSULTANT shall keep employee and expense  
12 records according to customary accounting methods and such records, upon request, shall  
13 be made available for inspection by DISTRICT to verify CONSULTANT'S invoice(s).  
14 All invoices shall itemize charges to conform with the rates as set forth in Attachment "A".  
15 In addition, all invoices shall contain, at a minimum, the following information: a  
16 reference to the name of this Agreement (Multi-year Consulting Services Agreement for  
17 Hydstra Custom Software, FY 2014/15 through FY 2016/17), invoice number and date,  
18 invoice amount and remittance address.  
19

20  
21 Except as specifically provided for and stated in this Agreement or Attachment "A",  
22 DISTRICT shall not be responsible for payment of any of CONSULTANT'S expenses  
23 related to this Agreement.

- 24 6. LICENSES – CONSULTANT, its employees, agents, sub-consultants, contractors and  
25 subcontractors shall possess and maintain professional licenses required by the applicable  
26 federal, state and local regulations at all times while performing services under this  
27 Agreement.  
28



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

3 RIVERSIDE COUNTY FLOOD CONTROL  
4 AND WATER CONSERVATION DISTRICT  
5 1995 Market Street  
6 Riverside, CA 92501  
7 Attn: Hydrologic Data Collection Section

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

8 8. INSURANCE -- CONSULTANT shall not commence operations until DISTRICT has  
9 been furnished with original certificate(s) of insurance and certified original copies of  
10 endorsements and, if requested, certified original policies of insurance including all  
11 endorsements and any and all other attachments as required in this Section.

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

16 A. Workers' Compensation:

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

24 B. Commercial General Liability:

25 Commercial General Liability insurance coverage, including but not limited to,  
26 premises liability, unmodified contractual liability, products and completed  
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1 operations liability, personal and advertising injury and cross liability coverage,  
2 covering claims which may arise from or out of CONSULTANT'S performance of  
3 its obligations hereunder. Policy shall name the Riverside County Flood Control and  
4 Water Conservation District, the County of Riverside, its agencies, districts, special  
5 districts, and departments, their respective directors, officers, Board of Supervisors,  
6 employees, elected or appointed officials, employees, agents or representatives as  
7 additional insureds. Policy's limit of liability shall not be less than \$1,000,000 per  
8 occurrence combined single limit. If such insurance contains a general aggregate  
9 limit, it shall apply separately to this Agreement or be no less than two (2) times the  
10 occurrence limit.  
11

12  
13 C. Vehicle Liability:

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

25  
26 D. Professional Liability:

27 CONSULTANT shall maintain Professional Liability Insurance providing coverage  
28 for CONSULTANT'S performance of work included within this Agreement, with a

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

11  
12  
13 E. General Insurance Provisions – All Lines:

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

20  
21 ii. CONSULTANT must declare its insurance self-insured retention for each  
22 coverage required herein. If any such self-insured retention exceeds  
23 \$500,000 per occurrence, each such retention shall have the prior written  
24 consent of the County Risk Manager before the commencement of operations  
25 under this Agreement. Upon notification of self-insured retention deemed  
26 unacceptable to DISTRICT, and at the election of the County Risk Manager,  
27 CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-  
28

1 insured retention with respect to this Agreement with DISTRICT; or 2)  
2 procure a bond which guarantees payment of losses and related  
3 investigations, claims administration, and defense costs and expenses.  
4

5 iii. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT  
6 with: 1) a properly executed original certificate(s) of insurance and certified  
7 original copies of endorsements effecting coverage as required herein; and 2)  
8 if requested to do so orally or in writing by the County Risk Manager,  
9 provide original certified copies of policies, including all endorsements and  
10 all attachments thereto, showing such insurance is in full force and effect.  
11 Further, said certificate(s) and policies of insurance shall contain the  
12 covenant of the insurance carrier(s) that a minimum of thirty (30) days  
13 written notice shall be given to DISTRICT prior to any material modification,  
14 cancellation, expiration or reduction in coverage of such insurance. If  
15 CONSULTANT'S insurance carrier(s) policies do not meet the minimum  
16 notice requirement found herein, CONSULTANT shall cause  
17 CONSULTANT'S insurance carrier(s) to furnish a 30-day Notice of  
18 Cancellation Endorsement. In the event of a material modification,  
19 cancellation, expiration or reduction in coverage, this Agreement shall  
20 terminate forthwith, unless DISTRICT receives, prior to such effective date,  
21 another properly executed original certificate of insurance and original copies  
22 of endorsements or certified original policies, including all endorsements and  
23 attachments thereto, evidencing coverages set forth herein and the insurance  
24 required herein is in full force and effect. An individual authorized by the  
25  
26  
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1 insurance carrier to do so on its behalf shall sign the original endorsements  
2 for each policy and the certificate of insurance.

3  
4 iv. It is understood and agreed by the parties hereto that CONSULTANT'S  
5 insurance shall be construed as primary insurance, and DISTRICT'S  
6 insurance and/or deductibles and/or self-insured retentions or self-insured  
7 programs shall not be construed as contributory.

8  
9 v. If during the term of this Agreement or any extension thereof; there is a  
10 material change in the scope of services; or there is a material change in the  
11 equipment to be used in the performance of the scope of work which will add  
12 additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or  
13 the term of this Agreement, including any extensions thereof, exceeds five (5)  
14 years, DISTRICT reserves the right to adjust the types of insurance required  
15 under this Agreement and the monetary limits of liability for the insurance  
16 coverages currently required herein; if, in the County Risk Manager's  
17 reasonable judgment, the amount or type of insurance carried by  
18 CONSULTANT has become inadequate.

19  
20 vi. CONSULTANT shall pass down the insurance obligations contained herein  
21 to all tiers of subcontractors working under this Agreement.

22  
23 vii. The insurance requirements contained in this Agreement may be met with a  
24 program(s) of self-insurance acceptable to DISTRICT.

25  
26 viii. CONSULTANT agrees to notify DISTRICT of any claim by a third party or  
27 any incident or event that may give rise to a claim arising from the  
28 performance of this Agreement.

1 9. INDEMNIFICATION – CONSULTANT shall indemnify and hold harmless DISTRICT  
2 (including its officers, Board of Supervisors, elected and appointed officials, employees,  
3 agents and representatives) from any liability, claim, damage, proceeding or action,  
4 present or future, based upon, arising out of or in any way relating to CONSULTANT'S  
5 (including its officers, employees, subcontractors and agents) actual or alleged negligent,  
6 reckless or willful misconduct, acts or omissions related to this Agreement, performance  
7 under this Agreement or failure to comply with the requirements of this Agreement,  
8 including but not limited to: (a) property damage; (b) bodily injury or death; or (c) any  
9 other element of any kind or nature whatsoever.  
10

11 CONSULTANT shall defend, at its sole expense, including all costs and fees (including  
12 but not limited to attorney fees, cost of investigation, defense and settlements or awards),  
13 DISTRICT (its officers, Board of Supervisors, elected and appointed officials, employees,  
14 agents and representatives) in any claim, proceeding or action for which indemnification is  
15 required.  
16

17 With respect to any of CONSULTANT'S indemnification requirements, CONSULTANT  
18 shall, at its sole cost, have the right to use counsel of their own choice and shall have the  
19 right to adjust, settle, or compromise any such claim, proceeding or action without the  
20 prior consent of DISTRICT; provided, however, that such adjustment, settlement or  
21 compromise in no manner whatsoever limits or circumscribes CONSULTANT'S  
22 indemnification obligations to DISTRICT.  
23

24 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT  
25 has provided to DISTRICT the appropriate form of dismissal (or similar document)  
26 relieving DISTRICT from any liability for the claim, proceeding or action involved.  
27  
28

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

4 In the event there is conflict between this section and California Civil Code Section 2782,  
5 this section shall be interpreted to comply with California Civil Code Section 2782. Such  
6 interpretation shall not relieve CONSULTANT from indemnifying DISTRICT to the  
7 fullest extent allowed by law.

9 10. WORK PRODUCT - CONSULTANT shall provide DISTRICT with an electronic copy of  
10 the software modifications and installation instructions. All computer codes, files and  
11 reports shall be and remain the sole property of DISTRICT. All work products or  
12 deliverables furnished under this Agreement shall be and remain the sole property of  
13 DISTRICT. CONSULTANT shall not publish or transfer any material produced or  
14 resulting from activities supported by this Agreement without the written consent of the  
15 General Manager-Chief Engineer. If any such material is subject to copyright or  
16 trademark, the parties agree that the right to any and all copyright and/or trademark in and  
17 to the material is expressly reserved to DISTRICT. If any such material is copyrighted,  
18 the parties hereto understand and agree that DISTRICT reserves a royalty-free, non-  
19 exclusive and irrevocable license to reproduce, publish and use such material, in whole or  
20 in part, and to authorize others to do so, provided written credit is given the author.

23 11. CONFIDENTIALITY OF DATA – All technical or other data and information made  
24 available to CONSULTANT shall not be disclosed (in whole or in part) by  
25 CONSULTANT to any third parties and shall be protected by CONSULTANT from  
26 unauthorized use and disclosure. The only exception to this shall be if disclosure is  
27

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1 approved in advance in writing by DISTRICT or if the disclosure is made to  
2 CONSULTANT'S subcontractors as anticipated by this Agreement.

3 CONSULTANT shall refer all requests for information to DISTRICT. These same  
4 requirements shall be applicable to any of CONSULTANT'S sub-consultants.

5 CONSULTANT shall include the requirements stated in this section in the agreement(s)  
6 with any of its sub-consultants.  
7

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

9 A. Terminate this Agreement without cause upon providing CONSULTANT thirty  
10 (30) days written notice stating the extent and effective date of termination; or

11 B. Upon five (5) days written notice, terminate this Agreement for CONSULTANT  
12 default, if CONSULTANT refuses or fails to comply with the provisions of this  
13 Agreement or fails to make progress so as to endanger performance and does not  
14 cure such failure within a reasonable period of time. In the event of such  
15 termination, the DISTRICT may proceed with the work in a manner deemed  
16 proper to DISTRICT.  
17

18 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: (i)  
19 stop all work under this Agreement on the date specified in the Notice of  
20 Termination; and (ii) transfer to DISTRICT and deliver in the manner and to the  
21 extent, if any, as directed by DISTRICT, any computer codes, files or reports  
22 which, if the Agreement had been completed, would have been required to be  
23 furnished to DISTRICT.  
24

25 In the event DISTRICT terminates this Agreement pursuant to paragraph A) or B)  
26 above, DISTRICT shall make payment for all services satisfactorily performed in  
27 accordance with this Agreement to the date of termination and at the rates as set  
28



1           forth in Attachment "A". Notwithstanding any of the other provisions of this  
2           Agreement, CONSULTANT'S rights under this Agreement shall terminate (except  
3           for fees accrued prior to the date of termination) upon dishonesty or a willful or  
4           material breach of this Agreement by CONSULTANT; or in the event of  
5           CONSULTANT'S unwillingness or inability for any reason whatsoever to perform  
6           the duties hereunder; or if the Agreement is terminated pursuant to Section 17  
7           (NON-DISCRIMINATION). In such an event, CONSULTANT shall not be  
8           entitled to any further compensation under this Agreement. The rights and  
9           remedies of DISTRICT provided in this section shall not be exclusive and are in  
10          addition to any other rights and remedies provided by law or under this Agreement.  
11

12  
13 13. ASSIGNMENT – Neither this Agreement nor any part thereof shall be assigned by  
14          CONSULTANT without the prior written consent of DISTRICT.

15 14. CONFLICT OF INTEREST – CONSULTANT covenants that it presently has no interest  
16          in, including but not limited to, other projects or independent contracts, and shall not  
17          acquire any such interest, direct or indirect, which would conflict in any manner or degree  
18          with the performance of services required to be performed under this Agreement.  
19          CONSULTANT further covenants that in the performance of this Agreement, no person  
20          having any such interest shall be employed or retained by it under this Agreement.  
21

22 15. JURISDICTION/LAW/SEVERABILITY – This Agreement is to be construed in  
23          accordance with the laws of the State of California. If any provision of this Agreement is  
24          held by a court of competent jurisdiction to be invalid, void or unenforceable, the  
25          remaining provisions shall be declared severable and shall be given full force and effect to  
26          the extent possible.  
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28

1 Any legal action, in law or equity related to the performance or interpretation of this  
2 Agreement shall be filed only in the Superior Court for the State of California located in  
3 Riverside, California, and the parties waive any provision of law providing for a change of  
4 venue to another location. Prior to the filing of any legal action, the parties shall be  
5 obligated to attend a mediation session with a neutral mediator to try to resolve the  
6 dispute.  
7

8 16. WAIVER – Any waiver by DISTRICT of any breach of any one or more of the terms of  
9 this Agreement shall not be construed to be a waiver of any subsequent or other breach of  
10 the same or any other term thereof. Failure on the part of DISTRICT to require exact, full  
11 and complete compliance with any terms of this Agreement shall not be construed as in  
12 any manner changing the terms hereof or estopping DISTRICT from enforcement hereof.  
13

14 17. NON-DISCRIMINATION – In the performance of the terms of this Agreement,  
15 CONSULTANT shall not engage in or permit others he may employ to engage in  
16 discrimination in the employment of persons because of the race, color, national origin or  
17 ancestry, religion, physical handicap, disability as defined by the Americans with  
18 Disabilities Act (ADA), medical condition, marital status or sex of such persons, in  
19 accordance with the provision of California Labor Code Section 1735.  
20

21 18. INDEPENDENT CONTRACTOR – CONSULTANT and the agents and employees of  
22 CONSULTANT shall act at all times in an independent capacity during the term of this  
23 Agreement and in the performance of the services to be rendered hereunder and shall not  
24 act as or shall not be and shall not in any manner be considered employees or agents of  
25 DISTRICT.  
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27 19. NON-APPROPRIATION OF FUNDS – It is mutually agreed and understood that the  
28 obligation(s) of DISTRICT are limited by and contingent upon the availability of

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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 4 and 5 (COMPENSATION and PAYMENT).

20. DISCREPANCIES – In the event of any conflict between the terms of this Agreement and Attachment "A", the terms of this Agreement shall govern.

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

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

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5  
6 RECOMMENDED FOR APPROVAL:

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

7  
8 By  \_\_\_\_\_  
WARREN D. WILLIAMS  
9 General Manager-Chief Engineer

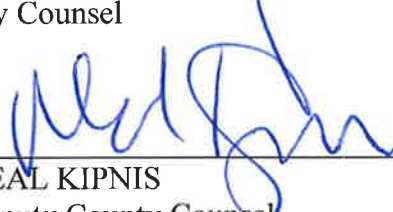
By \_\_\_\_\_  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water  
Conservation District Board of Supervisors

10  
11 APPROVED AS TO FORM:

ATTEST:

12 GREGORY P. PRIAMOS  
13 County Counsel

KECIA HARPER-IHEM  
Clerk of the Board

14  
15 By  \_\_\_\_\_  
NEAL KIPNIS  
16 Deputy County Counsel

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

17  
18 (SEAL)

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26 Consultant Services Agreement (FY 2014/15 – FY 2016/17)  
27 w/Kisters North America, Inc.  
11/17/14  
28 TT:AMR:blm

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**KISTERS NORTH AMERICA, INC.**

By   
STAN MALINKY  
Chief Operating Officer

Consultant Services Agreement (FY 2014/15 – FY 2016/17)  
w/Kisters North America, Inc.  
11/17/14  
TT:AMR:blm

# ATTACHMENT A

## Rates

Kisters North America, Inc.

### Custom Software Modifications to the Hydstra Database Program

At the specific request of the Flood Control District, Consultant shall make software modifications to the Hydstra database program. Such modifications will be done at a cost of:

Senior Systems Engineer -- \$250/hour off site, \$2000/day on site.

Associate Systems Engineer -- \$219/hour off site, \$1750/day on site.

Senior Hydrological Engineer -- \$250/hour off site, \$2000/day on site.

Associate Hydrological Engineer -- \$219/hour off site, \$1750/day on site.

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