

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

608B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
August 16, 2011

SUBJECT: Prequalification for On-Call Engineering Services Support and Ancillary Professional Services

RECOMMENDED MOTION:

1. Approve the On-Call Engineering Services providers list (Attachment "A") for use on an as-needed basis, with a limit of \$750,000 over three years and a cap of \$250,000 per year, for Fiscal Years 2011-2012, 2012-2013 and 2013-2014; and
2. Approve the Consulting Services Agreements for the On-Call Engineering Services providers; and
3. Authorize the Chairman to execute the Agreement documents on behalf of the District.

Continued on page 2

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

FINANCIAL DATA	Current F.Y. District Cost:	\$3,250,000	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	\$3,250,000	For Fiscal Year:	11/12; 12/13; 13/14

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

C.E.O. RECOMMENDATION: **APPROVE**
BY: *Alex Gann*
Alex Gann

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: August 16, 2011
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: District: All **Agenda Number:**

FISCAL PROCEDURES APPROVED BY: DAN M. CHAND, FINANCE DIRECTOR

FORM APPROVED COUNTY COUNSEL BY: NEAL R. KIRNIS DATE: 8/11/11

Dept's Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

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

SUBJECT: Prequalification for On-Call Engineering Services Support and
Ancillary Professional Services

SUBMITTAL DATE: August 16, 2011

Page 2

BACKGROUND:

The purpose of the Prequalification for On-Call Engineering Services and Ancillary Professional Services list (On-Call list) is to provide expedited access to supplemental engineering and associated specialized technical expertise and services necessary to support the District's ongoing preparation of design and construction plans, specifications and estimates.

To allow the District to implement its Capital Improvement Program more effectively, the County Board Policy H-7 limits of \$100,000 per project with a further \$100,000 cap in a single year needs to be increased. Therefore, the On-Call list would raise the contract limit to \$750,000 over three (3) years with a cap of \$250,000 per year for selected firms. This is identical to the limit approved by the County Board for the Transportation Department for work of similar scale. Furthermore, per the consulting services agreements approved via this action the Board will authorize the General Manager-Chief Engineer to issue task orders to the consultants for individual projects. The District will fairly apportion the work among the members of the On-Call list. The On-Call list will be reviewed annually and updated on an as-needed basis. At the end of the three years, in 2014, all consulting services agreements for the On-Call list will terminate and a new pre-qualified list of firms will be selected.

Pursuant to County Board Policy H-7, on June 7, 2011, the District mailed a Request for Qualifications to various engineering services firms with the intent to establish a pre-qualified list of engineering service providers. A Notice of Availability was also published in The Press Enterprise and Desert Sun on June 7, 2011. The Request for Qualifications was also made available to the public on the District's website from June 7, 2011 through June 30, 2011.

Twenty-five firms submitted Statement of Qualifications packages. A selection committee comprised of District office staff was established to review and rank each firm's qualifications relative to the following:

- Relevant Experience, Technical Competence and Past Performance;
- Personnel - Technical Competence & Qualifications;
- Support Resources; and
- Location/Local Experience

The top scoring tier of firms was selected to fill the On-Call list (Attachment "A") developed as a result of this Request for Qualifications.

FINANCIAL:

Sufficient funding to accomplish the District's Capital Improvement Program annual work plan is available in the District's Zone 1 through Zone 7 budget(s) for Fiscal Year 2011-2012 and will be included in the proposed budget(s) for Fiscal Year 2012-2013 and Fiscal Year 2013-2014.

CLC:seb

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PRE-QUALIFIED LIST OF CONSULTANTS FOR SERVICES UP TO \$750,000 OVER THREE YEARS,
WITH A CAP OF \$250,000 PER YEAR (Per Board's Approval)

On-Call Engineering Services Support and
Ancillary Professional Services

Atkins North America

Bureau Veritas North America

Cozad & Fox

Cvaldo Corporation

Engineering Resources

Harris & Associates

JLC Engineering & Consulting

K&A Engineering

Krieger & Stewart

Pacific Advanced Civil Engineering

RBF Consulting

Albert A. Webb Associates

West Consultants

ATTACHMENT "A"

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and COZAD AND FOX, INC., hereinafter called
3 "CONSULTANT", hereby agree as follows:
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5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
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20 By entering into this Agreement, CONSULTANT assumes responsible charge of the
21 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
22 3 of the Business and Professions Code, and shall be wholly responsible for the
23 completeness and accuracy of all data, technical studies, reports, plans, specifications
24 and estimates prepared pursuant to this Agreement, and shall check all such material
25 accordingly.
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3. PERSONNEL

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A. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the later of:

- A. Three (3) years from the date of the Board of Supervisors approval; or
- B. The required date for completion of an assigned Task Order, provided that such Task Order was approved prior to expiration date stipulated in 4.A., above.

5. COMPENSATION

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

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the

task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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3 7. PROJECT PERFORMANCE

4 A. Commencement of Services

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

7 B. Time of Completion

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

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

16 9. STANDARD OF CARE

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

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports.
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
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8 11. PERMITS AND RIGHTS OF ENTRY

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

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

24 RIVERSIDE COUNTY FLOOD CONTROL	COZAD AND FOX, INC.
25 AND WATER CONSERVATION DISTRICT	151 South Girard Street
26 1995 Market Street	Hemet, CA 92544
27 Riverside, CA 92501	
Attn: Design and Construction Division	Attn: Kevin Cozad

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
2 with original certificate(s) of insurance and original certified copies of endorsements or
3 policies of insurance including all endorsements and any and all other attachments as
4 required in this Section.
5

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

10 A. Workers' Compensation

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

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

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles 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. If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Such non-owned or hired coverage may be included on the Commercial General Liability policy. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as additional insureds.

D. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for CONSULTANT'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 CONSULTANT'S Professional Liability

1 Insurance is written on a claims made basis rather than an occurrence basis, such
2 insurance shall continue through the term of this Agreement and CONSULTANT
3 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
4 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
5 with a date retroactive to the date of, or prior to, the inception of this Agreement;
6 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
7 maintained continuous coverage with the same or original insurer. Coverage
8 provided under items: 1), 2) or 3) will continue as long as the law allows.

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

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25 d. It is understood and agreed by the parties hereto and the
26 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.
- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
11 officials, employees, agents and representatives) in any claim, proceeding or action for
12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
18 settlement or compromise in no manner whatsoever limits or circumscribes
19 CONSULTANT'S indemnification obligations to DISTRICT.
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21 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT
22 has provided to DISTRICT the appropriate form of dismissal (or similar document)
23 relieving DISTRICT from any liability for the claim, proceeding or action involved.

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

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

18 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
19 make payment for all services satisfactorily performed in accordance with the
20 negotiated Task Order to the date of termination, a total amount which bears the
21 same ratio to the total maximum fee otherwise payable under the Task Order as
22 the services actually bear to the total services necessary for performance of the
23 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

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13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.

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21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

1 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
2 nor permit others he may employ to engage in discrimination in the employment of
3 persons because of the race, color, national origin or ancestry, religion, physical
4 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
5 condition, marital status or sex of such persons, in accordance with the provision of
6 California Labor Code Section 1735.
7

8 28. NON-APPROPRIATION OF FUNDS

9 It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by
10 and contingent upon the availability of DISTRICT funds for the reimbursement of
11 CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason,
12 DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall
13 be deemed terminated and have no further force and effect immediately upon receipt of
14 DISTRICT'S notification by CONSULTANT. In the event of such termination,
15 CONSULTANT shall be entitled to reimbursement of its costs in accordance with
16 Section 5 (COMPENSATION).
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18 //

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

AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

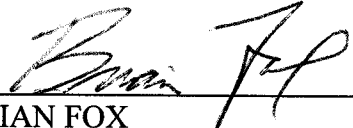
KECIA HARPER-IHEM
Clerk of the Board
By: Kecia Harper-Ihem
Deputy

(SEAL)

Consulting Services Agreement
07/20/11

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COZAD AND FOX, INC.

By:  _____
BRIAN FOX
Vice President

Consulting Services Agreement
07/20/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

COZAD AND FOX, INC.

By: _____
BRIAN FOX
Vice President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and CVALDO CORPORATION, hereinafter
3 called "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19
20 By entering into this Agreement, CONSULTANT assumes responsible charge of the
21 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
22 3 of the Business and Professions Code, and shall be wholly responsible for the
23 completeness and accuracy of all data, technical studies, reports, plans, specifications
24 and estimates prepared pursuant to this Agreement, and shall check all such material
25 accordingly.
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AUG 16 2011 11:15

3. PERSONNEL

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2 A. Project Manager

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

9
10 B. CONSULTANT'S Representative

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

16
17 C. Substitution of Key Personnel

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

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:
4

5 A. Three (3) years from the date of the Board of Supervisors approval; or

6 B. The required date for completion of an assigned Task Order, provided that such
7 Task Order was approved prior to expiration date stipulated in 4.A., above.

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
15

16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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1 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice
2 within thirty (30) days of receipt.

3 7. PROJECT PERFORMANCE

4 A. Commencement of Services

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

7 B. Time of Completion

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

- 11
- 12 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
13 shall possess appropriate federal and/or state permits and maintain professional licenses
14 required by the applicable Federal, State and local regulations at all times while
15 performing services under this Agreement.

16 9. STANDARD OF CARE

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

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
 2 estimates or any work products contain any errors or omissions that cause the
 3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
 4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
 5 plans, specifications, estimates or any work products, such additional expense shall be
 6 borne solely by CONSULTANT.
 7

8 11. PERMITS AND RIGHTS OF ENTRY

9 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT
 10 to perform the proposed consulting services within and upon privately-owned property.
 11 All permits and rights of entry as may be required from any and all affected public
 12 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained
 13 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,
 14 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as
 15 to minimize public inconvenience and possible hazard, and will restore the streets and
 16 other work areas to their original condition and former usefulness as soon as practicable.
 17 CONSULTANT shall be responsible for the protection of public and private property
 18 adjacent to the work and shall exercise due caution to avoid damage to such property.
 19

20 12. NOTICES

21 Any and all notices sent or required to be sent to the parties of this Agreement will be
 22 mailed by first class mail, postage prepaid, to the following addresses:
 23

24 RIVERSIDE COUNTY FLOOD CONTROL
 25 AND WATER CONSERVATION DISTRICT
 26 1995 Market Street
 27 Riverside, CA 92501
 28 Attn: Design and Construction Division

CVALDO CORPORATION
 4901 Morena Boulevard, Ste 1110
 San Diego, CA 92117
 Attn: Michael Cairns

13. REQUIRED INSURANCE

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

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

A. Workers' Compensation

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

B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, personal and advertising injury covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of

1 Supervisors, elected officials, employees, agents or representatives as additional
2 insureds. Policy's limit of liability shall not be less than \$1,000,000 per
3 occurrence combined single limit. If such insurance contains a general aggregate
4 limit, it shall apply separately to this Agreement or be no less than two (2) times
5 the occurrence limit.

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.

20 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

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26 d. It is understood and agreed by the parties hereto and the
27 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.
- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

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

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

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
18

19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.
5

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

8 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times
9 in an independent capacity during the term of this Agreement and in the performance of
10 the services to be rendered hereunder and shall not act as or shall not be and shall not in
11 any manner be considered to be employees or agents of DISTRICT.
12

13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.
20

21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

23. ASSIGNMENT

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

24. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or

indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

28. NON-APPROPRIATION OF FUNDS

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

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

AUG 16 2011

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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CVALDO CORPORATION

By: 
MICHAEL CAIRNS
President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

CVALDO CORPORATION

By: _____
MICHAEL CAIRNS
President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and RBF CONSULTING a California Corporation,
3 hereinafter called "CONSULTANT", hereby agree as follows:
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5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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AUG 16 2011 11.15

3. PERSONNEL

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A. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the later of:

- A. Three (3) years from the date of the Board of Supervisors approval; or
- B. The required date for completion of an assigned Task Order, provided that such Task Order was approved prior to expiration date stipulated in 4.A., above.

5. COMPENSATION

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

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the

task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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3 7. PROJECT PERFORMANCE

4 A. Commencement of Services

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

7 B. Time of Completion

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

- 11
12 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
13 shall possess appropriate federal and/or state permits and maintain professional licenses
14 required by the applicable Federal, State and local regulations at all times while
15 performing services under this Agreement.

16 9. STANDARD OF CARE

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

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

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Design and Construction Division

RBF CONSULTING
40810 County Center, Suite 100
Temecula, CA 92591
Attn: Michael Tylman

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.
 5

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

10 A. Workers' Compensation

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

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

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles 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. If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Such non-owned or hired coverage may be included on the Commercial General Liability policy. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as additional insureds.

D. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for CONSULTANT'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 CONSULTANT'S Professional Liability

1 Insurance is written on a claims made basis rather than an occurrence basis, such
2 insurance shall continue through the term of this Agreement and CONSULTANT
3 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
4 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
5 with a date retroactive to the date of, or prior to, the inception of this Agreement;
6 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
7 maintained continuous coverage with the same or original insurer. Coverage
8 provided under items: 1), 2) or 3) will continue as long as the law allows.

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

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25 d. It is understood and agreed by the parties hereto and the
26 CONSULTANT'S insurance company(s), that the certificate(s) of
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1 insurance and policies shall so covenant and shall be construed as primary
 2 insurance, and the DISTRICT'S insurance and/or deductibles and/or self-
 3 insured retentions or self-insured programs shall not be construed as
 4 contributory.

- 5 e. If, during the term of this Agreement or any extension thereof, there is a
 6 material change in the scope of services; or there is a material change in
 7 the equipment to be used in the performance of the scope of work which
 8 will add additional exposures (such as the use of aircraft, watercraft,
 9 cranes, etc.); or the term of this Agreement, including any extensions
 10 thereof, exceeds five (5) years, the County reserves the right to adjust the
 11 types of insurance required under this Agreement and the monetary limits
 12 of liability for the insurance coverage's currently required herein, if, in the
 13 County Risk Manager's reasonable judgment, the amount or type of
 14 insurance carried by the CONSULTANT has become inadequate.
- 15 f. CONSULTANT shall pass down the insurance obligations contained
 16 herein to all tiers of subcontractors working under this Agreement.
- 17 g. The insurance requirements contained in this Agreement may be met with
 18 a program(s) of self-insurance acceptable to DISTRICT.
- 19 h. CONSULTANT agrees to notify DISTRICT of any claim by a third party
 20 or any incident or event that may give rise to a claim arising from the
 21 performance of this Agreement.
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24 14. INDEMNIFICATION

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
11 officials, employees, agents and representatives) in any claim, proceeding or action for
12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
18 settlement or compromise in no manner whatsoever limits or circumscribes
19 CONSULTANT'S indemnification obligations to DISTRICT.
20

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.
5

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12 20. SUBCONTRACTING

13 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
14 consultants to accomplish certain portions of the work covered by this Agreement.
15 However, except as specifically provided in the Compensation/Fee Rate Schedule
16 attached to the approved Task Order or as expressly identified in this Agreement, no
17 portion of the services pertinent to this Agreement shall be subcontracted without prior
18 written approval and authorization by DISTRICT.

19 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
20 Schedule attached to the approved Task Order or as expressly identified in this
21 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
22 of equal or greater competence upon written approval by DISTRICT. In the event that
23 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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

13
14 B. Any controversy or claim arising out of or relating to this Agreement which
15 cannot be resolved by mutual agreement may be settled by arbitration, provided
16 that the parties hereto mutually agree to submit to arbitration.

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

28. NON-APPROPRIATION OF FUNDS

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

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

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AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

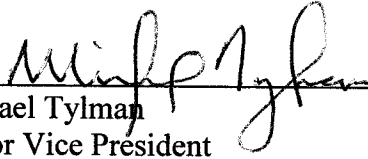
KECIA HARPER-IHEM
Clerk of the Board
By: Kecia Harper-Ihem
Deputy

(SEAL)

Consulting Services Agreement
07/20/11

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RBF CONSULTING

By: 
Michael Tylman
Senior Vice President

Consulting Services Agreement
07/20/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

RBF CONSULTING

By: _____
Michael Tylman
Senior Vice President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and JLC ENGINEERING AND CONSULTING,
3 INC., hereinafter called "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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AUG 16 2011 11:15

3. PERSONNEL

1 A. Project Manager

2 For each Task Order, the DISTRICT shall designate a representative who shall
3 act as the DISTRICT'S Project Manager ("Project Manager"). The Project
4 Manager shall have authority to act on behalf of DISTRICT for all purposes
5 under this Task Order. DISTRICT shall provide written notice to
6 CONSULTANT of any change in Project Manager assignment for a given Task
7 Order.
8

9 B. CONSULTANT'S Representative

10 CONSULTANT shall appoint a designated Representative for each assigned
11 Task Order who shall be responsible for coordinating all aspects of the assigned
12 Task Order. CONSULTANT'S Representative shall be available to DISTRICT'S
13 Project Manager at reasonable times. CONSULTANT may appoint another
14 person as Representative upon written notice to DISTRICT.
15

16 C. Substitution of Key Personnel

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

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

4 A. Three (3) years from the date of the Board of Supervisors approval; or

5 B. The required date for completion of an assigned Task Order, provided that such
6 Task Order was approved prior to expiration date stipulated in 4.A., above.
7

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
15

16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
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8 11. PERMITS AND RIGHTS OF ENTRY

9 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT
10 to perform the proposed consulting services within and upon privately-owned property.
11 All permits and rights of entry as may be required from any and all affected public
12 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained
13 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,
14 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as
15 to minimize public inconvenience and possible hazard, and will restore the streets and
16 other work areas to their original condition and former usefulness as soon as practicable.
17 CONSULTANT shall be responsible for the protection of public and private property
18 adjacent to the work and shall exercise due caution to avoid damage to such property.
19

20 12. NOTICES

21 Any and all notices sent or required to be sent to the parties of this Agreement will be
22 mailed by first class mail, postage prepaid, to the following addresses:
23

24 RIVERSIDE COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT
26 1995 Market Street
27 Riverside, CA 92501
28 Attn: Design and Construction Division

JLC ENGINEERING AND
CONSULTING, INC.
36263 Calle de Lobo
Murrieta, CA 92562
Attn: Joseph Castaneda

13. REQUIRED INSURANCE

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

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

A. Workers' Compensation

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

B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, personal and advertising injury covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of

1 Supervisors, elected officials, employees, agents or representatives as additional
2 insureds. Policy's limit of liability shall not be less than \$1,000,000 per
3 occurrence combined single limit. If such insurance contains a general aggregate
4 limit, it shall apply separately to this Agreement or be no less than two (2) times
5 the occurrence limit.

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.
20

21
22 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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

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

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

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

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

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

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

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.

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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

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22 18. PREVAILING WAGE

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12
13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.

20
21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

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25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

28. NON-APPROPRIATION OF FUNDS

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

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

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AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: [Signature]
NEAL R. KIPNIS
Deputy County Counsel


By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

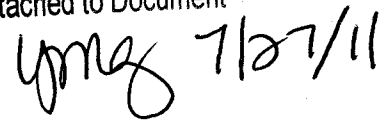
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JLC ENGINEERING AND CONSULTING, INC.

By: 

JOSEPH CASTANEDA
President

Loose Certificate
Attached to Document


YMG 7/27/11

Consulting Services Agreement
07/18/11

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On 7/27/11 before me, Yvette Marie Godoy, Notary Public
(Here insert name and title of the officer)

personally appeared Joseph Castaneda

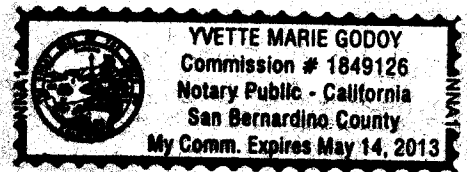
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Yvette Marie Godoy
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Consulting Services
(Title or description of attached document)

Agreement
(Title or description of attached document continued)

Number of Pages 23 Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment-verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~, is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

JLC ENGINEERING AND CONSULTING, INC.

By: _____
JOSEPH CASTANEDA
President

CONSULTING SERVICES AGREEMENT

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RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and BUREAU VERITAS NORTH AMERICA, INC., hereinafter called "CONSULTANT", hereby agree as follows:

1. PROJECT

CONSULTANT shall provide on-call professional engineering services in accordance with applicable federal, state, and local laws and regulations as requested by DISTRICT.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide design and construction related services in support of DISTRICT's capital improvement projects as described on Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this Agreement, the CONSULTANT may be invited to submit proposals for some of the various services listed in Attachment "A" as requested by DISTRICT and be assigned subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division 3 of the Business and Professions Code, and shall be wholly responsible for the completeness and accuracy of all data, technical studies, reports, plans, specifications and estimates prepared pursuant to this Agreement, and shall check all such material accordingly.

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3. PERSONNEL

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A. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

- 4
5 A. Three (3) years from the date of the Board of Supervisors approval; or
6 B. The required date for completion of an assigned Task Order, provided that such
7 Task Order was approved prior to expiration date stipulated in 4.A., above.

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
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16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
7

8 11. PERMITS AND RIGHTS OF ENTRY

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

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

24 RIVERSIDE COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT
26 1995 Market Street
27 Riverside, CA 92501
28 Attn: Design and Construction Division

BUREAU VERITAS NORTH
AMERICA, INC.
1181 California Avenue, Ste 202
Corona, CA 92881
Attn: Bradley Waldrop

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.
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6 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold
 7 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be
 8 maintained, at its sole cost and expense, the following insurance coverages during the
 9 term of this Agreement:

10 A. Workers' Compensation

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

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.

20 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.
- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
11 officials, employees, agents and representatives) in any claim, proceeding or action for
12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
18 settlement or compromise in no manner whatsoever limits or circumscribes
19 CONSULTANT'S indemnification obligations to DISTRICT.
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21 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT
22 has provided to DISTRICT the appropriate form of dismissal (or similar document)
23 relieving DISTRICT from any liability for the claim, proceeding or action involved.

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

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

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

15 extent, if any, as directed by DISTRICT, any equipment, data or reports which, if

16 the Agreement had been completed, would have been required to be furnished to

17 DISTRICT.

18 In the event DISTRICT terminates this Agreement, DISTRICT shall make

19 payment for all services performed in accordance with this Agreement to the date

20 of termination, a total amount which bears the same ratio to the total maximum

21 fee otherwise payable under this Agreement as the services actually bear to the

22 total services necessary for performance of this Agreement. Notwithstanding any

23 of the other provision of this Agreement, CONSULTANT rights under this

24 Agreement shall terminate (except for fees accrued prior to the date of

25 termination) upon dishonesty, or a willful or material breach of this Agreement

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1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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Department of Industrial Relations, State of California, his determinations 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, apprentices and similar purposes for each craft, classification or type of workman needed, as set forth on the schedule which is on file at DISTRICT office, and which will be made available to any interested person upon request.

19. INDEPENDENT CONTRACTOR

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

20. SUBCONTRACTING

CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-consultants to accomplish certain portions of the work covered by this Agreement. However, except as specifically provided in the Compensation/Fee Rate Schedule attached to the approved Task Order or as expressly identified in this Agreement, no portion of the services pertinent to this Agreement shall be subcontracted without prior written approval and authorization by DISTRICT.

Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate Schedule attached to the approved Task Order or as expressly identified in this Agreement, become unavailable, CONSULTANT may substitute other sub-consultants of equal or greater competence upon written approval by DISTRICT. In the event that DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-

consultant, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONSULTANT shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of the Project Manager. If at any time during the performance of an approved Task Order, CONSULTANT believes that it is necessary to include certain work or services which are not clearly covered under the scope of an approved Task Order, CONSULTANT shall immediately notify the Project Manager in writing of CONSULTANT'S assertion that the work is out of scope. Said notification by CONSULTANT to the Project Manager shall not in any way be construed as proving that the work or services in question are outside the scope of the Task Order. The Project Manager must approve or reject CONSULTANT'S assertion in writing. In the event the Project Manager determines that CONSULTANT is correct, the additional work or services shall be authorized by a new or revised Task Order that covers the new scope, cost and schedule. In the event that such notification is not given or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such additional services prior to CONSULTANT'S commencement of such additional services, then CONSULTANT shall be deemed to have agreed to perform the

1 work or services without any additional compensation and to have accepted sole
2 responsibility for the performance of said work or services. Extra work done or services
3 performed without a new or revised Task Order from the Project Manager shall be
4 considered unauthorized and shall not be paid for by DISTRICT.

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

9 It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by
10 and contingent upon the availability of DISTRICT funds for the reimbursement of
11 CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason,
12 DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall
13 be deemed terminated and have no further force and effect immediately upon receipt of
14 DISTRICT'S notification by CONSULTANT. In the event of such termination,
15 CONSULTANT shall be entitled to reimbursement of its costs in accordance with
16 Section 5 (COMPENSATION).
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
AUG 16 2011

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

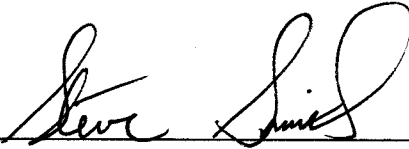
KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/20/11

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BUREAU VERITAS NORTH AMERICA, INC.

By:  _____

STEVE SMITH
Vice President, Public Works Services

Consulting Services Agreement
07/20/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

BUREAU VERITAS NORTH AMERICA, INC.

By: _____
STEVE SMITH
Vice President, Public Works Services

CONSULTING SERVICES AGREEMENT

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

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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AUG 16 2011 11.15

3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the later of:

- A. Three (3) years from the date of the Board of Supervisors approval; or
- B. The required date for completion of an assigned Task Order, provided that such Task Order was approved prior to expiration date stipulated in 4.A., above.

5. COMPENSATION

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

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the

1 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice
2 within thirty (30) days of receipt.

3 7. PROJECT PERFORMANCE

4 A. Commencement of Services

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

7 B. Time of Completion

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

- 11
12 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
13 shall possess appropriate federal and/or state permits and maintain professional licenses
14 required by the applicable Federal, State and local regulations at all times while
15 performing services under this Agreement.

16 9. STANDARD OF CARE

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

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

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT 1995 Market Street Riverside, CA 92501 Attn: Design and Construction Division	WEST CONSULTANTS, INC. 11440 W. Bernardo Court, Ste 360 San Diego, CA 92127 Attn: Martin J. Teal
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13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.
 5

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

10 A. Workers' Compensation

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

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.

20 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

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25 d. It is understood and agreed by the parties hereto and the
26 CONSULTANT'S insurance company(s), that the certificate(s) of
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1 insurance and policies shall so covenant and shall be construed as primary
 2 insurance, and the DISTRICT'S insurance and/or deductibles and/or self-
 3 insured retentions or self-insured programs shall not be construed as
 4 contributory.

- 5 e. If, during the term of this Agreement or any extension thereof, there is a
 6 material change in the scope of services; or there is a material change in
 7 the equipment to be used in the performance of the scope of work which
 8 will add additional exposures (such as the use of aircraft, watercraft,
 9 cranes, etc.); or the term of this Agreement, including any extensions
 10 thereof, exceeds five (5) years, the County reserves the right to adjust the
 11 types of insurance required under this Agreement and the monetary limits
 12 of liability for the insurance coverage's currently required herein, if, in the
 13 County Risk Manager's reasonable judgment, the amount or type of
 14 insurance carried by the CONSULTANT has become inadequate.
- 15 f. CONSULTANT shall pass down the insurance obligations contained
 16 herein to all tiers of subcontractors working under this Agreement.
- 17 g. The insurance requirements contained in this Agreement may be met with
 18 a program(s) of self-insurance acceptable to DISTRICT.
- 19 h. CONSULTANT agrees to notify DISTRICT of any claim by a third party
 20 or any incident or event that may give rise to a claim arising from the
 21 performance of this Agreement.
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24 14. INDEMNIFICATION

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
 9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
 10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
 11 officials, employees, agents and representatives) in any claim, proceeding or action for
 12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
 15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
 16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
 17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
 18 settlement or compromise in no manner whatsoever limits or circumscribes
 19 CONSULTANT'S indemnification obligations to DISTRICT.
 20

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

24 The specified insurance limits required in this Agreement shall in no way limit or
 25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
 26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.

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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
18

19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12 20. SUBCONTRACTING

13 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
14 consultants to accomplish certain portions of the work covered by this Agreement.
15 However, except as specifically provided in the Compensation/Fee Rate Schedule
16 attached to the approved Task Order or as expressly identified in this Agreement, no
17 portion of the services pertinent to this Agreement shall be subcontracted without prior
18 written approval and authorization by DISTRICT.

19
20 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
21 Schedule attached to the approved Task Order or as expressly identified in this
22 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
23 of equal or greater competence upon written approval by DISTRICT. In the event that
24 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

5 25. JURISDICTION/LAW/SEVERABILITY

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

10 Any legal action, in law or equity related to the performance or interpretation of this
11 Agreement shall be filed only in the Superior Court for the State of California located in
12 Riverside, California, and the parties waive any provision of law providing for a change
13 of venue to another location. Prior to the filing of any legal action, the parties shall be
14 obligated to attend a mediation session with a neutral mediator to try to resolve the
15 dispute.
16

17 26. WAIVER

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

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

28. NON-APPROPRIATION OF FUNDS

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

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

AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

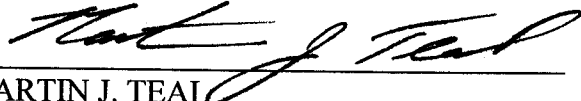
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Consulting Services Agreement
07/20/11

AUG 16 2011 11:15

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WEST CONSULTANTS, INC.

By: 
MARTIN J. TEAL
Vice President

Consulting Services Agreement
07/20/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

WEST CONSULTANTS, INC.

By: _____
MARTIN J. TEAL
Vice President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and HARRIS & ASSOCIATES, hereinafter called
3 "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the later of:

- A. Three (3) years from the date of the Board of Supervisors approval; or
- B. The required date for completion of an assigned Task Order, provided that such Task Order was approved prior to expiration date stipulated in 4.A., above.

5. COMPENSATION

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

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the

task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
7

8 11. PERMITS AND RIGHTS OF ENTRY

9 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT
10 to perform the proposed consulting services within and upon privately-owned property.
11 All permits and rights of entry as may be required from any and all affected public
12 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained
13 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,
14 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as
15 to minimize public inconvenience and possible hazard, and will restore the streets and
16 other work areas to their original condition and former usefulness as soon as practicable.
17 CONSULTANT shall be responsible for the protection of public and private property
18 adjacent to the work and shall exercise due caution to avoid damage to such property.
19

20 12. NOTICES

21 Any and all notices sent or required to be sent to the parties of this Agreement will be
22 mailed by first class mail, postage prepaid, to the following addresses:
23

24 RIVERSIDE COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT
26 1995 Market Street
27 Riverside, CA 92501
28 Attn: Design and Construction Division

HARRIS & ASSOCIATES
9445 Fairview Place, Suite 215
Rancho Cucamonga, CA 91730
Attn: Randall G. Berry

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.

5 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold
 6 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be
 7 maintained, at its sole cost and expense, the following insurance coverages during the
 8 term of this Agreement:
 9

10 A. Workers' Compensation

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

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.
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22 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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1 insurance and policies shall so covenant and shall be construed as primary
 2 insurance, and the DISTRICT'S insurance and/or deductibles and/or self-
 3 insured retentions or self-insured programs shall not be construed as
 4 contributory.

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

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

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

19 h. CONSULTANT agrees to notify DISTRICT of any claim by a third party
 20 or any incident or event that may give rise to a claim arising from the
 21 performance of this Agreement.
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23
 24 14. INDEMNIFICATION

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

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

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

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

22 The specified insurance limits required in this Agreement shall in no way limit or
23 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
24 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.

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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12
13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.

20
21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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consultant, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONSULTANT shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of the Project Manager. If at any time during the performance of an approved Task Order, CONSULTANT believes that it is necessary to include certain work or services which are not clearly covered under the scope of an approved Task Order, CONSULTANT shall immediately notify the Project Manager in writing of CONSULTANT'S assertion that the work is out of scope. Said notification by CONSULTANT to the Project Manager shall not in any way be construed as proving that the work or services in question are outside the scope of the Task Order. The Project Manager must approve or reject CONSULTANT'S assertion in writing. In the event the Project Manager determines that CONSULTANT is correct, the additional work or services shall be authorized by a new or revised Task Order that covers the new scope, cost and schedule. In the event that such notification is not given or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such additional services prior to CONSULTANT'S commencement of such additional services, then CONSULTANT shall be deemed to have agreed to perform the

1 work or services without any additional compensation and to have accepted sole
2 responsibility for the performance of said work or services. Extra work done or services
3 performed without a new or revised Task Order from the Project Manager shall be
4 considered unauthorized and shall not be paid for by DISTRICT.

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

1 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
2 nor permit others he may employ to engage in discrimination in the employment of
3 persons because of the race, color, national origin or ancestry, religion, physical
4 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
5 condition, marital status or sex of such persons, in accordance with the provision of
6 California Labor Code Section 1735.
7

28. NON-APPROPRIATION OF FUNDS

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

AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

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

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

APPROVED AS TO FORM:

ATTEST:

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


KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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HARRIS & ASSOCIATES

By: 

EHAB GERGES
Vice President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

HARRIS & ASSOCIATES

By: _____
EHAB GERGES
Vice President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and KRIEGER & STEWART, INC., hereinafter
3 called "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

- 4 A. Three (3) years from the date of the Board of Supervisors approval; or
- 5 B. The required date for completion of an assigned Task Order, provided that such
6 Task Order was approved prior to expiration date stipulated in 4.A., above.

7
8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
15

16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
 2 estimates or any work products contain any errors or omissions that cause the
 3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
 4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
 5 plans, specifications, estimates or any work products, such additional expense shall be
 6 borne solely by CONSULTANT.
 7

8 11. PERMITS AND RIGHTS OF ENTRY

9 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT
 10 to perform the proposed consulting services within and upon privately-owned property.
 11 All permits and rights of entry as may be required from any and all affected public
 12 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained
 13 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,
 14 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as
 15 to minimize public inconvenience and possible hazard, and will restore the streets and
 16 other work areas to their original condition and former usefulness as soon as practicable.
 17 CONSULTANT shall be responsible for the protection of public and private property
 18 adjacent to the work and shall exercise due caution to avoid damage to such property.
 19
 20

21 12. NOTICES

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

24 RIVERSIDE COUNTY FLOOD CONTROL
 25 AND WATER CONSERVATION DISTRICT
 26 1995 Market Street
 27 Riverside, CA 92501
 28 Attn: Design and Construction Division

KRIEGER & STEWART, INC.
 3602 University Avenue, Suite 201
 Riverside, CA 92501-3380

Attn: Mark Messersmith

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.
 5

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

10 A. Workers' Compensation

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

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

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles 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. If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Such non-owned or hired coverage may be included on the Commercial General Liability policy. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as additional insureds.

D. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for CONSULTANT'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 CONSULTANT'S Professional Liability

1 Insurance is written on a claims made basis rather than an occurrence basis, such
 2 insurance shall continue through the term of this Agreement and CONSULTANT
 3 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
 4 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
 5 with a date retroactive to the date of, or prior to, the inception of this Agreement;
 6 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
 7 maintained continuous coverage with the same or original insurer. Coverage
 8 provided under items: 1), 2) or 3) will continue as long as the law allows.

9 E. General Insurance Provisions – All Lines

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

16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
 17 deductibles or self-insured retentions. If such deductibles or self-insured
 18 retentions exceed \$500,000 per occurrence such deductibles and/or
 19 retentions shall have the prior written consent of the County Risk
 20 Manager before the commencement of operations under this Agreement.
 21 Upon notification of deductibles or self-insured retentions which are
 22 deemed unacceptable to the DISTRICT, at the election of the County's
 23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
 24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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

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

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

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

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

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

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

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.

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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
18

19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

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22 18. PREVAILING WAGE

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12
13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.

20
21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

13
14 B. Any controversy or claim arising out of or relating to this Agreement which
15 cannot be resolved by mutual agreement may be settled by arbitration, provided
16 that the parties hereto mutually agree to submit to arbitration.

17
18 C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse
19 CONSULTANT from full and timely performance in accordance with the terms
20 of this Agreement.

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

5 25. JURISDICTION/LAW/SEVERABILITY

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

10 Any legal action, in law or equity related to the performance or interpretation of this
11 Agreement shall be filed only in the Superior Court for the State of California located in
12 Riverside, California, and the parties waive any provision of law providing for a change
13 of venue to another location. Prior to the filing of any legal action, the parties shall be
14 obligated to attend a mediation session with a neutral mediator to try to resolve the
15 dispute.
16

17 26. WAIVER

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

1 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
2 nor permit others he may employ to engage in discrimination in the employment of
3 persons because of the race, color, national origin or ancestry, religion, physical
4 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
5 condition, marital status or sex of such persons, in accordance with the provision of
6 California Labor Code Section 1735.
7

8 28. NON-APPROPRIATION OF FUNDS

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

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AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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KRIEGER & STEWART, INC.

By: 

CHARLES A. KRIEGER
President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

KRIEGER & STEWART, INC.

By: _____
CHARLES A. KRIEGER
President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and WS ATKINS PLC, doing business in
3 California as ATKINS NORTH AMERICA, INC., hereinafter called "CONSULTANT", hereby
4 agree as follows:
5

6 1. PROJECT

7 CONSULTANT shall provide on-call professional engineering services in accordance
8 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

9 2. SCOPE OF SERVICES

10 As requested by DISTRICT, CONSULTANT shall provide design and construction
11 related services in support of DISTRICT's capital improvement projects as described on
12 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
13 Agreement, the CONSULTANT may be invited to submit proposals for some of the
14 various services listed in Attachment "A" as requested by DISTRICT and be assigned
15 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
16 understands and expressly agrees that the execution of this Agreement by
17 CONSULTANT and/or the submission of any proposal to furnish services does not
18 guarantee the assignment or approval of any subsequent Task Order(s).
19

20 By entering into this Agreement, CONSULTANT assumes responsible charge of the
21 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
22 3 of the Business and Professions Code, and shall be wholly responsible for the
23 completeness and accuracy of all data, technical studies, reports, plans, specifications
24 and estimates prepared pursuant to this Agreement, and shall check all such material
25 accordingly.
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3. PERSONNEL

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A. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

4 A. Three (3) years from the date of the Board of Supervisors approval; or

5 B. The required date for completion of an assigned Task Order, provided that such
6 Task Order was approved prior to expiration date stipulated in 4.A., above.

7
8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.

15
16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports.
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
7

8 11. PERMITS AND RIGHTS OF ENTRY

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

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

24 RIVERSIDE COUNTY FLOOD CONTROL	ATKINS NORTH AMERICA, INC.
25 AND WATER CONSERVATION DISTRICT	9275 Sky Park Court, Suite 200
26 1995 Market Street	San Diego, CA 92123-4386
27 Riverside, CA 92501	
Attn: Design and Construction Division	Attn: Gary Yagade

28

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
2 with original certificate(s) of insurance and original certified copies of endorsements or
3 policies of insurance including all endorsements and any and all other attachments as
4 required in this Section.
5

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

10 A. Workers' Compensation

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

19 B. Commercial General Liability

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.
20

21
22 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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

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

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

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

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
11 officials, employees, agents and representatives) in any claim, proceeding or action for
12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
18 settlement or compromise in no manner whatsoever limits or circumscribes
19 CONSULTANT'S indemnification obligations to DISTRICT.
20

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

8 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times
9 in an independent capacity during the term of this Agreement and in the performance of
10 the services to be rendered hereunder and shall not act as or shall not be and shall not in
11 any manner be considered to be employees or agents of DISTRICT.
12

13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.
20

21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

5 25. JURISDICTION/LAW/SEVERABILITY

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

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

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

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

28. NON-APPROPRIATION OF FUNDS

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

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

AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

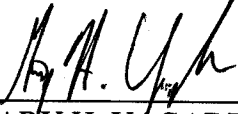
KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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ATKINS NORTH AMERICA, INC.

By: 

GARY H. YAGADE
Vice President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

ATKINS NORTH AMERICA, INC.

By: _____
GARY H. YAGADE
Vice President

CONSULTING SERVICES AGREEMENT

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RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter called "DISTRICT", and ALBERT A. WEBB ASSOCIATES, hereinafter called "CONSULTANT", hereby agree as follows:

1. PROJECT

CONSULTANT shall provide on-call professional engineering services in accordance with applicable federal, state, and local laws and regulations as requested by DISTRICT.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide design and construction related services in support of DISTRICT's capital improvement projects as described on Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this Agreement, the CONSULTANT may be invited to submit proposals for some of the various services listed in Attachment "A" as requested by DISTRICT and be assigned subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division 3 of the Business and Professions Code, and shall be wholly responsible for the completeness and accuracy of all data, technical studies, reports, plans, specifications and estimates prepared pursuant to this Agreement, and shall check all such material accordingly.

AUG 16 2011 11.15

3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

The term of this Agreement shall become effective on the date the Agreement is executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the later of:

- A. Three (3) years from the date of the Board of Supervisors approval; or
- B. The required date for completion of an assigned Task Order, provided that such Task Order was approved prior to expiration date stipulated in 4.A., above.

5. COMPENSATION

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

6. PAYMENTS

Progress payments shall be made in accordance with the Compensation/Fee Rate Schedule attached to the approved Task Order. Progress payments shall be processed no more than once per month. Upon satisfactory performance of CONSULTANT'S services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate invoices. CONSULTANT shall keep employee and expense records according to customary accounting methods and such records shall, upon request, be available for inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the

task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

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

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT 1995 Market Street Riverside, CA 92501 Attn: Design and Construction Division	ALBERT A. WEBB ASSOCIATES 3788 McCray Street Riverside, CA 92506 Attn: Scott Hildebrandt
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13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
2 with original certificate(s) of insurance and original certified copies of endorsements or
3 policies of insurance including all endorsements and any and all other attachments as
4 required in this Section.
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6 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold
7 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be
8 maintained, at its sole cost and expense, the following insurance coverages during the
9 term of this Agreement:
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11 A. Workers' Compensation

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

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.

20 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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

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

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

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

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

8 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
9 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
11 officials, employees, agents and representatives) in any claim, proceeding or action for
12 which indemnification is required.
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14 With respect to any of CONSULTANT'S indemnification requirements,
15 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
16 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
17 action without the prior consent of DISTRICT; provided, however, that such adjustment,
18 settlement or compromise in no manner whatsoever limits or circumscribes
19 CONSULTANT'S indemnification obligations to DISTRICT.
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21 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT
22 has provided to DISTRICT the appropriate form of dismissal (or similar document)
23 relieving DISTRICT from any liability for the claim, proceeding or action involved.

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.
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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

8 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times
9 in an independent capacity during the term of this Agreement and in the performance of
10 the services to be rendered hereunder and shall not act as or shall not be and shall not in
11 any manner be considered to be employees or agents of DISTRICT.
12

13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.
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21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

23. ASSIGNMENT

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

24. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or

indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

28. NON-APPROPRIATION OF FUNDS

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

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
AUG 16 2011

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(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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


KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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ALBERT A. WEBB ASSOCIATES

By: 
SCOTT R. HILDEBRANDT
Vice President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

ALBERT A. WEBB ASSOCIATES

By: _____
SCOTT R. HILDEBRANDT
Vice President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and ENGINEERING RESOURCES, INC.,
3 hereinafter called "CONSULTANT", hereby agree as follows:
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5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

4 A. Three (3) years from the date of the Board of Supervisors approval; or

5 B. The required date for completion of an assigned Task Order, provided that such
6 Task Order was approved prior to expiration date stipulated in 4.A., above.
7

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
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16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

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

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT 1995 Market Street Riverside, CA 92501 Attn: Design and Construction Division	ENGINEERING RESOURCES, INC. 3550 E. Florida Avenue, Ste B Hemet, CA 92544 Attn: Moe Ahmadi
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13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
 2 with original certificate(s) of insurance and original certified copies of endorsements or
 3 policies of insurance including all endorsements and any and all other attachments as
 4 required in this Section.
 5

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

10 A. Workers' Compensation

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

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

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles 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. If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Such non-owned or hired coverage may be included on the Commercial General Liability policy. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as additional insureds.

D. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for CONSULTANT'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 CONSULTANT'S Professional Liability

1 Insurance is written on a claims made basis rather than an occurrence basis, such
 2 insurance shall continue through the term of this Agreement and CONSULTANT
 3 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
 4 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
 5 with a date retroactive to the date of, or prior to, the inception of this Agreement;
 6 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
 7 maintained continuous coverage with the same or original insurer. Coverage
 8 provided under items: 1), 2) or 3) will continue as long as the law allows.

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
 11 admitted to the State of California and have an A.M. BEST rating of not
 12 less than an A: VIII (A: 8) unless such requirements are waived, in
 13 writing, by the County Risk Manager. If the County's Risk Manager
 14 waives a requirement for a particular insurer such waiver is only valid for
 15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
 17 deductibles or self-insured retentions. If such deductibles or self-insured
 18 retentions exceed \$500,000 per occurrence such deductibles and/or
 19 retentions shall have the prior written consent of the County Risk
 20 Manager before the commencement of operations under this Agreement.
 21 Upon notification of deductibles or self-insured retentions which are
 22 deemed unacceptable to the DISTRICT, at the election of the County's
 23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
 24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

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- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.
- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

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

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

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

22 The specified insurance limits required in this Agreement shall in no way limit or
23 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
24 from third party claims.
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In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code 2782. Such interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) or the County of Riverside to the fullest extent allowed by law.

15. WORK PRODUCT

CONSULTANT shall provide DISTRICT with all data, calculations, technical studies, plans, specifications, computer files, field notes, estimates, drawings, logs, reports and any other documents as set forth in the approved Task Order(s). All data, calculations, technical studies, plans, specifications, computer files, field notes, drawings, logs and reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not publish or transfer any material produced or resulting from activities supported by this Agreement without the written consent of the General Manager-Chief Engineer of DISTRICT. If any such material is subject to copyright or trademark, the parties agree that the right to any and all copyright and/or trademark in and to the material is expressly reserved to DISTRICT. If any such material is copyrighted, the parties hereto understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such material, in whole or in part, and to authorize others to do so, provided written credit is given the author.

16. TERMINATION

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

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.

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

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22 18. PREVAILING WAGE

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12 20. SUBCONTRACTING

13 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
14 consultants to accomplish certain portions of the work covered by this Agreement.
15 However, except as specifically provided in the Compensation/Fee Rate Schedule
16 attached to the approved Task Order or as expressly identified in this Agreement, no
17 portion of the services pertinent to this Agreement shall be subcontracted without prior
18 written approval and authorization by DISTRICT.

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21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

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

27. NON-DISCRIMINATION

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

28. NON-APPROPRIATION OF FUNDS

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

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

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AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel
By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

KECIA HARPER-IHEM
Clerk of the Board
By: Kecia Harper-Ihem
Deputy

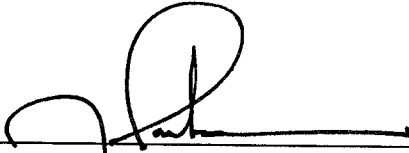
(SEAL)

Consulting Services Agreement
07/18/11

AUG 16 2011 11.15

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ENGINEERING RESOURCES, INC.

By: 

JOHN M. BRUDIN
President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

ENGINEERING RESOURCES, INC.

By: _____
JOHN M. BRUDIN
President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and PACIFIC ADVANCED CIVIL
3 ENGINEERING, INC., hereinafter called "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19 By entering into this Agreement, CONSULTANT assumes responsible charge of the
20 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
21 3 of the Business and Professions Code, and shall be wholly responsible for the
22 completeness and accuracy of all data, technical studies, reports, plans, specifications
23 and estimates prepared pursuant to this Agreement, and shall check all such material
24 accordingly.
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3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

4 A. Three (3) years from the date of the Board of Supervisors approval; or

5 B. The required date for completion of an assigned Task Order, provided that such
6 Task Order was approved prior to expiration date stipulated in 4.A., above.
7

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
15

16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of receipt.

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7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
2 estimates or any work products contain any errors or omissions that cause the
3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
5 plans, specifications, estimates or any work products, such additional expense shall be
6 borne solely by CONSULTANT.
7

8 11. PERMITS AND RIGHTS OF ENTRY

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

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

24 RIVERSIDE COUNTY FLOOD CONTROL
25 AND WATER CONSERVATION DISTRICT
26 1995 Market Street
27 Riverside, CA 92501
28 Attn: Design and Construction Division

PACIFIC ADVANCED CIVIL
ENGINEERING, INC.
17520 Newhope Street, Ste 200
Fountain Valley, CA 92708
Attn: Bruce Phillips

13. REQUIRED INSURANCE

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

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

A. Workers' Compensation

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

B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, personal and advertising injury covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of

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Supervisors, elected officials, employees, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles 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. If CONSULTANT does not own vehicles, CONSULTANT shall maintain coverage for non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Such non-owned or hired coverage may be included on the Commercial General Liability policy. Policy shall name Riverside County Flood Control and Water Conservation District, the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials, employees, agents or representatives as additional insureds.

D. Professional Liability

CONSULTANT shall maintain Professional Liability Insurance providing coverage for CONSULTANT'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 CONSULTANT'S Professional Liability

1 Insurance is written on a claims made basis rather than an occurrence basis, such
2 insurance shall continue through the term of this Agreement and CONSULTANT
3 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
4 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
5 with a date retroactive to the date of, or prior to, the inception of this Agreement;
6 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
7 maintained continuous coverage with the same or original insurer. Coverage
8 provided under items: 1), 2) or 3) will continue as long as the law allows.

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

23 d. It is understood and agreed by the parties hereto and the
24 CONSULTANT'S insurance company(s), that the certificate(s) of
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insurance and policies shall so covenant and shall be construed as primary insurance, and the DISTRICT'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.
- f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- h. CONSULTANT agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

14. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and

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

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

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

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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1 In the event there is conflict between this section and California Civil Code Section
2 2782, this section shall be interpreted to comply with California Civil Code 2782. Such
3 interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT
4 (including its directors, officers, Board of Supervisors, elected and appointed officials,
5 employees, agents and representatives) or the County of Riverside to the fullest extent
6 allowed by law.

7 15. WORK PRODUCT

8 CONSULTANT shall provide DISTRICT with all data, calculations, technical studies,
9 plans, specifications, computer files, field notes, estimates, drawings, logs, reports and
10 any other documents as set forth in the approved Task Order(s). All data, calculations,
11 technical studies, plans, specifications, computer files, field notes, drawings, logs and
12 reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not
13 publish or transfer any material produced or resulting from activities supported by this
14 Agreement without the written consent of the General Manager-Chief Engineer of
15 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
16 that the right to any and all copyright and/or trademark in and to the material is expressly
17 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
18 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
19 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
20 to authorize others to do so, provided written credit is given the author.

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23 16. TERMINATION

24 At any time during the term of this Agreement, DISTRICT may:
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A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

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

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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.
5

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

8 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times
9 in an independent capacity during the term of this Agreement and in the performance of
10 the services to be rendered hereunder and shall not act as or shall not be and shall not in
11 any manner be considered to be employees or agents of DISTRICT.
12

13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.
20

21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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consultant, DISTRICT may terminate the Task Order, pursuant to the applicable provisions of this Agreement.

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONSULTANT shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of the Project Manager. If at any time during the performance of an approved Task Order, CONSULTANT believes that it is necessary to include certain work or services which are not clearly covered under the scope of an approved Task Order, CONSULTANT shall immediately notify the Project Manager in writing of CONSULTANT'S assertion that the work is out of scope. Said notification by CONSULTANT to the Project Manager shall not in any way be construed as proving that the work or services in question are outside the scope of the Task Order. The Project Manager must approve or reject CONSULTANT'S assertion in writing. In the event the Project Manager determines that CONSULTANT is correct, the additional work or services shall be authorized by a new or revised Task Order that covers the new scope, cost and schedule. In the event that such notification is not given or if the Project Manager is not afforded an opportunity to negotiate the appropriate fee for such additional services prior to CONSULTANT'S commencement of such additional services, then CONSULTANT shall be deemed to have agreed to perform the

1 work or services without any additional compensation and to have accepted sole
2 responsibility for the performance of said work or services. Extra work done or services
3 performed without a new or revised Task Order from the Project Manager shall be
4 considered unauthorized and shall not be paid for by DISTRICT.

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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21 22. DISPUTES

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

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

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

21 23. ASSIGNMENT

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

24 24. CONFLICT OF INTEREST

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

5 25. JURISDICTION/LAW/SEVERABILITY

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

10 Any legal action, in law or equity related to the performance or interpretation of this
11 Agreement shall be filed only in the Superior Court for the State of California located in
12 Riverside, California, and the parties waive any provision of law providing for a change
13 of venue to another location. Prior to the filing of any legal action, the parties shall be
14 obligated to attend a mediation session with a neutral mediator to try to resolve the
15 dispute.
16

17 26. WAIVER

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

1 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
2 nor permit others he may employ to engage in discrimination in the employment of
3 persons because of the race, color, national origin or ancestry, religion, physical
4 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
5 condition, marital status or sex of such persons, in accordance with the provision of
6 California Labor Code Section 1735.
7

8 28. NON-APPROPRIATION OF FUNDS

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

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AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

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

KECIA HARPER-IHEM
Clerk of the Board
By: [Signature]
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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PACIFIC ADVANCED CIVIL ENGINEERING, INC.

By: *Bruce Phillips*
BRUCE PHILLIPS
Senior Vice-President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

PACIFIC ADVANCED CIVIL ENGINEERING, INC.

By: _____
BRUCE PHILIPS
Senior Vice-President

CONSULTING SERVICES AGREEMENT

1 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
2 DISTRICT, hereinafter called "DISTRICT", and K & A ENGINEERING, INC., hereinafter
3 called "CONSULTANT", hereby agree as follows:
4

5 1. PROJECT

6 CONSULTANT shall provide on-call professional engineering services in accordance
7 with applicable federal, state, and local laws and regulations as requested by DISTRICT.

8 2. SCOPE OF SERVICES

9 As requested by DISTRICT, CONSULTANT shall provide design and construction
10 related services in support of DISTRICT's capital improvement projects as described on
11 Attachment "A" for DISTRICT projects on an "on-call" basis. During the term of this
12 Agreement, the CONSULTANT may be invited to submit proposals for some of the
13 various services listed in Attachment "A" as requested by DISTRICT and be assigned
14 subsequent Task Orders, the form of which is Attachment "B" hereto. CONSULTANT
15 understands and expressly agrees that the execution of this Agreement by
16 CONSULTANT and/or the submission of any proposal to furnish services does not
17 guarantee the assignment or approval of any subsequent Task Order(s).
18

19
20 By entering into this Agreement, CONSULTANT assumes responsible charge of the
21 work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division
22 3 of the Business and Professions Code, and shall be wholly responsible for the
23 completeness and accuracy of all data, technical studies, reports, plans, specifications
24 and estimates prepared pursuant to this Agreement, and shall check all such material
25 accordingly.
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3. PERSONNELA. Project Manager

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

B. CONSULTANT'S Representative

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

C. Substitution of Key Personnel

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

4. TERM

1 The term of this Agreement shall become effective on the date the Agreement is
2 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
3 later of:

4
5 A. Three (3) years from the date of the Board of Supervisors approval; or

6 B. The required date for completion of an assigned Task Order, provided that such
7 Task Order was approved prior to expiration date stipulated in 4.A., above.

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed seven hundred fifty thousand
13 dollars (\$750,000), or two hundred fifty thousand dollars (\$250,000) in a single fiscal
14 year.
15

16 6. PAYMENTS

17 Progress payments shall be made in accordance with the Compensation/Fee Rate
18 Schedule attached to the approved Task Order. Progress payments shall be processed no
19 more than once per month. Upon satisfactory performance of CONSULTANT'S
20 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
21 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
22 invoices. CONSULTANT shall keep employee and expense records according to
23 customary accounting methods and such records shall, upon request, be available for
24 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
25 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
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1 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice
2 within thirty (30) days of receipt.

3 7. PROJECT PERFORMANCE

4 A. Commencement of Services

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

7 B. Time of Completion

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

- 11 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
12 shall possess appropriate federal and/or state permits and maintain professional licenses
13 required by the applicable Federal, State and local regulations at all times while
14 performing services under this Agreement.
15

16 9. STANDARD OF CARE

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

1 In the event CONSULTANT'S data, technical studies, reports, plans, specifications,
 2 estimates or any work products contain any errors or omissions that cause the
 3 DISTRICT to incur additional expense beyond what would have otherwise resulted if
 4 there were no errors or omissions in CONSULTANT'S data, technical studies, reports,
 5 plans, specifications, estimates or any work products, such additional expense shall be
 6 borne solely by CONSULTANT.
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8 11. PERMITS AND RIGHTS OF ENTRY

9 DISTRICT shall obtain all rights of entry as may be required to allow CONSULTANT
 10 to perform the proposed consulting services within and upon privately-owned property.
 11 All permits and rights of entry as may be required from any and all affected public
 12 entities shall be obtained by CONSULTANT. Sufficient evidence of having obtained
 13 such permits and/or rights of entry shall be furnished to DISTRICT by CONSULTANT,
 14 prior to initiation of work. CONSULTANT will prosecute the work in such a manner as
 15 to minimize public inconvenience and possible hazard, and will restore the streets and
 16 other work areas to their original condition and former usefulness as soon as practicable.
 17 CONSULTANT shall be responsible for the protection of public and private property
 18 adjacent to the work and shall exercise due caution to avoid damage to such property.
 19

20 12. NOTICES

21 Any and all notices sent or required to be sent to the parties of this Agreement will be
 22 mailed by first class mail, postage prepaid, to the following addresses:
 23

24 RIVERSIDE COUNTY FLOOD CONTROL
 25 AND WATER CONSERVATION DISTRICT
 26 1995 Market Street
 27 Riverside, CA 92501
 28 Attn: Design and Construction Division

K & A ENGINEERING, INC.
 357 N. Sheridan, Suite 117
 Corona, CA 92880
 Attn: Donald Bergh

13. REQUIRED INSURANCE

1 CONSULTANT shall not commence operations until DISTRICT has been furnished
2 with original certificate(s) of insurance and original certified copies of endorsements or
3 policies of insurance including all endorsements and any and all other attachments as
4 required in this Section.
5

6 Without limiting or diminishing the CONSULTANT'S obligation to indemnify or hold
7 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be
8 maintained, at its sole cost and expense, the following insurance coverages during the
9 term of this Agreement:
10

11 A. Workers' Compensation

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

20 B. Commercial General Liability

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

6 C. Vehicle Liability

7 If vehicles or mobile equipment are used in the performance of the obligations
8 under this Agreement, CONSULTANT shall maintain liability insurance for all
9 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
10 occurrence combined single limit. If such insurance contains a general aggregate
11 limit, it shall apply separately to this Agreement or be no less than two (2) times
12 the occurrence limit. If CONSULTANT does not own vehicles, CONSULTANT
13 shall maintain coverage for non-owned or hired vehicles in an amount not less
14 than \$1,000,000 per occurrence combined single limit. Such non-owned or hired
15 coverage may be included on the Commercial General Liability policy. Policy
16 shall name Riverside County Flood Control and Water Conservation District, the
17 County of Riverside, special districts, their respective directors, officers, Board
18 of Supervisors, elected officials, employees, agents or representatives as
19 additional insureds.

20 D. Professional Liability

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

9 E. General Insurance Provisions – All Lines

- 10 a. Any insurance carrier providing insurance coverage hereunder shall be
11 admitted to the State of California and have an A.M. BEST rating of not
12 less than an A: VIII (A: 8) unless such requirements are waived, in
13 writing, by the County Risk Manager. If the County's Risk Manager
14 waives a requirement for a particular insurer such waiver is only valid for
15 the specific insurer and only for one policy term.
- 16 b. CONSULTANT'S insurance carrier(s) must declare its insurance
17 deductibles or self-insured retentions. If such deductibles or self-insured
18 retentions exceed \$500,000 per occurrence such deductibles and/or
19 retentions shall have the prior written consent of the County Risk
20 Manager before the commencement of operations under this Agreement.
21 Upon notification of deductibles or self-insured retentions which are
22 deemed unacceptable to the DISTRICT, at the election of the County's
23 Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or
24 eliminate such deductibles or self-insured retentions with respect to this
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1 Agreement with DISTRICT, or 2) procure a bond which guarantees
2 payment of losses and related investigations, claims administration,
3 defense costs and expenses.

4 c. CONSULTANT shall cause their insurance carrier(s) to furnish
5 DISTRICT with: 1) a properly executed original certificate(s) of
6 insurance and original certified copies of endorsements effecting
7 coverage as required herein; or 2) if requested to do so orally or in writing
8 by the County Risk Manager, provide original certified copies of policies
9 including all endorsements and all attachments thereto, showing such
10 insurance is in full force and effect. Further, said certificate(s) and
11 policies of insurance shall contain the covenant that the insurance
12 carrier(s) shall provide no less than thirty (30) days written notice be
13 given to DISTRICT prior to any material modification or cancellation of
14 such insurance. In the event of a material modification or cancellation of
15 coverage, this Agreement shall terminate forthwith, unless DISTRICT
16 receives, prior to such effective date, another properly executed original
17 certificate of insurance and original copies of endorsements or original
18 certified policies, including all endorsements and attachments thereto,
19 evidencing coverages and the insurance required herein is in full force
20 and effect. Individual(s) authorized by the insurance carrier to do so on
21 its behalf shall sign the original endorsements for each policy and the
22 certificate of insurance.

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26 d. It is understood and agreed by the parties hereto and the
27 CONSULTANT'S insurance company(s), that the certificate(s) of
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1 insurance and policies shall so covenant and shall be construed as primary
2 insurance, and the DISTRICT'S insurance and/or deductibles and/or self-
3 insured retentions or self-insured programs shall not be construed as
4 contributory.

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

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

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

19 h. CONSULTANT agrees to notify DISTRICT of any claim by a third party
20 or any incident or event that may give rise to a claim arising from the
21 performance of this Agreement.
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24 14. INDEMNIFICATION

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

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

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

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

24 The specified insurance limits required in this Agreement shall in no way limit or
25 circumscribe CONSULTANT'S obligations to indemnify and hold harmless DISTRICT
26 from third party claims.
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In the event there is conflict between this section and California Civil Code Section 2782, this section shall be interpreted to comply with California Civil Code 2782. Such interpretation shall not relieve the CONSULTANT from indemnifying DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) or the County of Riverside to the fullest extent allowed by law.

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15. WORK PRODUCT

CONSULTANT shall provide DISTRICT with all data, calculations, technical studies, plans, specifications, computer files, field notes, estimates, drawings, logs, reports and any other documents as set forth in the approved Task Order(s). All data, calculations, technical studies, plans, specifications, computer files, field notes, drawings, logs and reports shall be and remain the sole property of DISTRICT. CONSULTANT shall not publish or transfer any material produced or resulting from activities supported by this Agreement without the written consent of the General Manager-Chief Engineer of DISTRICT. If any such material is subject to copyright or trademark, the parties agree that the right to any and all copyright and/or trademark in and to the material is expressly reserved to DISTRICT. If any such material is copyrighted, the parties hereto understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such material, in whole or in part, and to authorize others to do so, provided written credit is given the author.

16. TERMINATION

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

A. Agreement

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

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

In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all services performed in accordance with this Agreement to the date of termination, a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually bear to the total services necessary for performance of this Agreement. Notwithstanding any of the other provision of this Agreement, CONSULTANT 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

1 by CONSULTANT; or in the event of CONSULTANT'S unwillingness or
2 inability for any reason whatsoever to perform the duties hereunder; or if the
3 Agreement is terminated pursuant to Section 27 (NON-DISCRIMINATION). In
4 such event, CONSULTANT shall not be entitled to any further compensation
5 under this Agreement. The rights and remedies of DISTRICT provided in this
6 section shall not be exclusive and are in addition to any other rights and remedies
7 provided by law or under this Agreement.

8 B. Approved Task Order

9 Terminate an approved Task Order or portion thereof without cause upon
10 providing CONSULTANT fourteen (14) days written notice stating the extent
11 and effective date of termination. In the event DISTRICT issues a Notice of
12 Termination for an approved Task Order, CONSULTANT shall: i) stop all work
13 under the Task Order on the date specified in the Notice of Termination; and ii)
14 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
15 directed by DISTRICT, any equipment, data, reports or other documents which,
16 if the Task Order had been completed, would have been required to be furnished
17 to DISTRICT.
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19 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
20 make payment for all services satisfactorily performed in accordance with the
21 negotiated Task Order to the date of termination, a total amount which bears the
22 same ratio to the total maximum fee otherwise payable under the Task Order as
23 the services actually bear to the total services necessary for performance of the
24 Task Order.
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17. BASIC SERVICES OF CONSULTANT

1 The scope of services associated with the performance of any specific Task Order under
2 this Agreement shall be expressly defined and agreed upon prior to the approval of the
3 Task Order by the Project Manager. Any changes to the approved scope of services must
4 be authorized by the Project Manager, and shall be made in writing.
5

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

23 All workers shall be paid not less than the general prevailing rate of wages and benefits
24 for work of a similar character in the locality in which the work is performed, as
25 provided in Labor Code Sections 1770 et seq. Pursuant to the Labor Code, DISTRICT
26 has obtained for the Board of Supervisors of the DISTRICT from the Director of the
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1 Department of Industrial Relations, State of California, his determinations of general
2 prevailing rates of per diem wages applicable to the work, and for holiday and overtime
3 work, including employer payments for health and welfare, pension, vacation,
4 apprentices and similar purposes for each craft, classification or type of workman
5 needed, as set forth on the schedule which is on file at DISTRICT office, and which will
6 be made available to any interested person upon request.

7 19. INDEPENDENT CONTRACTOR

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

12
13 20. SUBCONTRACTING

14 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
15 consultants to accomplish certain portions of the work covered by this Agreement.
16 However, except as specifically provided in the Compensation/Fee Rate Schedule
17 attached to the approved Task Order or as expressly identified in this Agreement, no
18 portion of the services pertinent to this Agreement shall be subcontracted without prior
19 written approval and authorization by DISTRICT.

20
21 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
22 Schedule attached to the approved Task Order or as expressly identified in this
23 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
24 of equal or greater competence upon written approval by DISTRICT. In the event that
25 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
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1 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
2 provisions of this Agreement.

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

9 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

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

5 At any time during the performance of an approved Task Order, DISTRICT may request
6 that CONSULTANT perform extra services. Any work which is determined by
7 DISTRICT to be necessary for the proper completion of the approved Task Order, but
8 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
9 necessary at the time the scope of services for the assigned Task Order was approved,
10 must be authorized by the Project Manager by a new or revised Task Order.

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

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

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

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

21 23. ASSIGNMENT

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

25 24. CONFLICT OF INTEREST

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

5 25. JURISDICTION/LAW/SEVERABILITY

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

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

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

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

28. NON-APPROPRIATION OF FUNDS

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

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

AUG 16 2011

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: Steve Thomas

By: Marion Ashley

WARREN D. WILLIAMS
General Manager-Chief Engineer

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

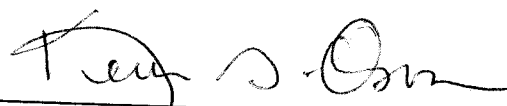
By: Kecia Harper-Ihem
Deputy

(SEAL)

Consulting Services Agreement
07/18/11

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K & A ENGINEERING, INC.

By: 

KEITH G. OSBORN
President

Consulting Services Agreement
07/18/11

ATTACHMENT "A"

SCOPE OF SERVICES

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

1. CIVIL ENGINEERING (GENERAL)

As part of the District's capital improvement program, Consultant shall prepare construction drawings, specifications, cost estimates and all other supporting documents and reports.

2. PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES

Under the direction of the Engineering Project Manager in the Construction Administration Section of the Design and Construction Division, Consultant shall act as District's agent to independently perform both continuous and/or periodic on-site technical and quality control inspections of District public works drainage projects during construction. Consultant will ensure that construction complies with plans, quality control specifications, contract documents, and all applicable federal, state and local building codes, ordinances, and regulations. Consultant shall prepare and maintain job records, including quantities records, daily logs, schedules, monthly and final payments, change orders and all records necessitated by law.

3. PROJECT MANAGEMENT - STAFF EXTENSION

Based on knowledge of District standards and organizational structure as well as other specialized skills and experience, Consultant may be called upon to:

- A. Attend meetings and write briefing documents on project status, and maintain District provided project schedule and fiscal tracking reports.
- B. Prepare scopes of work and cost estimates for budgetary purposes.
- C. Prepare and deliver formal training sessions/lectures to District staff in technical areas.
- D. Coordinate the preparation of design and construction documents by consultant design professionals.

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

By: _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

K & A ENGINEERING, INC.

By: _____
KEITH G. OSBORN
President