

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

412B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
November 6, 2012

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

RECOMMENDED MOTION:

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

Continued on Page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

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

SOURCE OF FUNDS: 25110-25170 947400 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:
Michael R. Shetler

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Ashley, seconded by Supervisor Benoit 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: November 6, 2012
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: All
ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Agenda Number:

11.8

FISCAL PROCEDURES APPROVED
 JEANINE J. REY, FINANCE DIRECTOR
 BY: 9/25/2012
 JEANINE J. REY
 FORM APPROVED COUNTY COUNSEL
 BY: DATE: 11/13/12
 NEAL R. KIPNIS

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

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

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

SUBMITTAL DATE: November 6, 2012

Page 2

BACKGROUND:

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

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

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

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

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

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

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

County Counsel has approved the Agreements as to legal form.

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

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

SUBMITTAL DATE: November 6, 2012
Page 3

FINANCIAL:

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

Attachment "A"**Pre-qualified List Of On-call Environmental and Regulatory Support Services Providers**

(For individual contract limits of \$250,000 in any fiscal year with a further cap of \$750,000 for the entire term of the contract from Fiscal Years 2012-2013 through 2015-2016)

CHAMBERS GROUP, INC.

LILBURN CORPORATION

URS CORPORATION AMERICAS

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

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

5
6 1. PROJECT

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

10 2. SCOPE OF SERVICES

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

22
23 3. PERSONNEL24 A. Project Manager

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

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

3 B. CONSULTANT'S Representative

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

9 C. Substitution of Key Personnel

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

20 4. TERM

21 The term of this Agreement shall become effective on the date the Agreement is
22 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
23 required date for completion of an assigned Task Order, provided that such Task Order
24 was approved prior to and completed by June 30, 2016.
25
26
27
28

5. COMPENSATION

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

8 6. PAYMENTS

9 Progress payments shall be made in accordance with the Compensation/Fee Rate
10 Schedule attached to the approved Task Order. Progress payments shall be processed no
11 more than once per month. Upon satisfactory performance of CONSULTANT'S
12 services pursuant to an approved Task Order, DISTRICT shall pay CONSULTANT
13 within forty-five (45) days after DISTRICT'S receipt of CONSULTANT'S appropriate
14 invoices. DISTRICT shall not pay interest or finance charges on any outstanding
15 balance(s). CONSULTANT shall keep employee and expense records according to
16 customary accounting methods and such records shall, upon request, be available for
17 inspection by DISTRICT to verify the invoices of CONSULTANT. All invoices shall
18 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
19 task order. DISTRICT shall notify CONSULTANT of any disputed amounts on invoice
20 within thirty (30) days of receipt.
21
22

23 7. PROJECT PERFORMANCE

24 A. Commencement of Services

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

B. Time of Completion

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

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

9. STANDARD OF CARE

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

10. ERRORS AND OMISSIONS

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

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

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

20. REQUIRED INSURANCE

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

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

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

1
2
3 A. Workers' Compensation

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

12 B. Commercial General Liability

13 Commercial General Liability insurance coverage, including but not limited to,
14 premises liability, unmodified contractual liability, products and completed
15 operations liability, personal and advertising injury, and cross liability coverage,
16 covering claims which may arise from or out of CONSULTANT'S performance
17 of its obligations hereunder. Policy shall name the Riverside County Flood
18 Control and Water Conservation District, the County of Riverside, its agencies,
19 districts, special districts, and departments, their respective directors, officers,
20 Board of Supervisors, employees, elected or appointed officials, employees,
21 agents or representatives as additional insureds. Policy's limit of liability shall
22 not be less than \$1,000,000 per occurrence combined single limit. If such
23 insurance contains a general aggregate limit, it shall apply separately to this
24 Agreement or be no less than two (2) times the occurrence limit.
25
26
27
28

C. Vehicle Liability

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

E. General Insurance Provisions – All Lines

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

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

- 16 4. It is understood and agreed by the parties hereto that CONSULTANT'S
17 insurance shall be construed as primary insurance, and DISTRICT'S
18 insurance and/or deductibles and/or self-insured retentions or self-insured
19 programs shall not be construed as contributory.
20
- 21 5. If, during the term of this Agreement or any extension thereof, there is a
22 material change in the scope of services; or there is a material change in
23 the equipment to be used in the performance of the scope of work which
24 will add additional exposures (such as the use of aircraft, watercraft,
25 cranes, etc.); or the term of this Agreement, including any extensions
26 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
27
28

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

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

14. INDEMNIFICATION

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

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

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

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

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

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

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

15. WORK PRODUCT

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

1 Order(s) shall be and remain the sole property of DISTRICT. CONSULTANT shall not
 2 publish or transfer any material produced or resulting from activities supported by this
 3 Agreement without the written consent of the General Manager-Chief Engineer of
 4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
 5 that the right to any and all copyright and/or trademark in and to the material is expressly
 6 reserved to DISTRICT. If any such material is copyrighted, the parties hereto
 7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
 8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
 9 to authorize others to do so, provided written credit is given the author.
 10

11 16. TERMINATION

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

13 A. Agreement

- 14 1) Terminate this Agreement without cause upon providing CONSULTANT
 15 thirty (30) days written notice stating the extent and effective date of
 16 termination; or
 17 2) Upon five (5) days written notice, terminate this Agreement for
 18 CONSULTANT default, if CONSULTANT refuses or fails to comply with
 19 the provisions of this Agreement or fails to make progress so as to endanger
 20 performance and does not cure such failure within a reasonable period of
 21 time. In the event of such termination, the DISTRICT may proceed with
 22 the work in a manner deemed proper to DISTRICT.
 23

24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)
 25 stop all work under this Agreement on the date specified in the Notice of
 26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
 27
 28

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

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

19
20
21 B. Approved Task Order

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

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

5 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
6 make payment for all services satisfactorily performed in accordance with the
7 negotiated Task Order to the date of termination, a total amount which bears the
8 same ratio to the total maximum fee otherwise payable under the Task Order as
9 the services actually bear to the total services necessary for performance of the
10 Task Order.
11

12 17. BASIC SERVICES OF CONSULTANT

13 The scope of services associated with the performance of any specific Task Order under
14 this Agreement shall be expressly defined and agreed upon prior to the approval of the
15 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the
16 approved scope of services must be authorized by DISTRICT'S General Manager-Chief
17 Engineer, and shall be made in writing.
18

19 A. Right to Preliminary Review

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

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

B. Progress Reports

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

18. INDEPENDENT CONTRACTOR

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

19. SUBCONTRACTING

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

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

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

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

15 20. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of
17 an approved Task Order without the prior written approval of DISTRICT'S General
18 Manager-Chief Engineer. If at any time during the performance of an approved Task
19 Order, CONSULTANT believes that it is necessary to include certain work or services
20 which are not clearly covered under the scope of an approved Task Order,
21 CONSULTANT shall immediately notify the Project Manager in writing of
22 CONSULTANT'S assertion that the work is out of scope. Said notification by
23 CONSULTANT to the Project Manager shall not in any way be construed as proving
24 that the work or services in question are outside the scope of the Task Order. The
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
26
27
28

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

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

18 At any time during the performance of the Task Order, the Project Manager, upon
19 providing five (5) days written notice to CONSULTANT, may delete services and the
20 associated fees from the Task Order. In the event DISTRICT requests deletion of
21 services from the Task Order, DISTRICT shall make payment for all services
22 satisfactorily performed in accordance with the negotiated Task Order up to the effective
23 date of deletion; the amount of the payment shall be prorated to the total services
24
25
26
27
28

necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

21. DISPUTES

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

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

22. ASSIGNMENT

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

23. CONFLICT OF INTEREST

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

24. JURISDICTION/LAW/SEVERABILITY

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

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

25. WAIVER

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

26. NON-DISCRIMINATION

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

27. NON-APPROPRIATION OF FUNDS

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

//

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

NOV 06 2012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By: *Warren D. Williams*
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: *Neal R. Kipnis*
NEAL R. KIPNIS
Deputy County Counsel

By: *Kellie Batten*
Deputy

(SEAL)

CHAMBERS GROUP, INC.

By: *Sherman Smith*
SHERMAN SMITH
President

(NOTARY)



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

Judith Bosman
10-17-12

ATTACHMENT "A"

SCOPE OF SERVICES

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

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

and Notice of Determination.

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

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

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

CONSULTANT

By: _____
Printed Name and Title

ATTACHMENT "C"

LIST OF SUB-CONSULTANTS

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

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

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

1. PROJECT

CONSULTANT shall provide on-call environmental and regulatory support 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 project specific environmental/regulatory support and ancillary professional services as described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, for DISTRICT projects on an "on-call" basis. During the term of this Agreement, CONSULTANT may be invited to submit budget 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 budget proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

3. PERSONNEL

A. Project Manager

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

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

3 B. CONSULTANT'S Representative

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

9 C. Substitution of Key Personnel

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

20 4. TERM

21 The term of this Agreement shall become effective on the date the Agreement is
22 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
23 required date for completion of an assigned Task Order, provided that such Task Order
24 was approved prior to and completed by June 30, 2016.
25
26
27
28

5. COMPENSATION

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

8 6. PAYMENTS

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

22 7. PROJECT PERFORMANCE23 A. Commencement of Services

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

B. Time of Completion

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

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

9 9. STANDARD OF CARE

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

19 10. ERRORS AND OMISSIONS

20 In the event CONSULTANT'S reports or work products contain any errors or omissions
21 that cause DISTRICT to incur additional expense beyond what would have otherwise
22 resulted if there were no errors or omissions in CONSULTANT'S reports or work
23 products, such additional expense shall be borne solely by CONSULTANT.
24
25
26
27
28

11. PERMITS AND RIGHTS OF ENTRY

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

12. NOTICES

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

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

21. REQUIRED INSURANCE

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

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

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

1
2
3 A. Workers' Compensation

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

12 B. Commercial General Liability

13 Commercial General Liability insurance coverage, including but not limited to,
14 premises liability, unmodified contractual liability, products and completed
15 operations liability, personal and advertising injury, and cross liability coverage,
16 covering claims which may arise from or out of CONSULTANT'S performance
17 of its obligations hereunder. Policy shall name the Riverside County Flood
18 Control and Water Conservation District, the County of Riverside, its agencies,
19 districts, special districts, and departments, their respective directors, officers,
20 Board of Supervisors, employees, elected or appointed officials, employees,
21 agents or representatives as additional insureds. Policy's limit of liability shall
22 not be less than \$1,000,000 per occurrence combined single limit. If such
23 insurance contains a general aggregate limit, it shall apply separately to this
24 Agreement or be no less than two (2) times the occurrence limit.
25
26
27
28

C. Vehicle Liability

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

D. Professional Liability

14 CONSULTANT shall maintain Professional Liability Insurance providing
15 coverage for CONSULTANT'S performance of work included within this
16 Agreement, with a limit of liability of not less than \$1,000,000 per occurrence
17 and \$2,000,000 annual aggregate. If CONSULTANT'S Professional Liability
18 Insurance is written on a claims made basis rather than an occurrence basis, such
19 insurance shall continue through the term of this Agreement and CONSULTANT
20 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
21 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
22 with a date retroactive to the date of, or prior to, the inception of this Agreement;
23 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
24 maintained continuous coverage with the same or original insurer. Coverage
25 provided under items: 1), 2) or 3) will continue as long as the law allows.
26
27
28

E. General Insurance Provisions – All Lines

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

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

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

21 5. If, during the term of this Agreement or any extension thereof, there is a
22 material change in the scope of services; or there is a material change in
23 the equipment to be used in the performance of the scope of work which
24 will add additional exposures (such as the use of aircraft, watercraft,
25 cranes, etc.); or the term of this Agreement, including any extensions
26 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
27
28

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

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

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

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

13 14. INDEMNIFICATION

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

24 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
25 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
26 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
27
28

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

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

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

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

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

21
22
23 15. WORK PRODUCT

24 CONSULTANT shall provide DISTRICT with all plans, technical studies, reports or
25 other materials as set forth in the approved Task Order(s). All materials produced by
26 CONSULTANT in the performance of the services as set forth in the approved Task
27
28

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

10
 11 16. TERMINATION

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

13 A. Agreement

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

24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)
 25 stop all work under this Agreement on the date specified in the Notice of
 26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
 27
 28

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

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

21 B. Approved Task Order

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

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

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

11
12 17. BASIC SERVICES OF CONSULTANT

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

18
19 A. Right to Preliminary Review

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

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

10
11 **B. Progress Reports**

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

18
19 **18. INDEPENDENT CONTRACTOR**

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

24
25 **19. SUBCONTRACTING**

26 A list of sub-consultants (Sub-consultants), as identified by the CONSULTANT, is
27 attached hereto as Attachment "C". CONSULTANT may, at CONSULTANT'S own
28

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

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

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

14
15 20. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of
17 an approved Task Order without the prior written approval of DISTRICT'S General
18 Manager-Chief Engineer. If at any time during the performance of an approved Task
19 Order, CONSULTANT believes that it is necessary to include certain work or services
20 which are not clearly covered under the scope of an approved Task Order,
21 CONSULTANT shall immediately notify the Project Manager in writing of
22 CONSULTANT'S assertion that the work is out of scope. Said notification by
23 CONSULTANT to the Project Manager shall not in any way be construed as proving
24 that the work or services in question are outside the scope of the Task Order. The
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
26
27
28

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

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

18 At any time during the performance of the Task Order, the Project Manager, upon
19 providing five (5) days written notice to CONSULTANT, may delete services and the
20 associated fees from the Task Order. In the event DISTRICT requests deletion of
21 services from the Task Order, DISTRICT shall make payment for all services
22 satisfactorily performed in accordance with the negotiated Task Order up to the effective
23 date of deletion; the amount of the payment shall be prorated to the total services
24
25
26
27
28

necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

21. DISPUTES

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

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

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

22. ASSIGNMENT

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

23. CONFLICT OF INTEREST

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

24. JURISDICTION/LAW/SEVERABILITY

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

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

25. WAIVER

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

26. NON-DISCRIMINATION

8
9 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
10 nor permit others he may employ to engage in discrimination in the employment of
11 persons because of the race, color, national origin or ancestry, religion, physical
12 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
13 condition, marital status or sex of such persons, in accordance with the provision of
14 California Labor Code Section 1735.
15

27. NON-APPROPRIATION OF FUNDS

16
17 It is mutually agreed and understood that the obligation(s) of DISTRICT are limited by
18 and contingent upon the availability of DISTRICT funds for the reimbursement of
19 CONSULTANT'S fees. In the event that such funds are not forthcoming for any reason,
20 DISTRICT shall immediately notify CONSULTANT in writing. This Agreement shall
21 be deemed terminated and have no further force and effect immediately upon receipt of
22 DISTRICT'S notification by CONSULTANT. In the event of such termination,
23 CONSULTANT shall be entitled to reimbursement of its costs in accordance with
24 Sections 5 and 6 (COMPENSATION and PAYMENTS).
25
26

27 //
28

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

NOV 06 2012

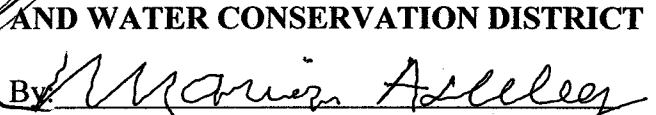
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By: 

WARREN D. WILLIAMS
General Manager-Chief Engineer

By: 

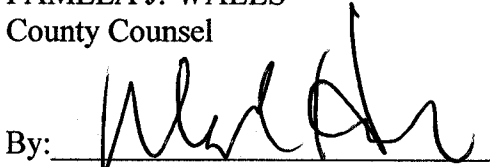
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:


ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: 

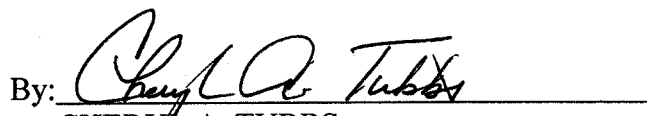
NEAL R. KIPNIS
Deputy County Counsel

By: 

Deputy

(SEAL)

LILBURN CORPORATION

By: 

CHERYL A. TUBBS
Vice President

(NOTARY)

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

ATTACHMENT "A"

SCOPE OF SERVICES

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

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

and Notice of Determination.

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

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

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

CONSULTANT

By: _____
Printed Name and Title

ATTACHMENT "C"

LIST OF SUB-CONSULTANTS

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

CONSULTING SERVICES AGREEMENT

FY 2012/13 to FY 2015/16

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

1. PROJECT

CONSULTANT shall provide on-call environmental and regulatory support 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 project specific environmental/regulatory support and ancillary professional services as described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, for DISTRICT projects on an "on-call" basis. During the term of this Agreement, the CONSULTANT may be invited to submit budget 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 budget proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

3. PERSONNEL

A. Project Manager

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

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

3 B. CONSULTANT'S Representative

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

9 C. Substitution of Key Personnel

10 At the time of Task Order approval, CONSULTANT shall identify its Key
11 Personnel who will perform each assigned Task Order to DISTRICT'S Project
12 Manager. Should one or more of the identified Key Personnel become
13 unavailable, CONSULTANT may substitute other personnel of equal or greater
14 competence upon written approval by DISTRICT. In the event that DISTRICT
15 and CONSULTANT cannot agree as to the substitution of the Key Personnel,
16 DISTRICT may terminate the Task Order, pursuant to the applicable provisions
17 of this Agreement.
18

19
20 4. TERM

21 The term of this Agreement shall become effective on the date the Agreement is
22 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
23 required date for completion of an assigned Task Order, provided that such Task Order
24 was approved prior to and completed by June 30, 2016.
25
26
27
28

5. COMPENSATION

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

6. PAYMENTS

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

7. PROJECT PERFORMANCE

A. Commencement of Services

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

B. Time of Completion

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

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

9 9. STANDARD OF CARE

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

19 10. ERRORS AND OMISSIONS

20 In the event CONSULTANT'S reports or work products contain any errors or omissions
21 that cause DISTRICT to incur additional expense beyond what would have otherwise
22 resulted if there were no errors or omissions in CONSULTANT'S reports or work
23 products, such additional expense shall be borne solely by CONSULTANT.
24
25
26
27
28

11. PERMITS AND RIGHTS OF ENTRY

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

12 12. NOTICES

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

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

20 13. REQUIRED INSURANCE

21 CONSULTANT shall not commence operations until DISTRICT has been furnished
 22 with original certificate(s) of insurance and original certified copies of endorsements and
 23 if requested, certified original policies of insurance including all endorsements and any
 24 and all other attachments as required in this Section.
 25

26 Without limiting or diminishing CONSULTANT'S obligation to indemnify or hold
 27 DISTRICT harmless, CONSULTANT shall procure and maintain or cause to be
 28

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

1
2
3 A. Workers' Compensation

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

12 B. Commercial General Liability

13 Commercial General Liability insurance coverage, including but not limited to,
14 premises liability, unmodified contractual liability, products and completed
15 operations liability, personal and advertising injury, and cross liability coverage,
16 covering claims which may arise from or out of CONSULTANT'S performance
17 of its obligations hereunder. Policy shall name the Riverside County Flood
18 Control and Water Conservation District, the County of Riverside, its agencies,
19 districts, special districts, and departments, their respective directors, officers,
20 Board of Supervisors, employees, elected or appointed officials, employees,
21 agents or representatives as additional insureds. Policy's limit of liability shall
22 not be less than \$1,000,000 per occurrence combined single limit. If such
23 insurance contains a general aggregate limit, it shall apply separately to this
24 Agreement or be no less than two (2) times the occurrence limit.
25
26
27
28

C. Vehicle Liability

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

D. Professional Liability

14 CONSULTANT shall maintain Professional Liability Insurance providing
 15 coverage for CONSULTANT'S performance of work included within this
 16 Agreement, with a limit of liability of not less than \$1,000,000 per occurrence
 17 and \$2,000,000 annual aggregate. If CONSULTANT'S Professional Liability
 18 Insurance is written on a claims made basis rather than an occurrence basis, such
 19 insurance shall continue through the term of this Agreement and CONSULTANT
 20 shall purchase at his sole expense either: 1) an Extended Reporting Endorsement
 21 (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer
 22 with a date retroactive to the date of, or prior to, the inception of this Agreement;
 23 or 3) demonstrate through Certificates of Insurance that CONSULTANT has
 24 maintained continuous coverage with the same or original insurer. Coverage
 25 provided under items: 1), 2) or 3) will continue as long as the law allows.
 26
 27
 28

E. General Insurance Provisions – All Lines

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
1. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
 2. CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
 3. CONSULTANT shall cause their insurance carrier(s) to furnish DISTRICT with: 1) a properly executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing

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

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

21 5. If, during the term of this Agreement or any extension thereof, there is a
22 material change in the scope of services; or there is a material change in
23 the equipment to be used in the performance of the scope of work which
24 will add additional exposures (such as the use of aircraft, watercraft,
25 cranes, etc.); or the term of this Agreement, including any extensions
26 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
27
28

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

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

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

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

13 14. INDEMNIFICATION

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

24 CONSULTANT shall defend, at its sole expense, including all costs and fees (including
25 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
26 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
27
28

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

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

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

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

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

15. WORK PRODUCT

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

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

10 16. TERMINATION

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

12 A. Agreement

- 13 1) Terminate this Agreement without cause upon providing CONSULTANT
14 thirty (30) days written notice stating the extent and effective date of
15 termination; or
16
17 2) Upon five (5) days written notice, terminate this Agreement for
18 CONSULTANT default, if CONSULTANT refuses or fails to comply
19 with the provisions of this Agreement or fails to make progress so as to
20 endanger performance and does not cure such failure within a reasonable
21 period of time. In the event of such termination, DISTRICT may proceed
22 with the work in a manner deemed proper to DISTRICT.
23

24 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall: i)
25 stop all work under this Agreement on the date specified in the Notice of
26 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
27
28

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

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

19
20
21 B. Approved Task Order

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

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

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

11
12 17. BASIC SERVICES OF CONSULTANT

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

18
19 A. Right to Preliminary Review

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

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

10 B. Progress Reports

11 Attached with CONSULTANT'S periodic invoice(s), CONSULTANT shall
12 submit a Progress Report indicating the project status in relation to the approved
13 Project Schedule and, as DISTRICT deems necessary, an updated Project
14 Schedule for review and approval. Failure to submit the Progress Report or
15 updated Project Schedule shall be cause for DISTRICT to withhold payment of
16 CONSULTANT'S invoice.
17

18 18. INDEPENDENT CONTRACTOR

19 CONSULTANT and the agents and employees of CONSULTANT, shall act at all times
20 in an independent capacity during the term of this Agreement and in the performance of
21 the services to be rendered hereunder and shall not act as or shall not be and shall not in
22 any manner be considered to be employees or agents of DISTRICT.
23

24 19. SUBCONTRACTING

25 A list of sub-consultants (Sub-consultants), as identified by CONSULTANT, is attached
26 hereto as Attachment "C". CONSULTANT may, at CONSULTANT'S own expense,
27
28

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

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

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

15 20. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of
17 an approved Task Order without the prior written approval of DISTRICT'S General
18 Manager-Chief Engineer. If at any time during the performance of an approved Task
19 Order, CONSULTANT believes that it is necessary to include certain work or services
20 which are not clearly covered under the scope of an approved Task Order,
21 CONSULTANT shall immediately notify the Project Manager in writing of
22 CONSULTANT'S assertion that the work is out of scope. Said notification by
23 CONSULTANT to the Project Manager shall not in any way be construed as proving
24 that the work or services in question are outside the scope of the Task Order. The
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
26
27
28

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

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

18 At any time during the performance of the Task Order, the Project Manager, upon
19 providing five (5) days written notice to CONSULTANT, may delete services and the
20 associated fees from the Task Order. In the event DISTRICT requests deletion of
21 services from the Task Order, DISTRICT shall make payment for all services
22 satisfactorily performed in accordance with the negotiated Task Order up to the effective
23 date of deletion; the amount of the payment shall be prorated to the total services
24
25
26
27
28

necessary for completion of the Task Order. No work product for the deleted services shall be provided to DISTRICT.

21. DISPUTES

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

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

4 22. ASSIGNMENT

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

7 23. CONFLICT OF INTEREST

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

14
15 24. JURISDICTION/LAW/SEVERABILITY

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

20
21 Any legal action, in law or equity related to the performance or interpretation of this
22 Agreement shall be filed only in the Superior Court for the State of California located in
23 Riverside, California, and the parties waive any provision of law providing for a change
24 of venue to another location. Prior to the filing of any legal action, the parties shall be
25 obligated to attend a mediation session with a neutral mediator to try to resolve the
26 dispute.
27
28

25. WAIVER

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

26. NON-DISCRIMINATION

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

27. NON-APPROPRIATION OF FUNDS

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

//

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

NOV 06 2012

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: [Signature]
WARREN D. WILLIAMS
General Manager-Chief Engineer

By: [Signature]
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)

URS CORPORATION AMERICAS

By: [Signature]
~~RICHARD HART~~ BRIAN E. WYNNE
Vice President

(NOTARY)

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

ATTACHMENT "A"

SCOPE OF SERVICES

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

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

and Notice of Determination.

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

ATTACHMENT "B"

TASK ORDER APPROVAL FORM

CONSULTANT: _____

PROJECT NAME: _____

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

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

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

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

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

CONSULTANT

By: _____
Printed Name and Title

ATTACHMENT "C"

LIST OF SUB-CONSULTANTS

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