

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 to FY 2015-16

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

1. PROJECT

CONSULTANT shall provide professional geotechnical engineering and ancillary services, on an as-needed basis as requested by DISTRICT, for DISTRICT'S capital improvements program in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide on-call geotechnical engineering and testing related services, as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, in support of DISTRICT'S capital improvement projects. During the term of this Agreement, CONSULTANT may be invited to submit proposals for one or more 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", "Task Order Approval Form", attached hereto and made a part hereof. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division

1 3 of the Business and Professions Code, and shall be wholly responsible for the
2 completeness and accuracy of all data, technical studies, reports, plans, specifications
3 and estimates prepared pursuant to this Agreement, and shall check all such material
4 accordingly.

5 3. PERSONNEL

6 A. Project Manager

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

14 CONSULTANT shall appoint a designated Representative for each assigned
15 Task Order who shall be responsible for coordinating all aspects of the assigned
16 Task Order. CONSULTANT'S Representative shall be available to
17 DISTRICT'S Project Manager at reasonable times. CONSULTANT may
18 appoint another person as Representative upon written notice to DISTRICT.
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20 C. Substitution of Key Personnel

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

3 4. TERM

4 The term of this Agreement shall become effective on the date this Agreement is
5 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
6 required date for completion of an assigned Task Order, provided that such Task Order
7 was approved prior to June 30, 2016 and completed by December 31, 2016.

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9 5. COMPENSATION

10 CONSULTANT shall receive compensation for all services satisfactorily performed
11 under this Agreement in accordance with the terms of the approved Task Order(s). The
12 total amount to be paid to CONSULTANT for the performance of all Task Orders
13 approved pursuant to this Agreement shall not exceed one hundred fifty thousand
14 dollars (\$150,000) in any Fiscal Year and shall not exceed the sum of four hundred fifty
15 thousand dollars (\$450,000) over the entire term of this Agreement.

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17 6. PAYMENT

18 Payments shall be made in accordance with the Compensation/Fee Rate Schedule
19 attached to the approved Task Order. Progress payments, if permitted in the approved
20 Task Order, shall be processed no more than once per month. Upon satisfactory
21 performance of CONSULTANT'S services pursuant to an approved Task Order,
22 DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S
23 receipt of CONSULTANT'S appropriate invoices. DISTRICT shall not pay interest or
24 finance charge on any outstanding balance(s). CONSULTANT shall submit its invoice,
25 in arrears, no later than sixty (60) calendar days following the month for which
26 satisfactory performance of CONSULTANT'S services were rendered pursuant to an
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1 approved Task Order. Failure to submit a timely invoice will result in non-payment of
 2 services. DISTRICT shall not be responsible for payment of any of CONSULTANT'S
 3 invoices submitted after the 60-day period. CONSULTANT shall keep employee and
 4 expense records according to customary accounting methods and such records shall,
 5 upon request, be available for inspection by DISTRICT to verify the invoices of
 6 CONSULTANT. All invoices shall itemize charges to conform to the
 7 Compensation/Fee Rate Schedule negotiated for the Task Order. DISTRICT shall
 8 notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of
 9 receipt.
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11 7. PROJECT PERFORMANCE

12 A. Commencement of Services

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

17 Time is of the essence in the performance of this Agreement. CONSULTANT
 18 shall complete services in accordance with the schedule(s) set forth in the
 19 approved Task Order(s).
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21 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
 22 shall possess appropriate Federal and/or State permits and maintain professional
 23 licenses required by the applicable Federal, State and local regulations at all times while
 24 performing services under this Agreement.

25 9. STANDARD OF CARE

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

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8 10. ERRORS AND OMISSIONS

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

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15 11. PERMITS AND RIGHTS OF ENTRY

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

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

5 RIVERSIDE COUNTY FLOOD CONTROL
6 AND WATER CONSERVATION DISTRICT
7 1995 Market Street
8 Riverside, CA 92501
9 Attn: Design and Construction Division

GEOTEK, INC.
710 E. Parkridge Ave., Ste.105
Corona, CA 92879
Attn: Edward H. Lamont

10 13. REQUIRED INSURANCE

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

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

19 A. Workers' Compensation

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

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

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

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

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

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- 10 3) CONSULTANT shall cause their insurance carrier(s) to furnish
11 DISTRICT with either: 1) a properly executed original certificate(s) of
12 insurance and original certified copies of endorsements effecting
13 coverage as required herein; or 2) if requested to do so orally or in
14 writing by the County Risk Manager, provide original certified copies of
15 policies including all endorsements and all attachments thereto, showing
16 such insurance is in full force and effect. Further, said certificate(s) and
17 policies of insurance shall contain the covenant of the insurance
18 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
19 prior to any material modification, cancellation, expiration, or reduction
20 in coverage of such insurance. In the event of a material modification,
21 cancellation, expiration, or reduction in coverage, this Agreement shall
22 terminate forthwith, unless DISTRICT receives, prior to such effective
23 date, another properly executed original certificate of insurance and
24 original copies of endorsements or original certified policies, including
25 all endorsements and attachments thereto, evidencing coverages and the
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1 insurance required herein is in full force and effect. Individual(s)
2 authorized by the insurance carrier to do so on its behalf shall sign the
3 original endorsements for each policy and the certificate of insurance.

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

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

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

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24 7) The insurance requirements contained in this Agreement may be met
25 with a program(s) of self-insurance acceptable to DISTRICT.
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1 8) CONSULTANT agrees to notify DISTRICT of any claim by a third
2 party or any incident or event that may give rise to a claim arising from
3 the performance of this Agreement.

4 14. INDEMNIFICATION

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

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

19 With respect to any of CONSULTANT'S indemnification requirements,
20 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
21 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
22 action without the prior consent of DISTRICT; provided, however, that such
23 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
24 CONSULTANT'S indemnification obligations to DISTRICT.
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1 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT
2 has provided to DISTRICT the appropriate form of dismissal (or similar document)
3 relieving DISTRICT from any liability for the claim, proceeding or action involved.

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

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8 In the event there is conflict between this section and California Civil Code Section
9 2782, this section shall be interpreted to comply with California Civil Code Section
10 2782. Such interpretation shall not relieve CONSULTANT from indemnifying
11 DISTRICT (including its directors, officers, Board of Supervisors, elected and
12 appointed officials, employees, agents and representatives) or the County of Riverside
13 to the fullest extent allowed by law.

14 15. WORK PRODUCT

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

4 16. TERMINATION

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

6 A. Agreement

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

17
18 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall:

- 19 i) stop all work under this Agreement on the date specified in the Notice of
20 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
21 extent, if any, as directed by DISTRICT, any equipment, data or reports which,
22 if the Agreement had been completed, would have been required to be furnished
23 to DISTRICT.

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25 In the event DISTRICT terminates this Agreement, DISTRICT shall make
26 payment for all services performed in accordance with this Agreement to the
27 date of termination, a total amount which bears the same ratio to the total
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1 maximum fee otherwise payable under this Agreement as the services actually
2 bear to the total services necessary for performance of this Agreement.
3 Notwithstanding any of the other provision of this Agreement, CONSULTANT
4 rights under this Agreement shall terminate (except for fees accrued prior to the
5 date of termination) upon dishonesty, or a willful or material breach of this
6 Agreement by CONSULTANT; or in the event of CONSULTANT'S
7 unwillingness or inability for any reason whatsoever to perform the duties
8 hereunder; or if the Agreement is terminated pursuant to Section 27 (NON-
9 DISCRIMINATION). In such event, CONSULTANT shall not be entitled to
10 any further compensation under this Agreement. The rights and remedies of
11 DISTRICT provided in this section shall not be exclusive and are in addition to
12 any other rights and remedies provided by law or under this Agreement.
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14 B. Approved Task Order

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

5 17. Basic Services of CONSULTANT

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

11 All work prepared by CONSULTANT shall be subject to the approval of the Project
12 Manager. CONSULTANT shall allow the Project Manager to inspect and review
13 CONSULTANT'S work in progress at any reasonable time. All reports, working
14 papers, and similar work products prepared for submission in the course of providing
15 services under this Agreement shall be submitted to the Project Manager in draft form.

16 In the event that Project Manager, in his or her sole discretion, determines the formally
17 submitted work product to be inadequate, CONSULTANT may be required to revise
18 and resubmit the work at no additional cost to DISTRICT. Should CONSULTANT fail
19 to make requested corrections in a timely manner, such corrections may be made by
20 DISTRICT and the cost thereof charged to CONSULTANT. The responsibility for
21 accuracy and completeness of such items remains solely that of CONSULTANT.
22 Neither DISTRICT'S review nor approval shall give rise to any liability or
23 responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve
24 CONSULTANT of its professional responsibilities or obligations under this Agreement.
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18. PREVAILING WAGE

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

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

19 20. SUBCONTRACTING

20 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
21 consultants to accomplish certain portions of the work covered by this Agreement.
22 However, except as specifically provided in the Compensation/Fee Rate Schedule
23 attached to the approved Task Order or as expressly identified in this Agreement, no
24 portion of the services pertinent to this Agreement shall be subcontracted without prior
25 written approval and authorization by DISTRICT.
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1 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
2 Schedule attached to the approved Task Order or as expressly identified in this
3 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
4 of equal or greater competence upon written approval by DISTRICT. In the event that
5 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
6 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
7 provisions of this Agreement.
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9 In the event CONSULTANT subcontracts any portion of CONSULTANT'S duties
10 under this Agreement, CONSULTANT shall require its sub-consultants to comply with
11 the terms of this Agreement in the same manner as required of CONSULTANT. The
12 fact that CONSULTANT employs sub-consultants not in his regular employ shall not
13 relieve CONSULTANT of any responsibility regarding the adequacy of the sub-
14 consultant's work performed or services provided pursuant to this Agreement.
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16 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

17 CONSULTANT shall not perform any additional work or services outside the scope of
18 an approved Task Order without the prior written approval of DISTRICT'S General
19 Manager-Chief Engineer. If at any time during the performance of an approved Task
20 Order, CONSULTANT believes that it is necessary to include certain work or services
21 which are not clearly covered under the scope of an approved Task Order,
22 CONSULTANT shall immediately notify the Project Manager in writing of
23 CONSULTANT'S assertion that the work is out of scope. Said notification by
24 CONSULTANT to the Project Manager shall not in any way be construed as proving
25 that the work or services in question are outside the scope of the Task Order. The
26 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
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1 event the Project Manager determines that CONSULTANT is correct, the additional
2 work or services shall be authorized by a new or revised Task Order that covers the new
3 scope, cost and schedule. In the event that such notification is not given or if the
4 Project 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
12 request 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
23 effective date of deletion; the amount of the payment shall be prorated to the total
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1 services necessary for completion of the Task Order. No work product for the deleted
2 services shall be provided to DISTRICT.

3 22. DISPUTES

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

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

4 23. ASSIGNMENT

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

7 24. 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 25. JURISDICTION/LAW/SEVERABILITY

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

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

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

27. NON-DISCRIMINATION

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

28. CONFIDENTIALITY OF DATA

16
17
18 All financial, statistical, personal, technical or other data and information made
19 available to CONSULTANT shall not be disclosed (in whole or in part) by
20 CONSULTANT to any third parties and shall be protected by CONSULTANT from
21 unauthorized use and disclosure. The only exception to this shall be if disclosure is
22 approved in advance in writing by DISTRICT or if the disclosure is made to
23 CONSULTANT'S subcontractors as anticipated by this Agreement.

24
25 CONSULTANT shall refer all requests for information to DISTRICT. These same
26 requirements shall be applicable to any of CONSULTANT'S subcontractors.

1 CONSULTANT shall include the requirements stated in this section of the Agreement
2 with any of its subcontractors.

3 29. DISCREPANCIES

4 In the event of any conflict between the provisions of this Agreement and any Task
5 Order, the provisions of this Agreement shall govern.

6 30. NON-APPROPRIATION OF FUNDS

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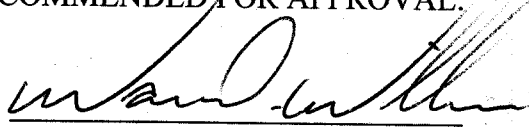
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

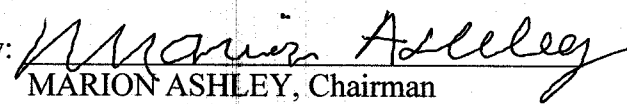
APR 09 2013

(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

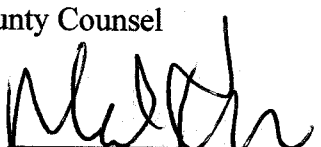
By: 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

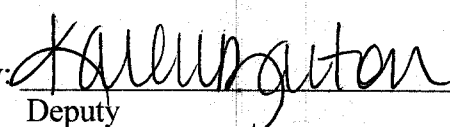
APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: 
NEAL R. KIPNIS
Deputy County Counsel

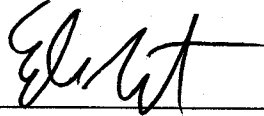
By: 
Deputy

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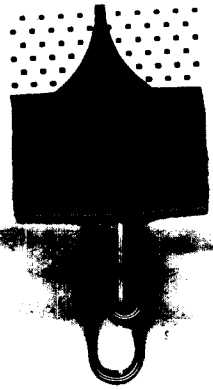
Multi-Year Consulting Services Agreement
w/Geotek
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13

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GEOTEK, INC.

By: 
EDWARD H. LAMONT
Vice President

**Multi-Year Consulting Services Agreement
w/Geotek
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13**



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 Order(s) issued to CONSULTANT:

1. GEOTECHNICAL ENGINEERING

Prepare geotechnical report(s) to address all geotechnical related issues including, but not limited to:

- Grading and Site Clearing
- Seepage Control and Dewatering Analysis
- Foundation Preparation
- Pavement Design
- Compacted Fills
- Soil Classification and Physical Properties
- Slope Stability and Protection
- Seismic Stability
- Open and Braced Excavation (Shallow/Deep)
- Material Testing

2. FIELD AND LABORATORY TESTING AND REPORTING

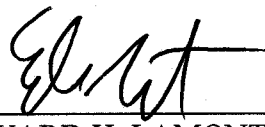
Perform material (such as earthwork and concrete construction) testing and reporting services. Testing may consist of, but not be limited to the following:

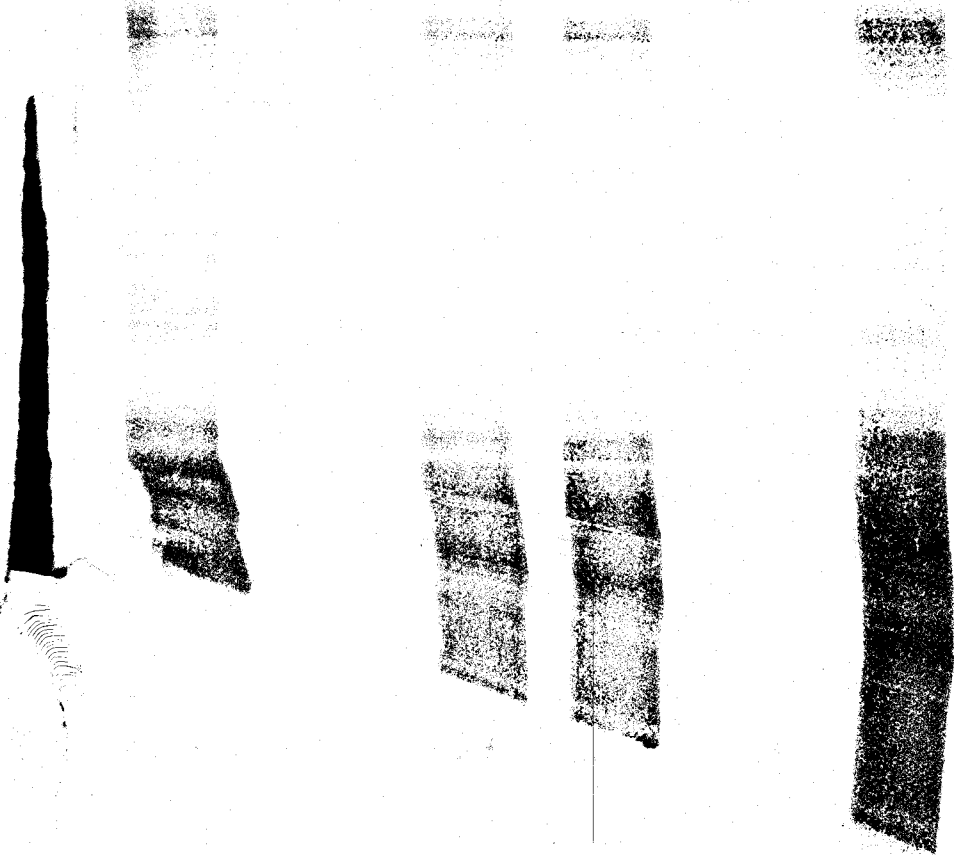
- Soil Sieve and Proctor Testing
- Soil Consolidation Testing
- Field Density Testing
- Concrete Cylinder Fabrication and Testing
- Asphalt Concrete Testing

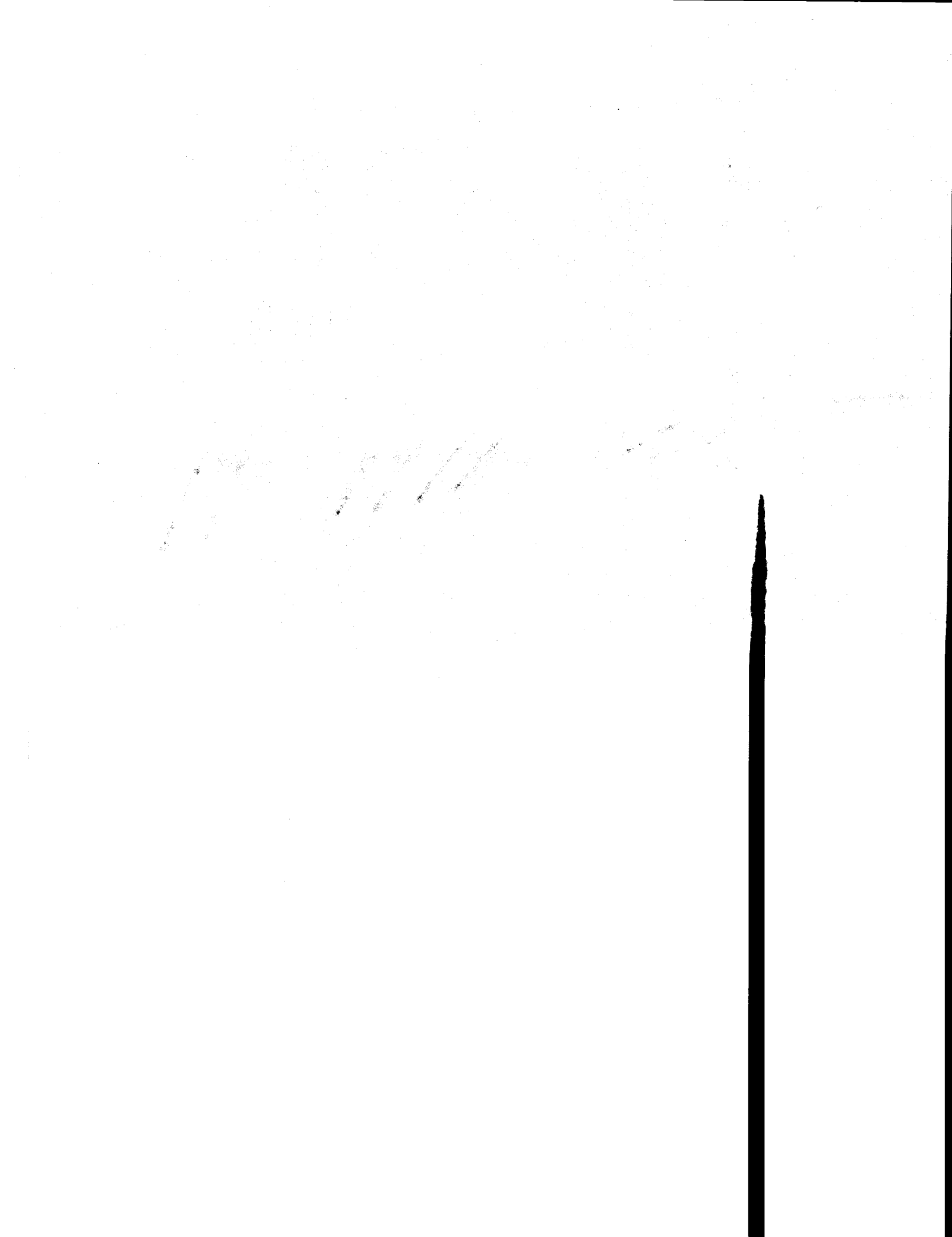
CONSULTANT may also be called upon to evaluate the condition of

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GEOTEK, INC.


By: 
EDWARD H. LAMONT
Vice President



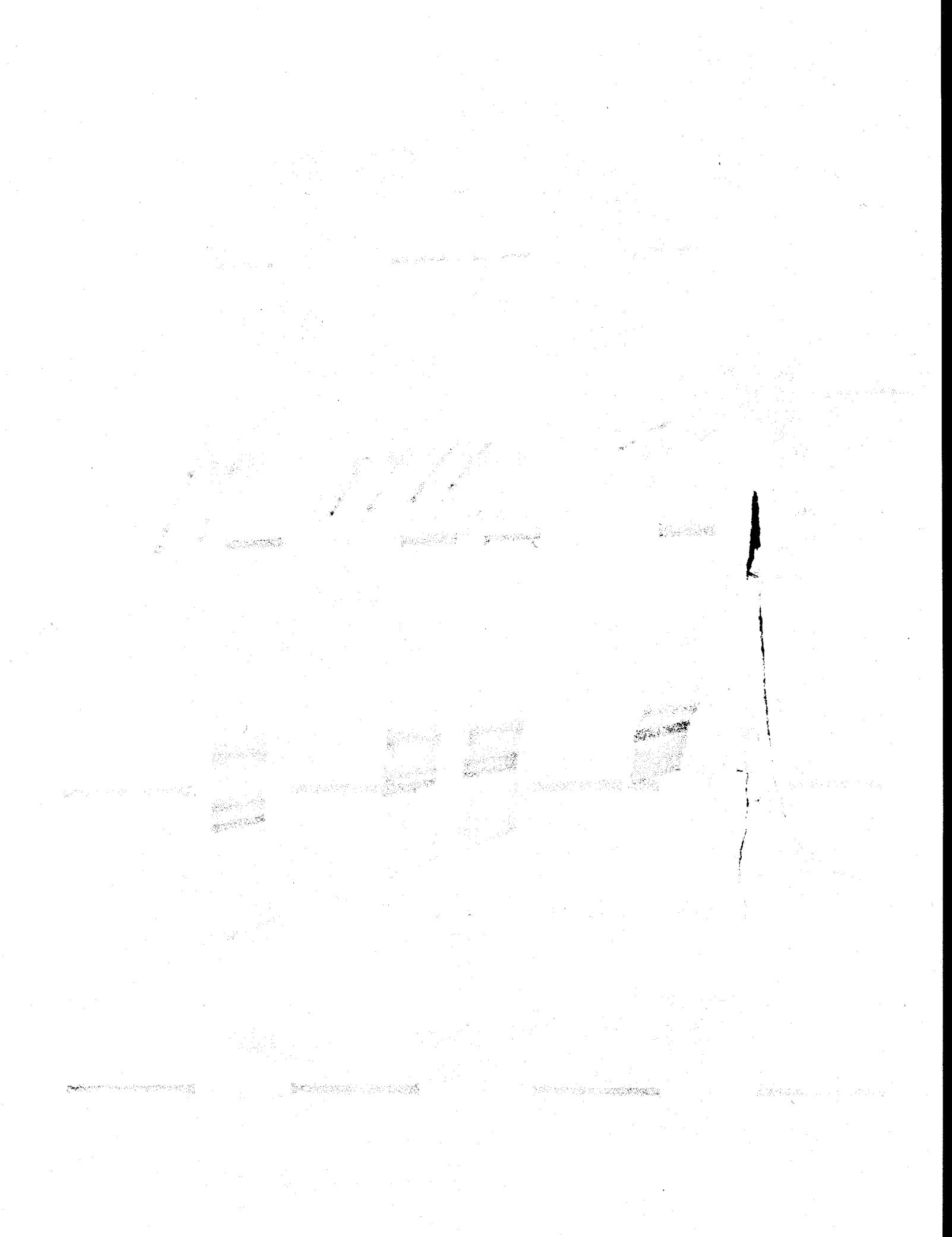


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GEOTEK, INC.

By: 
EDWARD H. LAMONT
Vice President

Multi-Year Consulting Services Agreement
w/Geotek
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13



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 Order(s) issued to CONSULTANT:

1. GEOTECHNICAL ENGINEERING

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- Grading and Site Clearing
- Seepage Control and Dewatering Analysis
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- Compacted Fills
- Soil Classification and Physical Properties
- Slope Stability and Protection
- Seismic Stability
- Open and Braced Excavation (Shallow/Deep)
- Material Testing

2. FIELD AND LABORATORY TESTING AND REPORTING

Perform material (such as earthwork and concrete construction) testing and reporting services. Testing may consist of, but not be limited to the following:

- Soil Sieve and Proctor Testing
- Soil Consolidation Testing
- Field Density Testing
- Concrete Cylinder Fabrication and Testing
- Asphalt Concrete Testing

CONSULTANT may also be called upon to evaluate the ability of subsurface soils to support in-ground disposal of concentrated stormwater via infiltration. Infiltration analysis typically consists of exploratory site evaluation, in-situ permeability testing and laboratory analysis of soil samples collected from relevant soil horizons. Results of in-situ permeability testing and laboratory analysis and recommendations based upon the results are presented in a concise report which will assist the DISTRICT in the design of infiltration systems. Test may consist of, but not be limited to the following:

- Double Ring Infiltration Tests
- Standard Percolation Tests
- Test Pits
- Piezometers (Groundwater Level Monitoring)

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

1
2
3 CONSULTANT: _____

4 PROJECT NAME: _____

5
6 The Scope of Services for _____, a copy of which is attached hereto as Exhibit
7 "A" and incorporated herein by this reference, shall constitute an approved Task Order
8 pursuant to the Agreement between DISTRICT and CONSULTANT dated _____
9 ("AGREEMENT"). CONSULTANT agrees to perform the services described in Exhibit "A"
10 within the time set forth in the Project Schedule as described in Exhibit "B" attached hereto
11 and incorporated herein, for a fee amount of \$_____, unless otherwise modified by
12 DISTRICT'S Project Manager in a subsequent Task Order Approval Form. All charges shall
13 be consistent with the Compensation/Fee Rate Schedule which is attached as Exhibit "C" and
14 incorporated herein by this reference.

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

17 Dated this _____ day of _____, 20_____
18 (To be filled in by General Manager-Chief Engineer)

19
20 **RIVERSIDE COUNTY FLOOD CONTROL**
21 **AND WATER CONSERVATION DISTRICT**

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

25 **GEOTEK, INC.**

26
27 By: _____
28 EDWARD H. LAMONT
Vice President

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 to FY 2015-16

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The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and Tetra Tech Bas, Inc., hereinafter called "CONSULTANT", hereby agree as follows:

1. PROJECT

CONSULTANT shall provide professional geotechnical engineering and ancillary services, on an as-needed basis as requested by DISTRICT, for DISTRICT'S capital improvements program in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide on-call geotechnical engineering and testing related services, as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, in support of DISTRICT'S capital improvement projects. During the term of this Agreement, CONSULTANT may be invited to submit proposals for one or more 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", "Task Order Approval Form", attached hereto and made a part hereof. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division

1 3 of the Business and Professions Code, and shall be wholly responsible for the
2 completeness and accuracy of all data, technical studies, reports, plans, specifications
3 and estimates prepared pursuant to this Agreement, and shall check all such material
4 accordingly.

5 3. PERSONNEL

6 A. Project Manager

7 For each Task Order, DISTRICT shall designate a representative who shall act
8 as DISTRICT'S Project Manager ("Project Manager"). The Project Manager
9 shall have authority to act on behalf of DISTRICT for all purposes under this
10 Task Order. DISTRICT shall provide written notice to CONSULTANT of any
11 change in Project Manager assignment for a given Task Order.
12

13 B. CONSULTANT'S Representative

14 CONSULTANT shall appoint a designated Representative for each assigned
15 Task Order who shall be responsible for coordinating all aspects of the assigned
16 Task Order. CONSULTANT'S Representative shall be available to
17 DISTRICT'S Project Manager at reasonable times. CONSULTANT may
18 appoint another person as Representative upon written notice to DISTRICT.
19

20 C. Substitution of Key Personnel

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

3 4. TERM

4 The term of this Agreement shall become effective on the date this Agreement is
5 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
6 required date for completion of an assigned Task Order, provided that such Task Order
7 was approved prior to June 30, 2016 and completed by December 31, 2016.
8

9 5. COMPENSATION

10 CONSULTANT shall receive compensation for all services satisfactorily performed
11 under this Agreement in accordance with the terms of the approved Task Order(s). The
12 total amount to be paid to CONSULTANT for the performance of all Task Orders
13 approved pursuant to this Agreement shall not exceed one hundred fifty thousand
14 dollars (\$150,000) in any Fiscal Year and shall not exceed the sum of four hundred fifty
15 thousand dollars (\$450,000) over the entire term of this Agreement.
16

17 6. PAYMENT

18 Payments shall be made in accordance with the Compensation/Fee Rate Schedule
19 attached to the approved Task Order. Progress payments, if permitted in the approved
20 Task Order, shall be processed no more than once per month. Upon satisfactory
21 performance of CONSULTANT'S services pursuant to an approved Task Order,
22 DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S
23 receipt of CONSULTANT'S appropriate invoices. DISTRICT shall not pay interest or
24 finance charge on any outstanding balance(s). CONSULTANT shall submit its invoice,
25 in arrears, no later than sixty (60) calendar days following the month for which
26 satisfactory performance of CONSULTANT'S services were rendered pursuant to an
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1 approved Task Order. Failure to submit a timely invoice will result in non-payment of
2 services. DISTRICT shall not be responsible for payment of any of CONSULTANT'S
3 invoices submitted after the 60-day period. CONSULTANT shall keep employee and
4 expense records according to customary accounting methods and such records shall,
5 upon request, be available for inspection by DISTRICT to verify the invoices of
6 CONSULTANT. All invoices shall itemize charges to conform to the
7 Compensation/Fee Rate Schedule negotiated for the Task Order. DISTRICT shall
8 notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of
9 receipt.
10

11 7. PROJECT PERFORMANCE

12 A. Commencement of Services

13 CONSULTANT shall commence performance of the services for each Task
14 Order upon receipt of DISTRICT'S approved Task Order.
15

16 B. Time of Completion

17 Time is of the essence in the performance of this Agreement. CONSULTANT
18 shall complete services in accordance with the schedule(s) set forth in the
19 approved Task Order(s).
20

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

25 9. STANDARD OF CARE

26 While performing the services, CONSULTANT shall exercise the reasonable
27 professional care and skill customarily exercised by reputable members of
28

1 CONSULTANT'S profession practicing in the State of California, and shall use
2 reasonable diligence and best judgment while exercising CONSULTANT'S professional
3 skill and expertise. By executing this Agreement, CONSULTANT represents and
4 maintains that CONSULTANT has the necessary experience and expertise to skillfully
5 perform all services, duties and obligations required by this Agreement and to fully and
6 adequately complete each approved Task Order.

7
8 10. ERRORS AND OMISSIONS

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

14
15 11. PERMITS AND RIGHTS OF ENTRY

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

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

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

TETRA TECH BAS, INC.
1360 Valley Vista Drive,
Diamond Bar, CA 91765
Attn: Peter Skopek

13. REQUIRED INSURANCE

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

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

A. Workers' Compensation

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

B. Commercial General Liability

1 Commercial General Liability insurance coverage, including but not limited to,
2 premises liability, unmodified contractual liability, products and completed
3 operations liability, personal and advertising injury, and cross liability coverage,
4 covering claims which may arise from or out of CONSULTANT'S performance
5 of its obligations hereunder. Policy shall name Riverside County Flood Control
6 and Water Conservation District, the County of Riverside, its agencies, districts,
7 special districts, and departments, their respective directors, officers, Board of
8 Supervisors, elected or appointed officials, employees, agents or representatives
9 as additional insureds. Policy's limit of liability shall not be less than
10 \$1,000,000 per occurrence combined single limit. If such insurance contains a
11 general aggregate limit, it shall apply separately to this Agreement or be no less
12 than two (2) times the occurrence limit.
13

14 C. Vehicle Liability

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

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

16 E. General Insurance Provisions – All Lines

- 17
- 18 1) Any insurance carrier providing insurance coverage hereunder shall be
19 admitted to the State of California and have an A.M. BEST rating of not
20 less than an A: VIII (A: 8) unless such requirements are waived, in
21 writing, by the County Risk Manager. If the County's Risk Manager
22 waives a requirement for a particular insurer such waiver is only valid
23 for the specific insurer and only for one policy term.
24
- 25 2) CONSULTANT must declare its insurance self-insured retention for
26 each coverage required herein. If any such self-insured retention
27 exceeds \$500,000 per occurrence each such retention shall have the prior
28

1 written consent of the County Risk Manager before the commencement
2 of operations under this Agreement. Upon notification of self-insured
3 retention unacceptable to the DISTRICT, and at the election of the
4 County's Risk Manager, CONSULTANT'S carriers shall either: 1)
5 reduce or eliminate such self-insured retention with respect to this
6 Agreement with DISTRICT, or 2) procure a bond which guarantees
7 payment of losses and related investigations, claims administration,
8 defense costs and expenses.

9
10 3) CONSULTANT shall cause their insurance carrier(s) to furnish
11 DISTRICT with either: 1) a properly executed original certificate(s) of
12 insurance and original certified copies of endorsements effecting
13 coverage as required herein; or 2) if requested to do so orally or in
14 writing by the County Risk Manager, provide original certified copies of
15 policies including all endorsements and all attachments thereto, showing
16 such insurance is in full force and effect. Further, said certificate(s) and
17 policies of insurance shall contain the covenant of the insurance
18 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
19 prior to any material modification, cancellation, expiration, or reduction
20 in coverage of such insurance. In the event of a material modification,
21 cancellation, expiration, or reduction in coverage, this Agreement shall
22 terminate forthwith, unless DISTRICT receives, prior to such effective
23 date, another properly executed original certificate of insurance and
24 original copies of endorsements or original certified policies, including
25 all endorsements and attachments thereto, evidencing coverages and the
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1 insurance required herein is in full force and effect. Individual(s)
2 authorized by the insurance carrier to do so on its behalf shall sign the
3 original endorsements for each policy and the certificate of insurance.

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

9
10 5) If, during the term of this Agreement or any extension thereof, there is a
11 material change in the scope of services; or there is a material change in
12 the equipment to be used in the performance of the scope of work which
13 will add additional exposures (such as the use of aircraft, watercraft,
14 cranes, etc.); or the term of this Agreement, including any extensions
15 thereof, exceeds five (5) years, the District reserves the right to adjust the
16 types of insurance and the monetary limits of liability required under this
17 Agreement, if, in the County Risk Manager's reasonable judgment, the
18 amount or type of insurance carried by CONSULTANT has become
19 inadequate.
20

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

23
24 7) The insurance requirements contained in this Agreement may be met
25 with a program(s) of self-insurance acceptable to DISTRICT.
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- 1 8) CONSULTANT agrees to notify DISTRICT of any claim by a third
2 party or any incident or event that may give rise to a claim arising from
3 the performance of this Agreement.

4 14. INDEMNIFICATION

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

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

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

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

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

7 In the event there is conflict between this section and California Civil Code Section
8 2782, this section shall be interpreted to comply with California Civil Code Section
9 2782. Such interpretation shall not relieve CONSULTANT from indemnifying
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and
11 appointed officials, employees, agents and representatives) or the County of Riverside
12 to the fullest extent allowed by law.
13

14 15. WORK PRODUCT

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

4 16. TERMINATION

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

6 A. Agreement

- 7
- 8 1) Terminate this Agreement without cause upon providing
9 CONSULTANT thirty (30) days written notice stating the extent and
10 effective date of termination; or
- 11 2) Upon five (5) days written notice, terminate this Agreement for
12 CONSULTANT default, if CONSULTANT refuses or fails to comply
13 with the provisions of this Agreement or fails to make progress so as to
14 endanger performance and does not cure such failure within a reasonable
15 period of time. In the event of such termination, DISTRICT may
16 proceed with the work in a manner deemed proper to DISTRICT.

17
18 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall:

- 19 i) stop all work under this Agreement on the date specified in the Notice of
20 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
21 extent, if any, as directed by DISTRICT, any equipment, data or reports which,
22 if the Agreement had been completed, would have been required to be furnished
23 to DISTRICT.

24
25 In the event DISTRICT terminates this Agreement, DISTRICT shall make
26 payment for all services performed in accordance with this Agreement to the
27 date of termination, a total amount which bears the same ratio to the total
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1 maximum fee otherwise payable under this Agreement as the services actually
2 bear to the total services necessary for performance of this Agreement.
3 Notwithstanding any of the other provision of this Agreement, CONSULTANT
4 rights under this Agreement shall terminate (except for fees accrued prior to the
5 date of termination) upon dishonesty, or a willful or material breach of this
6 Agreement by CONSULTANT; or in the event of CONSULTANT'S
7 unwillingness or inability for any reason whatsoever to perform the duties
8 hereunder; or if the Agreement is terminated pursuant to Section 27 (NON-
9 DISCRIMINATION). In such event, CONSULTANT shall not be entitled to
10 any further compensation under this Agreement. The rights and remedies of
11 DISTRICT provided in this section shall not be exclusive and are in addition to
12 any other rights and remedies provided by law or under this Agreement.
13

14 B. Approved Task Order

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

25 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
26 make payment for all services satisfactorily performed in accordance with the
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1 negotiated Task Order to the date of termination, a total amount which bears the
2 same ratio to the total maximum fee otherwise payable under the Task Order as
3 the services actually bear to the total services necessary for performance of the
4 Task Order.

5 17. Basic Services of CONSULTANT

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

11 All work prepared by CONSULTANT shall be subject to the approval of the Project
12 Manager. CONSULTANT shall allow the Project Manager to inspect and review
13 CONSULTANT'S work in progress at any reasonable time. All reports, working
14 papers, and similar work products prepared for submission in the course of providing
15 services under this Agreement shall be submitted to the Project Manager in draft form.

16 In the event that Project Manager, in his or her sole discretion, determines the formally
17 submitted work product to be inadequate, CONSULTANT may be required to revise
18 and resubmit the work at no additional cost to DISTRICT. Should CONSULTANT fail
19 to make requested corrections in a timely manner, such corrections may be made by
20 DISTRICT and the cost thereof charged to CONSULTANT. The responsibility for
21 accuracy and completeness of such items remains solely that of CONSULTANT.
22 Neither DISTRICT'S review nor approval shall give rise to any liability or
23 responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve
24 CONSULTANT of its professional responsibilities or obligations under this Agreement.
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18. PREVAILING WAGE

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

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

19 20. SUBCONTRACTING

20 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
21 consultants to accomplish certain portions of the work covered by this Agreement.
22 However, except as specifically provided in the Compensation/Fee Rate Schedule
23 attached to the approved Task Order or as expressly identified in this Agreement, no
24 portion of the services pertinent to this Agreement shall be subcontracted without prior
25 written approval and authorization by DISTRICT.
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1 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
2 Schedule attached to the approved Task Order or as expressly identified in this
3 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
4 of equal or greater competence upon written approval by DISTRICT. In the event that
5 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
6 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
7 provisions of this Agreement.

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

14
15 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of
17 an approved Task Order without the prior written approval of DISTRICT'S General
18 Manager-Chief Engineer. If at any time during the performance of an approved Task
19 Order, CONSULTANT believes that it is necessary to include certain work or services
20 which are not clearly covered under the scope of an approved Task Order,
21 CONSULTANT shall immediately notify the Project Manager in writing of
22 CONSULTANT'S assertion that the work is out of scope. Said notification by
23 CONSULTANT to the Project Manager shall not in any way be construed as proving
24 that the work or services in question are outside the scope of the Task Order. The
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
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1 event the Project Manager determines that CONSULTANT is correct, the additional
2 work or services shall be authorized by a new or revised Task Order that covers the new
3 scope, cost and schedule. In the event that such notification is not given or if the
4 Project 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
12 request 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
23 effective date of deletion; the amount of the payment shall be prorated to the total
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1 services necessary for completion of the Task Order. No work product for the deleted
2 services shall be provided to DISTRICT.

3 22. DISPUTES

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

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

23. ASSIGNMENT

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

24. CONFLICT OF INTEREST

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

25. JURISDICTION/LAW/SEVERABILITY

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

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

26. WAIVER

1
2 Any waiver by DISTRICT of any breach of any one or more of the terms of this
3 Agreement shall not be construed to be a waiver of any subsequent or other breach of
4 the same or any other term thereof. Failure on the part of DISTRICT to require exact,
5 full and complete compliance with any terms of this Agreement shall not be construed
6 as in any manner changing the terms hereof, or estopping DISTRICT from enforcement
7 hereof.
8

27. NON-DISCRIMINATION

9
10 In the performance of the terms of this Agreement, CONSULTANT shall not engage in
11 nor permit others he may employ to engage in discrimination in the employment of
12 persons because of the race, color, national origin or ancestry, religion, physical
13 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
14 condition, marital status or sex of such persons, in accordance with the provision of
15 California Labor Code Section 1735.
16

28. CONFIDENTIALITY OF DATA

17
18 All financial, statistical, personal, technical or other data and information made
19 available to CONSULTANT shall not be disclosed (in whole or in part) by
20 CONSULTANT to any third parties and shall be protected by CONSULTANT from
21 unauthorized use and disclosure. The only exception to this shall be if disclosure is
22 approved in advance in writing by DISTRICT or if the disclosure is made to
23 CONSULTANT'S subcontractors as anticipated by this Agreement.
24

25 CONSULTANT shall refer all requests for information to DISTRICT. These same
26 requirements shall be applicable to any of CONSULTANT'S subcontractors.
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1 CONSULTANT shall include the requirements stated in this section of the Agreement
2 with any of its subcontractors.

3 29. DISCREPANCIES

4 In the event of any conflict between the provisions of this Agreement and any Task
5 Order, the provisions of this Agreement shall govern.

6 30. NON-APPROPRIATION OF FUNDS

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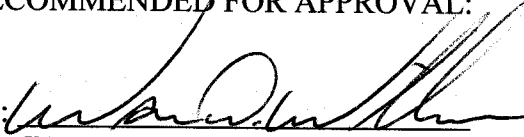
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

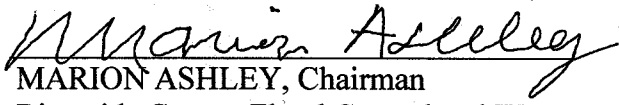
APR 09 2013

(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

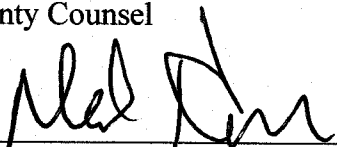
By: 
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

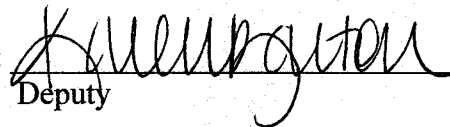
APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: 
NEAL R. KIPNIS
Deputy County Counsel

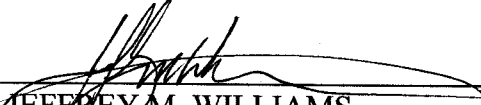
By: 
Deputy

(SEAL)

Multi-Year Consulting Services Agreement
w/Tetra Tech Bas
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/27/13

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TETRA TECH BAS, INC.

By: 
JEFFREY M. WILLIAMS
Vice President & Chief Financial Officer

Multi-Year Consulting Services Agreement
w/Tetra Tech Bas
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/27/13

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 Order(s) issued to CONSULTANT:

1. GEOTECHNICAL ENGINEERING

Prepare geotechnical report(s) to address all geotechnical related issues including, but not limited to:

- Grading and Site Clearing
- Seepage Control and Dewatering Analysis
- Foundation Preparation
- Pavement Design
- Compacted Fills
- Soil Classification and Physical Properties
- Slope Stability and Protection
- Seismic Stability
- Open and Braced Excavation (Shallow/Deep)
- Material Testing

2. FIELD AND LABORATORY TESTING AND REPORTING

Perform material (such as earthwork and concrete construction) testing and reporting services. Testing may consist of, but not be limited to the following:

- Soil Sieve and Proctor Testing
- Soil Consolidation Testing
- Field Density Testing
- Concrete Cylinder Fabrication and Testing
- Asphalt Concrete Testing

CONSULTANT may also be called upon to evaluate the ability of subsurface soils to support in-ground disposal of concentrated stormwater via infiltration. Infiltration analysis typically consists of exploratory site evaluation, in-situ permeability testing and laboratory analysis of soil samples collected from relevant soil horizons. Results of in-situ permeability testing and laboratory analysis and recommendations based upon the results are presented in a concise report which will assist the DISTRICT in the design of infiltration systems. Test may consist of, but not be limited to the following:

- Double Ring Infiltration Tests
- Standard Percolation Tests
- Test Pits
- Piezometers (Groundwater Level Monitoring)

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

The Scope of Services for _____, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall constitute an approved Task Order pursuant to the Agreement between 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 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 _____, 20_____
(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

TETRA TECH BAS, INC.

By: _____
JEFFREY M. WILLIAMS
Vice President & Chief Financial Officer

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 to FY 2015-16

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and SWG, Inc. doing business as Earth Systems Southwest, hereinafter called "CONSULTANT", hereby agree as follows:

1. PROJECT

CONSULTANT shall provide professional geotechnical engineering and ancillary services, on an as-needed basis as requested by DISTRICT, for DISTRICT'S capital improvements program in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide on-call geotechnical engineering and testing related services, as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, in support of DISTRICT'S capital improvement projects. During the term of this Agreement, CONSULTANT may be invited to submit proposals for one or more 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", "Task Order Approval Form", attached hereto and made a part hereof. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division

1 3 of the Business and Professions Code, and shall be wholly responsible for the
2 completeness and accuracy of all data, technical studies, reports, plans, specifications
3 and estimates prepared pursuant to this Agreement, and shall check all such material
4 accordingly.

5 3. PERSONNEL

6 A. Project Manager

7 For each Task Order, DISTRICT shall designate a representative who shall act
8 as DISTRICT'S Project Manager ("Project Manager"). The Project Manager
9 shall have authority to act on behalf of DISTRICT for all purposes under this
10 Task Order. DISTRICT shall provide written notice to CONSULTANT of any
11 change in Project Manager assignment for a given Task Order.
12

13 B. CONSULTANT'S Representative

14 CONSULTANT shall appoint a designated Representative for each assigned
15 Task Order who shall be responsible for coordinating all aspects of the assigned
16 Task Order. CONSULTANT'S Representative shall be available to
17 DISTRICT'S Project Manager at reasonable times. CONSULTANT may
18 appoint another person as Representative upon written notice to DISTRICT.
19

20 C. Substitution of Key Personnel

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

3 4. TERM

4 The term of this Agreement shall become effective on the date this Agreement is
5 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
6 required date for completion of an assigned Task Order, provided that such Task Order
7 was approved prior to June 30, 2016 and completed by December 31, 2016.

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed one hundred fifty thousand
13 dollars (\$150,000) in any Fiscal Year and shall not exceed the sum of four hundred fifty
14 thousand dollars (\$450,000) over the entire term of this Agreement.

15 6. PAYMENT

16 Payments shall be made in accordance with the Compensation/Fee Rate Schedule
17 attached to the approved Task Order. Progress payments, if permitted in the approved
18 Task Order, shall be processed no more than once per month. Upon satisfactory
19 performance of CONSULTANT'S services pursuant to an approved Task Order,
20 DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S
21 receipt of CONSULTANT'S appropriate invoices. DISTRICT shall not pay interest or
22 finance charge on any outstanding balance(s). CONSULTANT shall submit its invoice,
23 in arrears, no later than sixty (60) calendar days following the month for which
24 satisfactory performance of CONSULTANT'S services were rendered pursuant to an
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1 approved Task Order. Failure to submit a timely invoice will result in non-payment of
2 services. DISTRICT shall not be responsible for payment of any of CONSULTANT'S
3 invoices submitted after the 60-day period. CONSULTANT shall keep employee and
4 expense records according to customary accounting methods and such records shall,
5 upon request, be available for inspection by DISTRICT to verify the invoices of
6 CONSULTANT. All invoices shall itemize charges to conform to the
7 Compensation/Fee Rate Schedule negotiated for the Task Order. DISTRICT shall
8 notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of
9 receipt.
10

11 7. PROJECT PERFORMANCE

12 A. Commencement of Services

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

15 B. Time of Completion

16 Time is of the essence in the performance of this Agreement. CONSULTANT
17 shall complete services in accordance with the schedule(s) set forth in the
18 approved Task Order(s).
19

20 8. LICENSES – CONSULTANT, its employees, agents, contractors and subcontractors
21 shall possess appropriate Federal and/or State permits and maintain professional
22 licenses required by the applicable Federal, State and local regulations at all times while
23 performing services under this Agreement.
24

25 9. STANDARD OF CARE

26 While performing the services, CONSULTANT shall exercise the reasonable
27 professional care and skill customarily exercised by reputable members of
28

1 CONSULTANT'S profession practicing in the State of California, and shall use
2 reasonable diligence and best judgment while exercising CONSULTANT'S professional
3 skill and expertise. By executing this Agreement, CONSULTANT represents and
4 maintains that CONSULTANT has the necessary experience and expertise to skillfully
5 perform all services, duties and obligations required by this Agreement and to fully and
6 adequately complete each approved Task Order.

7
8 10. ERRORS AND OMISSIONS

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

14 11. PERMITS AND RIGHTS OF ENTRY

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

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

5 RIVERSIDE COUNTY FLOOD CONTROL	SWG, INC.
6 AND WATER CONSERVATION DISTRICT	(dba Earth Systems Southwest)
7 1995 Market Street	1680 Illinois Avenue, Ste. 20,
Riverside, CA 92501	Perris, CA 92571
8 Attn: Design and Construction Division	Attn: Mark Spykerman

9 13. REQUIRED INSURANCE

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

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

18
19 A. Workers' Compensation

20 If CONSULTANT has employees as defined by the State of California,
21 CONSULTANT shall maintain statutory Workers' Compensation Insurance
22 (Coverage A) as prescribed by the laws of the State of California. Policy shall
23 include Employer's Liability (Coverage B) including Occupational Disease with
24 limits not less than \$1,000,000 per person per accident. Policy shall be endorsed
25 to waive subrogation in favor of DISTRICT and, if applicable, to provide a
26 Borrowed Servant/Alternate Employer endorsement.
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28

1 B. Commercial General Liability

2 Commercial General Liability insurance coverage, including but not limited to,
3 premises liability, unmodified contractual liability, products and completed
4 operations liability, personal and advertising injury, and cross liability coverage,
5 covering claims which may arise from or out of CONSULTANT'S performance
6 of its obligations hereunder. Policy shall name Riverside County Flood Control
7 and Water Conservation District, the County of Riverside, its agencies, districts,
8 special districts, and departments, their respective directors, officers, Board of
9 Supervisors, elected or appointed officials, employees, agents or representatives
10 as additional insureds. Policy's limit of liability shall not be less than
11 \$1,000,000 per occurrence combined single limit. If such insurance contains a
12 general aggregate limit, it shall apply separately to this Agreement or be no less
13 than two (2) times the occurrence limit.
14

15 C. Vehicle Liability

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

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

16 E. General Insurance Provisions – All Lines

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

- 9
- 10 3) CONSULTANT shall cause their insurance carrier(s) to furnish
11 DISTRICT with either: 1) a properly executed original certificate(s) of
12 insurance and original certified copies of endorsements effecting
13 coverage as required herein; or 2) if requested to do so orally or in
14 writing by the County Risk Manager, provide original certified copies of
15 policies including all endorsements and all attachments thereto, showing
16 such insurance is in full force and effect. Further, said certificate(s) and
17 policies of insurance shall contain the covenant of the insurance
18 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
19 prior to any material modification, cancellation, expiration, or reduction
20 in coverage of such insurance. In the event of a material modification,
21 cancellation, expiration, or reduction in coverage, this Agreement shall
22 terminate forthwith, unless DISTRICT receives, prior to such effective
23 date, another properly executed original certificate of insurance and
24 original copies of endorsements or original certified policies, including
25 all endorsements and attachments thereto, evidencing coverages and the
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1 insurance required herein is in full force and effect. Individual(s)
2 authorized by the insurance carrier to do so on its behalf shall sign the
3 original endorsements for each policy and the certificate of insurance.

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

9
10 5) If, during the term of this Agreement or any extension thereof, there is a
11 material change in the scope of services; or there is a material change in
12 the equipment to be used in the performance of the scope of work which
13 will add additional exposures (such as the use of aircraft, watercraft,
14 cranes, etc.); or the term of this Agreement, including any extensions
15 thereof, exceeds five (5) years, the District reserves the right to adjust the
16 types of insurance and the monetary limits of liability required under this
17 Agreement, if, in the County Risk Manager's reasonable judgment, the
18 amount or type of insurance carried by CONSULTANT has become
19 inadequate.
20

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

23
24 7) The insurance requirements contained in this Agreement may be met
25 with a program(s) of self-insurance acceptable to DISTRICT.
26
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1 8) CONSULTANT agrees to notify DISTRICT of any claim by a third
2 party or any incident or event that may give rise to a claim arising from
3 the performance of this Agreement.

4 14. INDEMNIFICATION

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

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

19 With respect to any of CONSULTANT'S indemnification requirements,
20 CONSULTANT shall, at its sole cost, have the right to use counsel of their own choice
21 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
22 action without the prior consent of DISTRICT; provided, however, that such
23 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
24 CONSULTANT'S indemnification obligations to DISTRICT.
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1 CONSULTANT'S indemnification obligations shall be satisfied when CONSULTANT
2 has provided to DISTRICT the appropriate form of dismissal (or similar document)
3 relieving DISTRICT from any liability for the claim, proceeding or action involved.

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

7 In the event there is conflict between this section and California Civil Code Section
8 2782, this section shall be interpreted to comply with California Civil Code Section
9 2782. Such interpretation shall not relieve CONSULTANT from indemnifying
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and
11 appointed officials, employees, agents and representatives) or the County of Riverside
12 to the fullest extent allowed by law.
13

14 15. WORK PRODUCT

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

4 16. TERMINATION

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

6 A. Agreement

- 7 1) Terminate this Agreement without cause upon providing
8 CONSULTANT thirty (30) days written notice stating the extent and
9 effective date of termination; or
10
11 2) Upon five (5) days written notice, terminate this Agreement for
12 CONSULTANT default, if CONSULTANT refuses or fails to comply
13 with the provisions of this Agreement or fails to make progress so as to
14 endanger performance and does not cure such failure within a reasonable
15 period of time. In the event of such termination, DISTRICT may
16 proceed with the work in a manner deemed proper to DISTRICT.
17

18 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall:

- 19 i) stop all work under this Agreement on the date specified in the Notice of
20 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
21 extent, if any, as directed by DISTRICT, any equipment, data or reports which,
22 if the Agreement had been completed, would have been required to be furnished
23 to DISTRICT.
24

25 In the event DISTRICT terminates this Agreement, DISTRICT shall make
26 payment for all services performed in accordance with this Agreement to the
27 date of termination, a total amount which bears the same ratio to the total
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1 maximum fee otherwise payable under this Agreement as the services actually
2 bear to the total services necessary for performance of this Agreement.
3 Notwithstanding any of the other provision of this Agreement, CONSULTANT
4 rights under this Agreement shall terminate (except for fees accrued prior to the
5 date of termination) upon dishonesty, or a willful or material breach of this
6 Agreement by CONSULTANT; or in the event of CONSULTANT'S
7 unwillingness or inability for any reason whatsoever to perform the duties
8 hereunder; or if the Agreement is terminated pursuant to Section 27 (NON-
9 DISCRIMINATION). In such event, CONSULTANT shall not be entitled to
10 any further compensation under this Agreement. The rights and remedies of
11 DISTRICT provided in this section shall not be exclusive and are in addition to
12 any other rights and remedies provided by law or under this Agreement.
13

14 B. Approved Task Order

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

25
26 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
27 make payment for all services satisfactorily performed in accordance with the
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1 negotiated Task Order to the date of termination, a total amount which bears the
2 same ratio to the total maximum fee otherwise payable under the Task Order as
3 the services actually bear to the total services necessary for performance of the
4 Task Order.

5 17. Basic Services of CONSULTANT

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

12 All work prepared by CONSULTANT shall be subject to the approval of the Project
13 Manager. CONSULTANT shall allow the Project Manager to inspect and review
14 CONSULTANT'S work in progress at any reasonable time. All reports, working
15 papers, and similar work products prepared for submission in the course of providing
16 services under this Agreement shall be submitted to the Project Manager in draft form.

18 In the event that Project Manager, in his or her sole discretion, determines the formally
19 submitted work product to be inadequate, CONSULTANT may be required to revise
20 and resubmit the work at no additional cost to DISTRICT. Should CONSULTANT fail
21 to make requested corrections in a timely manner, such corrections may be made by
22 DISTRICT and the cost thereof charged to CONSULTANT. The responsibility for
23 accuracy and completeness of such items remains solely that of CONSULTANT.

25 Neither DISTRICT'S review nor approval shall give rise to any liability or
26 responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve
27 CONSULTANT of its professional responsibilities or obligations under this Agreement.
28

18. PREVAILING WAGE

1 All workers shall be paid not less than the general prevailing rate of wages and benefits
2 for work of a similar character in the locality in which the work is performed, as
3 provided in California Labor Code Sections 1770 et seq. Pursuant to the California
4 Labor Code, DISTRICT has obtained for the Board of Supervisors of DISTRICT from
5 the Director of the Department of Industrial Relations, State of California, his
6 determinations of general prevailing rates of per diem wages applicable to the work, and
7 for holiday and overtime work, including employer payments for health and welfare,
8 pension, vacation, apprentices and similar purposes for each craft, classification or type
9 of workman needed, as set forth on the schedule which is on file at DISTRICT office,
10 and which will be made available to any interested person upon request.
11

13 19. INDEPENDENT CONTRACTOR

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

19 20. SUBCONTRACTING

20 CONSULTANT may, at CONSULTANT'S own expense, retain or employ sub-
21 consultants to accomplish certain portions of the work covered by this Agreement.
22 However, except as specifically provided in the Compensation/Fee Rate Schedule
23 attached to the approved Task Order or as expressly identified in this Agreement, no
24 portion of the services pertinent to this Agreement shall be subcontracted without prior
25 written approval and authorization by DISTRICT.
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1 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
2 Schedule attached to the approved Task Order or as expressly identified in this
3 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
4 of equal or greater competence upon written approval by DISTRICT. In the event that
5 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
6 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
7 provisions of this Agreement.

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

14
15 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

16 CONSULTANT shall not perform any additional work or services outside the scope of
17 an approved Task Order without the prior written approval of DISTRICT'S General
18 Manager-Chief Engineer. If at any time during the performance of an approved Task
19 Order, CONSULTANT believes that it is necessary to include certain work or services
20 which are not clearly covered under the scope of an approved Task Order,
21 CONSULTANT shall immediately notify the Project Manager in writing of
22 CONSULTANT'S assertion that the work is out of scope. Said notification by
23 CONSULTANT to the Project Manager shall not in any way be construed as proving
24 that the work or services in question are outside the scope of the Task Order. The
25 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
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1 event the Project Manager determines that CONSULTANT is correct, the additional
2 work or services shall be authorized by a new or revised Task Order that covers the new
3 scope, cost and schedule. In the event that such notification is not given or if the
4 Project 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

12 At any time during the performance of an approved Task Order, DISTRICT may
13 request that CONSULTANT perform extra services. Any work which is determined by
14 DISTRICT to be necessary for the proper completion of the approved Task Order, but
15 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
16 necessary at the time the scope of services for the assigned Task Order was approved,
17 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
18 revised Task Order.
19

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

3 22. DISPUTES

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

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

4 23. ASSIGNMENT

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

7 24. 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 25. JURISDICTION/LAW/SEVERABILITY

16 This Agreement is to be construed in accordance with the laws of the State of
17 California. If any provision of this Agreement is held by a court of competent
18 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be
19 declared severable and shall be given full force and effect to the extent possible.
20

21 Any legal action, in law or in 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.
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26. WAIVER

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

27. NON-DISCRIMINATION

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

28. CONFIDENTIALITY OF DATA

16
17
18 All financial, statistical, personal, technical or other data and information made
19 available to CONSULTANT shall not be disclosed (in whole or in part) by
20 CONSULTANT to any third parties and shall be protected by CONSULTANT from
21 unauthorized use and disclosure. The only exception to this shall be if disclosure is
22 approved in advance in writing by DISTRICT or if the disclosure is made to
23 CONSULTANT'S subcontractors as anticipated by this Agreement.

24
25 CONSULTANT shall refer all requests for information to DISTRICT. These same
26 requirements shall be applicable to any of CONSULTANT'S subcontractors.

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1 CONSULTANT shall include the requirements stated in this section of the Agreement
2 with any of its subcontractors.

3 29. DISCREPANCIES

4 In the event of any conflict between the provisions of this Agreement and any Task
5 Order, the provisions of this Agreement shall govern.

6 30. NON-APPROPRIATION OF FUNDS

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

APR 09 2013

(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

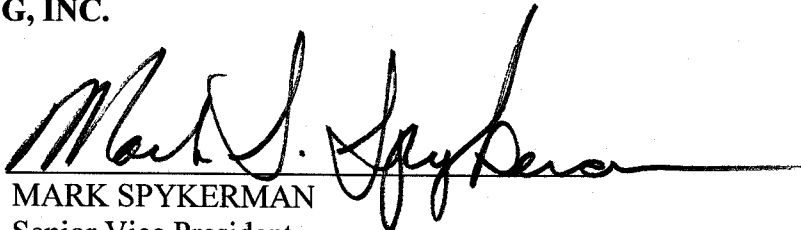
By: Kellie D. Gatten
Deputy

(SEAL)

Multi-Year Consulting Services Agreement w/SWG, Inc.
(dba Earth Systems Southwest)
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13

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SWG, INC.

By: 
MARK SPYKERMAN
Senior Vice President

Multi-Year Consulting Services Agreement w/SWG, Inc.
(dba Earth Systems Southwest)
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13

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 Order(s) issued to CONSULTANT:

1. GEOTECHNICAL ENGINEERING

Prepare geotechnical report(s) to address all geotechnical related issues including, but not limited to:

- Grading and Site Clearing
- Seepage Control and Dewatering Analysis
- Foundation Preparation
- Pavement Design
- Compacted Fills
- Soil Classification and Physical Properties
- Slope Stability and Protection
- Seismic Stability
- Open and Braced Excavation (Shallow/Deep)
- Material Testing

2. FIELD AND LABORATORY TESTING AND REPORTING

Perform material (such as earthwork and concrete construction) testing and reporting services. Testing may consist of, but not be limited to the following:

- Soil Sieve and Proctor Testing
- Soil Consolidation Testing
- Field Density Testing
- Concrete Cylinder Fabrication and Testing
- Asphalt Concrete Testing

CONSULTANT may also be called upon to evaluate the ability of subsurface soils to support in-ground disposal of concentrated stormwater via infiltration. Infiltration analysis typically consists of exploratory site evaluation, in-situ permeability testing and laboratory analysis of soil samples collected from relevant soil horizons. Results of in-situ permeability testing and laboratory analysis and recommendations based upon the results are presented in a concise report which will assist the DISTRICT in the design of infiltration systems. Test may consist of, but not be limited to the following:

- Double Ring Infiltration Tests
- Standard Percolation Tests
- Test Pits
- Piezometers (Groundwater Level Monitoring)

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

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CONSULTANT: _____

PROJECT NAME: _____

The Scope of Services for _____, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, shall constitute an approved Task Order pursuant to the Agreement between 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 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 _____, 20_____
(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

SWG, INC.

By: _____
MARK SPYKERMAN
Senior Vice President

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 to FY 2015-16

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

1. PROJECT

CONSULTANT shall provide professional geotechnical engineering and ancillary services, on an as-needed basis as requested by DISTRICT, for DISTRICT'S capital improvements program in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONSULTANT shall provide on-call geotechnical engineering and testing related services, as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof, in support of DISTRICT'S capital improvement projects. During the term of this Agreement, CONSULTANT may be invited to submit proposals for one or more 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", "Task Order Approval Form", attached hereto and made a part hereof. CONSULTANT understands and expressly agrees that the execution of this Agreement by CONSULTANT and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

By entering into this Agreement, CONSULTANT assumes responsible charge of the work pursuant to Section 6703 of the Professional Engineers Act; Chapter 7 of Division

1 3 of the Business and Professions Code, and shall be wholly responsible for the
2 completeness and accuracy of all data, technical studies, reports, plans, specifications
3 and estimates prepared pursuant to this Agreement, and shall check all such material
4 accordingly.

5 3. PERSONNEL

6 A. Project Manager

7 For each Task Order, DISTRICT shall designate a representative who shall act
8 as DISTRICT'S Project Manager ("Project Manager"). The Project Manager
9 shall have authority to act on behalf of DISTRICT for all purposes under this
10 Task Order. DISTRICT shall provide written notice to CONSULTANT of any
11 change in Project Manager assignment for a given Task Order.
12

13 B. CONSULTANT'S Representative

14 CONSULTANT shall appoint a designated Representative for each assigned
15 Task Order who shall be responsible for coordinating all aspects of the assigned
16 Task Order. CONSULTANT'S Representative shall be available to
17 DISTRICT'S Project Manager at reasonable times. CONSULTANT may
18 appoint another person as Representative upon written notice to DISTRICT.
19

20 C. Substitution of Key Personnel

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

3 4. TERM

4 The term of this Agreement shall become effective on the date this Agreement is
5 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
6 required date for completion of an assigned Task Order, provided that such Task Order
7 was approved prior to June 30, 2016 and completed by December 31, 2016.

8 5. COMPENSATION

9 CONSULTANT shall receive compensation for all services satisfactorily performed
10 under this Agreement in accordance with the terms of the approved Task Order(s). The
11 total amount to be paid to CONSULTANT for the performance of all Task Orders
12 approved pursuant to this Agreement shall not exceed one hundred fifty thousand
13 dollars (\$150,000) in any Fiscal Year and shall not exceed the sum of four hundred fifty
14 thousand dollars (\$450,000) over the entire term of this Agreement.
15

16 6. PAYMENT

17 Payments shall be made in accordance with the Compensation/Fee Rate Schedule
18 attached to the approved Task Order. Progress payments, if permitted in the approved
19 Task Order, shall be processed no more than once per month. Upon satisfactory
20 performance of CONSULTANT'S services pursuant to an approved Task Order,
21 DISTRICT shall pay CONSULTANT within forty-five (45) days after DISTRICT'S
22 receipt of CONSULTANT'S appropriate invoices. DISTRICT shall not pay interest or
23 finance charge on any outstanding balance(s). CONSULTANT shall submit its invoice,
24 in arrears, no later than sixty (60) calendar days following the month for which
25 satisfactory performance of CONSULTANT'S services were rendered pursuant to an
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1 approved Task Order. Failure to submit a timely invoice will result in non-payment of
2 services. DISTRICT shall not be responsible for payment of any of CONSULTANT'S
3 invoices submitted after the 60-day period. CONSULTANT shall keep employee and
4 expense records according to customary accounting methods and such records shall,
5 upon request, be available for inspection by DISTRICT to verify the invoices of
6 CONSULTANT. All invoices shall itemize charges to conform to the
7 Compensation/Fee Rate Schedule negotiated for the Task Order. DISTRICT shall
8 notify CONSULTANT of any disputed amounts on invoice within thirty (30) days of
9 receipt.
10

11 7. PROJECT PERFORMANCE

12 A. Commencement of Services

13 CONSULTANT shall commence performance of the services for each Task
14 Order upon receipt of DISTRICT'S approved Task Order.
15

16 B. Time of Completion

17 Time is of the essence in the performance of this Agreement. CONSULTANT
18 shall complete services in accordance with the schedule(s) set forth in the
19 approved Task Order(s).
20

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

25 9. STANDARD OF CARE

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

7 10. ERRORS AND OMISSIONS

8 In the event CONSULTANT'S data, technical studies, reports or any work products
9 contain any errors or omissions that cause DISTRICT to incur additional expense
10 beyond what would have otherwise resulted if there were no errors or omissions in
11 CONSULTANT'S data, technical studies, reports or any work products, such additional
12 expense shall be borne solely by CONSULTANT.
13

14 11. PERMITS AND RIGHTS OF ENTRY

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

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

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT 1995 Market Street Riverside, CA 92501 Attn: Design and Construction Division	GEI CONSULTANTS, INC. 2141 Palomar Airport Rd., Ste.160 Carlsbad, CA 92011-1463 Attn: Thomas Keller
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13. REQUIRED INSURANCE

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

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

A. Workers' Compensation

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

1 B. Commercial General Liability

2 Commercial General Liability insurance coverage, including but not limited to,
3 premises liability, unmodified contractual liability, products and completed
4 operations liability, personal and advertising injury, and cross liability coverage,
5 covering claims which may arise from or out of CONSULTANT'S performance
6 of its obligations hereunder. Policy shall name Riverside County Flood Control
7 and Water Conservation District, the County of Riverside, its agencies, districts,
8 special districts, and departments, their respective directors, officers, Board of
9 Supervisors, elected or appointed officials, employees, agents or representatives
10 as additional insureds. Policy's limit of liability shall not be less than
11 \$1,000,000 per occurrence combined single limit. If such insurance contains a
12 general aggregate limit, it shall apply separately to this Agreement or be no less
13 than two (2) times the occurrence limit.
14

15 C. Vehicle Liability

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

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

16
17 E. General Insurance Provisions – All Lines

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

- 9
- 10 3) CONSULTANT shall cause their insurance carrier(s) to furnish
11 DISTRICT with either: 1) a properly executed original certificate(s) of
12 insurance and original certified copies of endorsements effecting
13 coverage as required herein; or 2) if requested to do so orally or in
14 writing by the County Risk Manager, provide original certified copies of
15 policies including all endorsements and all attachments thereto, showing
16 such insurance is in full force and effect. Further, said certificate(s) and
17 policies of insurance shall contain the covenant of the insurance
18 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
19 prior to any material modification, cancellation, expiration, or reduction
20 in coverage of such insurance. In the event of a material modification,
21 cancellation, expiration, or reduction in coverage, this Agreement shall
22 terminate forthwith, unless DISTRICT receives, prior to such effective
23 date, another properly executed original certificate of insurance and
24 original copies of endorsements or original certified policies, including
25 all endorsements and attachments thereto, evidencing coverages and the
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1 insurance required herein is in full force and effect. Individual(s)
2 authorized by the insurance carrier to do so on its behalf shall sign the
3 original endorsements for each policy and the certificate of insurance.

- 4 4) It is understood and agreed by the parties hereto that the
5 CONSULTANT'S insurance shall be construed as primary insurance,
6 and the DISTRICT'S insurance and/or deductibles and/or self-insured
7 retentions or self-insured programs shall not be construed as
8 contributory.
- 9
- 10 5) If, during the term of this Agreement or any extension thereof, there is a
11 material change in the scope of services; or there is a material change in
12 the equipment to be used in the performance of the scope of work which
13 will add additional exposures (such as the use of aircraft, watercraft,
14 cranes, etc.); or the term of this Agreement, including any extensions
15 thereof, exceeds five (5) years, the District reserves the right to adjust the
16 types of insurance and the monetary limits of liability required under this
17 Agreement, if, in the County Risk Manager's reasonable judgment, the
18 amount or type of insurance carried by CONSULTANT has become
19 inadequate.
- 20
- 21 6) CONSULTANT shall pass down the insurance obligations contained
22 herein to all tiers of subcontractors working under this Agreement.
- 23
- 24 7) The insurance requirements contained in this Agreement may be met
25 with a program(s) of self-insurance acceptable to DISTRICT.
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1 8) CONSULTANT agrees to notify DISTRICT of any claim by a third
2 party or any incident or event that may give rise to a claim arising from
3 the performance of this Agreement.

4 14. INDEMNIFICATION

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

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

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

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

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

7 In the event there is conflict between this section and California Civil Code Section
8 2782, this section shall be interpreted to comply with California Civil Code Section
9 2782. Such interpretation shall not relieve CONSULTANT from indemnifying
10 DISTRICT (including its directors, officers, Board of Supervisors, elected and
11 appointed officials, employees, agents and representatives) or the County of Riverside
12 to the fullest extent allowed by law.

14 15. WORK PRODUCT

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

4 16. TERMINATION

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

6 A. Agreement

- 7
- 8 1) Terminate this Agreement without cause upon providing
9 CONSULTANT thirty (30) days written notice stating the extent and
10 effective date of termination; or
- 11 2) Upon five (5) days written notice, terminate this Agreement for
12 CONSULTANT default, if CONSULTANT refuses or fails to comply
13 with the provisions of this Agreement or fails to make progress so as to
14 endanger performance and does not cure such failure within a reasonable
15 period of time. In the event of such termination, DISTRICT may
16 proceed with the work in a manner deemed proper to DISTRICT.

17
18 In the event DISTRICT issues a Notice of Termination, CONSULTANT shall:

19 i) stop all work under this Agreement on the date specified in the Notice of
20 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
21 extent, if any, as directed by DISTRICT, any equipment, data or reports which,
22 if the Agreement had been completed, would have been required to be furnished
23 to DISTRICT.

24
25 In the event DISTRICT terminates this Agreement, DISTRICT shall make
26 payment for all services performed in accordance with this Agreement to the
27 date of termination, a total amount which bears the same ratio to the total
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1 maximum fee otherwise payable under this Agreement as the services actually
2 bear to the total services necessary for performance of this Agreement.
3 Notwithstanding any of the other provision of this Agreement, CONSULTANT
4 rights under this Agreement shall terminate (except for fees accrued prior to the
5 date of termination) upon dishonesty, or a willful or material breach of this
6 Agreement by CONSULTANT; or in the event of CONSULTANT'S
7 unwillingness or inability for any reason whatsoever to perform the duties
8 hereunder; or if the Agreement is terminated pursuant to Section 27 (NON-
9 DISCRIMINATION). In such event, CONSULTANT shall not be entitled to
10 any further compensation under this Agreement. The rights and remedies of
11 DISTRICT provided in this section shall not be exclusive and are in addition to
12 any other rights and remedies provided by law or under this Agreement.
13

14 B. Approved Task Order

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

25 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
26 make payment for all services satisfactorily performed in accordance with the
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1 negotiated Task Order to the date of termination, a total amount which bears the
2 same ratio to the total maximum fee otherwise payable under the Task Order as
3 the services actually bear to the total services necessary for performance of the
4 Task Order.

5 17. Basic Services of CONSULTANT

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

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

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

19. INDEPENDENT CONTRACTOR

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

20. SUBCONTRACTING

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

1 Should one or more of the sub-consultants, as identified in the Compensation/Fee Rate
2 Schedule attached to the approved Task Order or as expressly identified in this
3 Agreement, become unavailable, CONSULTANT may substitute other sub-consultants
4 of equal or greater competence upon written approval by DISTRICT. In the event that
5 DISTRICT and CONSULTANT cannot agree as to the substitution of the sub-
6 consultant, DISTRICT may terminate the Task Order, pursuant to the applicable
7 provisions of this Agreement.
8

9 In the event CONSULTANT subcontracts any portion of CONSULTANT'S duties
10 under this Agreement, CONSULTANT shall require its sub-consultants to comply with
11 the terms of this Agreement in the same manner as required of CONSULTANT. The
12 fact that CONSULTANT employs sub-consultants not in his regular employ shall not
13 relieve CONSULTANT of any responsibility regarding the adequacy of the sub-
14 consultant's work performed or services provided pursuant to this Agreement.
15

16 21. CHANGES TO TASK ORDER SCOPE OF SERVICES

17 CONSULTANT shall not perform any additional work or services outside the scope of
18 an approved Task Order without the prior written approval of DISTRICT'S General
19 Manager-Chief Engineer. If at any time during the performance of an approved Task
20 Order, CONSULTANT believes that it is necessary to include certain work or services
21 which are not clearly covered under the scope of an approved Task Order,
22 CONSULTANT shall immediately notify the Project Manager in writing of
23 CONSULTANT'S assertion that the work is out of scope. Said notification by
24 CONSULTANT to the Project Manager shall not in any way be construed as proving
25 that the work or services in question are outside the scope of the Task Order. The
26 Project Manager must approve or reject CONSULTANT'S assertion in writing. In the
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1 event the Project Manager determines that CONSULTANT is correct, the additional
2 work or services shall be authorized by a new or revised Task Order that covers the new
3 scope, cost and schedule. In the event that such notification is not given or if the
4 Project 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

12 At any time during the performance of an approved Task Order, DISTRICT may
13 request that CONSULTANT perform extra services. Any work which is determined by
14 DISTRICT to be necessary for the proper completion of the approved Task Order, but
15 which neither CONSULTANT nor DISTRICT reasonably anticipated would be
16 necessary at the time the scope of services for the assigned Task Order was approved,
17 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
18 revised Task Order.
19

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

3 22. DISPUTES

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

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

4 23. ASSIGNMENT

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

7 24. 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 25. JURISDICTION/LAW/SEVERABILITY

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

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

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

27. NON-DISCRIMINATION

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

28. CONFIDENTIALITY OF DATA

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17
18 All financial, statistical, personal, technical or other data and information made
19 available to CONSULTANT shall not be disclosed (in whole or in part) by
20 CONSULTANT to any third parties and shall be protected by CONSULTANT from
21 unauthorized use and disclosure. The only exception to this shall be if disclosure is
22 approved in advance in writing by DISTRICT or if the disclosure is made to
23 CONSULTANT'S subcontractors as anticipated by this Agreement.

24
25 CONSULTANT shall refer all requests for information to DISTRICT. These same
26 requirements shall be applicable to any of CONSULTANT'S subcontractors.

1 CONSULTANT shall include the requirements stated in this section of the Agreement
2 with any of its subcontractors.

3 29. DISCREPANCIES

4 In the event of any conflict between the provisions of this Agreement and any Task
5 Order, the provisions of this Agreement shall govern.

6 30. NON-APPROPRIATION OF FUNDS

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

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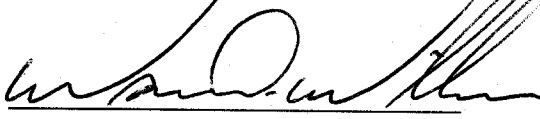
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

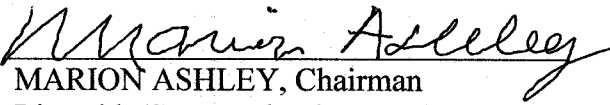
APR 09 2013

(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

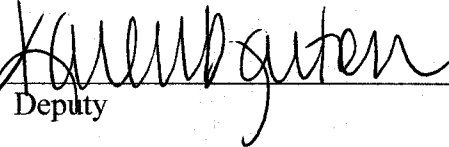
APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: 
NEAL R. KIPNIS
Deputy County Counsel

By: 
Deputy

(SEAL)

Multi-Year Consulting Services Agreement
w/GEI Consultants
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13

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GEI CONSULTANTS, INC.

By: *Thomas O. Keller*
THOMAS O. KELLER
Vice President

**Multi-Year Consulting Services Agreement
w/GEI Consultants
For Professional Geotechnical Engineering and Ancillary Services
FY 2012-13 through FY 2015-16
02/28/13**