

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

6078



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
September 10, 2013

SUBJECT: Prequalification for On-Call Underground Utility Potholing Services

RECOMMENDED MOTION:

1. Approve the On-Call Underground Utility Potholing Services Providers List (Attachment "A") for use on an as-needed basis, for Fiscal Years 2013-2014 through 2015-2016; and

Continued on Page 2

Steve Thomas

for

WARREN D. WILLIAMS

General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	\$600,000	In Current Year Budget:	Yes
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	\$600,000	For Fiscal Year:	13/14; 14/15; 15/16; 16/17

SOURCE OF FUNDS:

25110-25170 947400-947520 525440 Zone 1 through Zone 7 Const/Maint/Misc
Professional Services

**Positions To Be
Deleted Per A-30** ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:

APPROVE

BY:

Steven C. Horn
Steven C. Horn, MPA

County Executive Office Signature

☐ Policy

☐ Consent

☐ Policy

☐ Consent

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried,
IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone and Benoit

Nays: None

Absent: Ashley

Date: September 10, 2013

xc: Flood

Kecia Harper-Ihem

Clerk of the Board

By: *Kecia Harper-Ihem*

Deputy

Prev. Agn. Ref.:

District: All

Agenda Number:

11-2

ATTACHMENTS FILED

FORM APPROVED COUNTY COUNSEL
DATE 8/26/13
BY: NEAL R. KIPNIS
SCAL PROCEDURES APPROVED
SEANINE J. REY, FINANCE DIRECTOR
DATE 8/26/13
BY: SEANINE J. REY

Dep't Recomm.:

Per Exec. Ofc.:

2013 SEP 10 10:08 AM
RECEIVED VIA RIVERSIDE COUNTY

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

SUBJECT: Prequalification for On-Call Underground Utility Potholing Services

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RECOMMENDED MOTION (continued):

2. Approve four (4) Multi-year Consulting Services Agreements between the District and the following On-Call Underground Utility Potholing Services providers: AZTEC Engineering California, Inc.; C Below, Inc.; SAF-r-DIG Utility Surveys, Inc.; and Underground Solutions, Inc.; and
3. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
4. Authorize the District's General Manager-Chief Engineer to sign any necessary amendments to the Agreements that do not increase the cost to the District and do not materially change the scope of work.

BACKGROUND:

The primary purpose of the prequalification for On-Call Underground Utility Potholing Services Providers List (On-Call List) is to provide expedited access to specialized technical expertise and services necessary to support the District's ongoing Capital Improvements Program. To allow the District to implement its Capital Improvement more effectively, District staff is recommending that the agreement limits set forth in Board Policy H-7 (\$100,000 per project with a further \$100,000 cap in a single year) be increased for the establishment of this On-Call List. The subject On-Call List would authorize individual agreement limits of \$150,000 for the entire term of the agreement.

Pursuant to Board Policy H-7, on March 28 2013, the District mailed a Request for Qualifications to various utility potholing services firms with the intent to establish a pre-qualified list of underground utility potholing service providers. A Notice of Availability was also published in The Press Enterprise and Desert Sun on March 28, 2013. The Request for Qualifications was made available to the public on the District's website from March 28, 2013 through May 9, 2013.

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

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

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
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BACKGROUND (continued):

The On-Call List (Attachment "A") was developed as a result of this Request for Qualifications. The On-Call List is valid for three years. Under the Multi-year Consulting Services Agreements (Agreements) recommended for approval via this action, the District will have the ability, but no obligation, to utilize the services of the selected firms on an as-needed basis for Fiscal Years 2013-2014, 2014-2015 and 2015-2016. Work initiated during these fiscal years must be completed no later than the end of Fiscal Year 2016-2017. Prior to its expiration on August 30, 2016, the District will issue another Request for Qualifications.

County Counsel has approved the Agreements as to legal form.

FINANCIAL:

Sufficient funding to accomplish the District's Capital Improvements Program annual work plan is available in the District's Zone 1 through Zone 7 budget(s) for Fiscal Year 2013-2014 and will be included in the proposed budget(s) for Fiscal Years 2014-2015, 2015-2016 and 2016-2017, as appropriate.

AMR:blj

ATTACHMENT A**ON-CALL UNDERGROUND UTILITY POTHOLING SERVICES PROVIDERS LIST**

(Services with a not-to-exceed limit of \$150,000 for each individual agreement)

AZTEC Engineering California, Inc.

C Below, Inc.

SAF-r-DIG Utility Surveys, Inc.

Underground Solutions, Inc.

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Underground Utility Potholing and Ancillary Services
FY 2013-14 to FY 2015-16

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

1. PROJECT

CONTRACTOR shall provide on-call underground utility potholing and ancillary services in support of DISTRICT'S capital improvement programs, on an as-needed basis as requested by DISTRICT, in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONTRACTOR shall furnish all tools, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner those underground utility potholing and ancillary services as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof. During the term of this Agreement, CONTRACTOR 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" attached hereto and made a part hereof. CONTRACTOR understands and expressly agrees that the execution of this Agreement by CONTRACTOR and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

3. PERSONNEL

A. Project Manager

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

B. CONTRACTOR'S Representative

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

C. Substitution of Key Personnel

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

1 4. TERM

2 The term of this Agreement shall become effective on the date the Agreement is
3 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
4 required date for completion of an assigned Task Order, provided that such Task Order
5 was approved prior to June 30, 2016 and completed by June 30, 2017.

6 5. COMPENSATION

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

12 6. PAYMENT

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

11 A. Commencement of Services

12 CONTRACTOR shall commence performance of the services for each Task
13 Order upon receipt of DISTRICT'S approved Task Order(s).

14 B. Time of Completion

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

18 8. LICENSES

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

23 9. STANDARD OF CARE

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

6 10. ERRORS AND OMISSIONS

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

14 DISTRICT shall obtain all rights of entry as may be required to allow CONTRACTOR
15 to perform the proposed consulting services within and upon privately-owned property.
16 All permits and rights of entry as may be required from any and all affected public
17 entities shall be obtained by CONTRACTOR. Sufficient evidence of having obtained
18 such permits and/or rights of entry shall be furnished to DISTRICT by
19 CONTRACTOR, prior to initiation of work. CONTRACTOR will prosecute the work
20 in such a manner as to minimize public inconvenience and possible hazard, and will
21 restore the streets and other work areas to their original condition and former usefulness
22 as soon as practicable. CONTRACTOR shall be responsible for the protection of public
23 and private property adjacent to the work and shall exercise due caution to avoid
24 damage to 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: Surveying and Mapping Division Utility Coordinator	UNDERGROUND SOLUTIONS, INC. 6549 Mission Gorge Road, #335 San Diego, CA 92120 Attn: Dave Munson
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13. REQUIRED INSURANCE

CONTRACTOR 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 CONTRACTOR'S obligation to indemnify or hold DISTRICT harmless, CONTRACTOR 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 CONTRACTOR has employees as defined by the State of California, CONTRACTOR 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.

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B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the Riverside County Flood Control and Water Conservation District, the County of Riverside, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, elected or appointed officials, employees, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Said insurance must NOT contain, as respects the work covered hereunder, any exclusions as to bodily injury or death or property damage arising out of blasting, explosion, or underground damage to wire, pipes, conduits, mains, sewers, tanks, tunnels or any similar property, i.e. [the so-called "X C U" exclusions to not exist in the policy(s)]; and that the District and the municipal corporation (i.e., City or County) within which the work is being performed, as named as an additional insured as respects the work covered hereunder.

C. Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than

1 \$1,000,000 per occurrence combined single limit. If such insurance contains a
2 general aggregate limit, it shall apply separately to this Agreement or be no less
3 than two (2) times the occurrence limit. Policy shall name the Riverside
4 County Flood Control and Water Conservation District, the County of Riverside,
5 its agencies, districts, special districts, and departments, their respective
6 directors, officers, Board of Supervisors, elected or appointed officials,
7 employees, agents or representatives as additional insureds.

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9 D. Professional Liability

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

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25 E. General Insurance Provisions – All Lines

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

5 2) CONTRACTOR must declare its insurance self-insured retention for
6 each coverage required herein. If any such self-insured retention
7 exceeds \$500,000 per occurrence each such retention shall have the prior
8 written consent of the County Risk Manager before the commencement
9 of operations under this Agreement. Upon notification of self-insured
10 retention deemed unacceptable to DISTRICT, and at the election of the
11 County's Risk Manager, CONTRACTOR'S carriers shall either: 1)
12 reduce or eliminate such self-insured retention with respect to this
13 Agreement with DISTRICT, or 2) procure a bond which guarantees
14 payment of losses and related investigations, claims administration, and
15 defense costs and expenses.
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18 3) CONTRACTOR shall cause their insurance carrier(s) to furnish
19 DISTRICT with: 1) a properly executed original certificate(s) of
20 insurance and original certified copies of endorsements effecting
21 coverage as required herein; and 2) if requested to do so orally or in
22 writing by the County Risk Manager, provide original certified copies of
23 policies including all endorsements and all attachments thereto, showing
24 such insurance is in full force and effect. Further, said certificate(s) and
25 policies of insurance shall contain the covenant of the insurance
26 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
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1 prior to any material modification, cancellation, expiration, or reduction
2 in coverage of such insurance. In the event of a material modification,
3 cancellation, expiration, or reduction in coverage, this Agreement shall
4 terminate forthwith, unless DISTRICT receives, prior to such effective
5 date, another properly executed original certificate of insurance and
6 original copies of endorsements or original certified policies, including
7 all endorsements and attachments thereto, evidencing coverages set forth
8 herein and the insurance required herein is in full force and effect.
9 Individual(s) authorized by the insurance carrier to do so on its behalf
10 shall sign the original endorsements for each policy and the certificate of
11 insurance.
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- 13 4) It is understood and agreed by the parties hereto that CONTRACTOR'S
14 insurance shall be construed as primary insurance, and DISTRICT'S
15 insurance and/or deductibles and/or self-insured retentions or self-
16 insured programs shall not be construed as contributory.
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18 5) If, during the term of this Agreement or any extension thereof, there is a
19 material change in the scope of services; or there is a material change in
20 the equipment to be used in the performance of the scope of work which
21 will add additional exposures (such as the use of aircraft, watercraft,
22 cranes, etc.); or the term of this Agreement, including any extensions
23 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
24 types of insurance required under this Agreement and the monetary
25 limits of liability for the insurance coverage currently required herein, if,
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1 in the County Risk Manager's reasonable judgment, the amount or type
2 of insurance carried by CONTRACTOR has become inadequate.

3 6) CONTRACTOR shall pass down the insurance obligations contained
4 herein to all tiers of subcontractors working under this Agreement.

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

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

11 14. INDEMNIFICATION

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

22 CONTRACTOR shall defend, at its sole expense, including all costs and fees (including
23 but not limited to attorney fees, cost of investigation, defense and settlements or
24 awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and
25 appointed officials, employees, agents and representatives) in any claim, proceeding or
26 action for which indemnification is required.
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1 With respect to any of CONTRACTOR'S indemnification requirements,
2 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
3 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
4 action without the prior consent of DISTRICT; provided, however, that such
5 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
6 CONTRACTOR'S indemnification obligations to DISTRICT.

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

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

13 In the event there is conflict between this section and California Civil Code Section
14 2782, this section shall be interpreted to comply with California Civil Code Section
15 2782. Such interpretation shall not relieve CONTRACTOR from indemnifying
16 DISTRICT (including its directors, officers, Board of Supervisors, elected and
17 appointed officials, employees, agents and representatives) or the County of Riverside
18 to the fullest extent allowed by law.

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21 15. WORK PRODUCT

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

16. TERMINATION

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

A. Agreement

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

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

- i) stop all work under this Agreement on the date specified in the Notice of Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the

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

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

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

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

14 The scope of services associated with the performance of any specific Task Order under
15 this Agreement shall be expressly defined and agreed upon prior to the approval of the
16 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the
17 approved scope of services must be authorized by DISTRICT'S General Manager-Chief
18 Engineer, and shall be made in writing.
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20 All work prepared by CONTRACTOR shall be subject to the approval of Project
21 Manager. CONTRACTOR shall allow Project Manager to inspect and review
22 CONTRACTOR'S work in progress at any reasonable time. All reports, working
23 papers, and similar work products prepared for submission in the course of providing
24 services under this Agreement shall be submitted to the Project Manager in draft form.
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26 In the event that Project Manager, in his or her sole discretion, determines the formally
27 submitted work product to be inadequate, CONTRACTOR may be required to revise
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1 and resubmit the work at no additional cost to DISTRICT. Should CONTRACTOR fail
2 to make requested corrections in a timely manner, such corrections may be made by
3 DISTRICT, and the cost thereof charged to CONTRACTOR. The responsibility for
4 accuracy and completeness of such items remains solely that of CONTRACTOR.
5 Neither DISTRICT'S review nor approval shall give rise to any liability or
6 responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve
7 CONTRACTOR of its professional responsibilities or obligations under this
8 Agreement.

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10 18. PREVAILING WAGE

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

21
22 19. INDEPENDENT CONTRACTOR

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

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

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

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONTRACTOR shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of DISTRICT'S General Manager-Chief Engineer. If at any time during the performance of an approved Task

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

20 At any time during the performance of an approved Task Order, DISTRICT may
21 request that CONTRACTOR perform extra services. Any work which is determined by
22 DISTRICT to be necessary for the proper completion of the approved Task Order, but
23 which neither CONTRACTOR nor DISTRICT reasonably anticipated would be
24 necessary at the time the scope of services for the assigned Task Order was approved,
25 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
26 revised Task Order.
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1 At any time during the performance of the Task Order, Project Manager, upon
2 providing five (5) days written notice to CONTRACTOR, may delete services and the
3 associated fees from the Task Order. In the event DISTRICT requests deletion of
4 services from the Task Order, DISTRICT shall make payment for all services
5 satisfactorily performed in accordance with the negotiated Task Order up to the
6 effective date of deletion; the amount of the payment shall be prorated to the total
7 services necessary for completion of the Task Order. No work product for the deleted
8 services shall be provided to DISTRICT.

9
10 22. DISPUTES

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

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

C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONTRACTOR 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 CONTRACTOR without the prior written consent of DISTRICT.

24. CONFLICT OF INTEREST

CONTRACTOR 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. CONTRACTOR 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.

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

7 26. WAIVER

8 Any waiver by DISTRICT of any breach of any one or more of the terms of this
9 Agreement shall not be construed to be a waiver of any subsequent or other breach of
10 the same or any other term thereof. Failure on the part of DISTRICT to require exact,
11 full and complete compliance with any terms of this Agreement shall not be construed
12 as in any manner changing the terms hereof, or estopping DISTRICT from enforcement
13 hereof.
14

15 27. NON-DISCRIMINATION

16 In the performance of the terms of this Agreement, CONTRACTOR shall not engage in
17 nor permit others he may employ to engage in discrimination in the employment of
18 persons because of the race, color, national origin or ancestry, religion, physical
19 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
20 condition, marital status or sex of such persons, in accordance with the provision of
21 California Labor Code Section 1735.
22

23 28. CONFIDENTIALITY OF DATA

24 All financial, statistical, personal, technical or other data and information made
25 available to CONTRACTOR shall not be disclosed (in whole or in part) by
26 CONTRACTOR to any third parties and shall be protected by CONTRACTOR from
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1 unauthorized use and disclosure. The only exception to this shall be if disclosure is
2 approved in advance in writing by DISTRICT or if the disclosure is made to
3 CONTRACTOR'S subcontractors as anticipated by this Agreement.

4 CONTRACTOR shall refer all requests for information to DISTRICT. These same
5 requirements shall be applicable to any of CONTRACTOR'S subcontractors.
6 CONTRACTOR shall include the requirements stated in this section of the Agreement
7 with any of its subcontractors.

8
9 29. DISCREPANCIES

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

12 30. NON-APPROPRIATION OF FUNDS

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

22 //

23 //

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

SEP 10 2013

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

By: Karen Bayton
Deputy

(SEAL)

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/Underground Solutions, Inc. (FY 2013-14 to FY 2015-16)

07/25/2013

AMR:blj

UNDERGROUND SOLUTIONS, INC.By: 

MICHAEL E. ARME
President

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/Underground Solutions, Inc. (FY 2013-14 to FY 2015-16)
07/25/2013
AMR:blj

ATTACHMENT "A"
SCOPE OF SERVICES

CONTRACTOR may be asked to perform underground utility potholing and ancillary services, including but not limited to one or more of the following types of services, as specifically directed in Task Order(s) issued to CONTRACTOR:

1. Preparatory Work
 - a. Utility research
 - b. Utility coordination
2. Field Work
 - a. Utility marking
 - b. Utility potholing
 - c. Design/Implementation of traffic control services

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

CONTRACTOR: _____

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

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

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

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

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

UNDERGROUND SOLUTIONS, INC.

By: _____
MICHAEL E. ARME
President

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Underground Utility Potholing and Ancillary Services
FY 2013-14 to FY 2015-16

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and SAF-r-DIG Utility Surveys, Inc., hereinafter called "CONTRACTOR", hereby agree as follows:

1. PROJECT

CONTRACTOR shall provide on-call underground utility potholing and ancillary services in support of DISTRICT'S capital improvement programs, on an as-needed basis as requested by DISTRICT, in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONTRACTOR shall furnish all tools, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner those underground utility potholing and ancillary services as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof. During the term of this Agreement, CONTRACTOR 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" attached hereto and made a part hereof. CONTRACTOR understands and expressly agrees that the execution of this Agreement by CONTRACTOR and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

3. PERSONNEL

A. Project Manager

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

B. CONTRACTOR'S Representative

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

C. Substitution of Key Personnel

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

1 4. TERM

2 The term of this Agreement shall become effective on the date the Agreement is
3 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
4 required date for completion of an assigned Task Order, provided that such Task Order
5 was approved prior to June 30, 2016 and completed by June 30, 2017.

6 5. COMPENSATION

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

12 6. PAYMENT

13 Payments shall be made in accordance with the Compensation/Fee Rate Schedule
14 attached to the approved Task Order. Progress payments, if permitted in the approved
15 Task Order, shall be processed no more than once per month. Upon satisfactory
16 performance of CONTRACTOR'S services pursuant to an approved Task Order,
17 DISTRICT shall pay CONTRACTOR within forty-five (45) days after DISTRICT'S
18 receipt of CONTRACTOR'S appropriate invoices. DISTRICT shall not pay interest or
19 finance charges on any outstanding balance(s). CONTRACTOR shall submit its
20 invoice, in arrears, no later than thirty (30) calendar days following the month for which
21 satisfactory performance of CONTRACTOR'S services were rendered. Failure to
22 submit a timely invoice will result in non-payment of services. DISTRICT shall not be
23 responsible for payment of any of CONTRACTOR'S invoices submitted after the 30-
24 day period. CONTRACTOR shall keep employee and expense records according to
25 26 27 28

1 customary accounting methods and such records shall, upon request, be available for
2 inspection by DISTRICT to verify the invoices of CONTRACTOR. All invoices shall
3 itemize charges to conform to the Compensation/Fee Rate Schedule negotiated for the
4 Task Order. Except as specifically provided for and stated in this Agreement or the
5 Compensation/Fee Rate Schedule negotiated for the Task Order, DISTRICT shall not
6 be responsible for payment of any of CONTRACTOR'S expenses related to this
7 Agreement. DISTRICT shall notify CONTRACTOR of any disputed amounts on
8 invoice within thirty (30) days of receipt.
9

10 7. PROJECT PERFORMANCE

11 A. Commencement of Services

12 CONTRACTOR shall commence performance of the services for each Task
13 Order upon receipt of DISTRICT'S approved Task Order(s).

14 B. Time of Completion

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

18 8. LICENSES

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

23 9. STANDARD OF CARE

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

6 10. ERRORS AND OMISSIONS

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

12 11. PERMITS AND RIGHTS OF ENTRY

13 DISTRICT shall obtain all rights of entry as may be required to allow CONTRACTOR
14 to perform the proposed consulting services within and upon privately-owned property.
15 All permits and rights of entry as may be required from any and all affected public
16 entities shall be obtained by CONTRACTOR. Sufficient evidence of having obtained
17 such permits and/or rights of entry shall be furnished to DISTRICT by
18 CONTRACTOR, prior to initiation of work. CONTRACTOR will prosecute the work
19 in such a manner as to minimize public inconvenience and possible hazard, and will
20 restore the streets and other work areas to their original condition and former usefulness
21 as soon as practicable. CONTRACTOR shall be responsible for the protection of public
22 and private property adjacent to the work and shall exercise due caution to avoid
23 damage to 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: Surveying and Mapping Division Utility Coordinator	SAF-r-DIG UTILITY SURVEYS, INC. 12210 Michigan Avenue, Suite 24 Grand Terrace, CA 92313 Attn: Lena L. Granet
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13. REQUIRED INSURANCE

CONTRACTOR 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 CONTRACTOR'S obligation to indemnify or hold DISTRICT harmless, CONTRACTOR 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 CONTRACTOR has employees as defined by the State of California, CONTRACTOR 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 CONTRACTOR'S performance
6 of its obligations hereunder. Policy shall name the Riverside County Flood
7 Control and Water Conservation District, the County of Riverside, its agencies,
8 districts, special districts, and departments, their respective directors, officers,
9 Board of Supervisors, elected or appointed officials, employees, agents or
10 representatives as additional insureds. Policy's limit of liability shall not be less
11 than \$1,000,000 per occurrence combined single limit. If such insurance
12 contains a general aggregate limit, it shall apply separately to this Agreement or
13 be no less than two (2) times the occurrence limit. Said insurance must NOT
14 contain, as respects the work covered hereunder, any exclusions as to bodily
15 injury or death or property damage arising out of blasting, explosion, or
16 underground damage to wire, pipes, conduits, mains, sewers, tanks, tunnels or
17 any similar property, i.e. [the so-called "X C U" exclusions to not exist in the
18 policy(s)]; and that the District and the municipal corporation (i.e., City or
19 County) within which the work is being performed, as named as an additional
20 insured as respects the work covered hereunder.

21 C. Vehicle Liability

22 If vehicles or mobile equipment are used in the performance of the obligations
23 under this Agreement, CONTRACTOR shall maintain liability insurance for all
24 owned, non-owned or hired vehicles so used in an amount not less than
25

1 \$1,000,000 per occurrence combined single limit. If such insurance contains a
2 general aggregate limit, it shall apply separately to this Agreement or be no less
3 than two (2) times the occurrence limit. Policy shall name the Riverside
4 County Flood Control and Water Conservation District, the County of Riverside,
5 its agencies, districts, special districts, and departments, their respective
6 directors, officers, Board of Supervisors, elected or appointed officials,
7 employees, agents or representatives as additional insureds.
8

9 D. Professional Liability

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

25 E. General Insurance Provisions – All Lines

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

5 2) CONTRACTOR must declare its insurance self-insured retention for
6 each coverage required herein. If any such self-insured retention
7 exceeds \$500,000 per occurrence each such retention shall have the prior
8 written consent of the County Risk Manager before the commencement
9 of operations under this Agreement. Upon notification of self-insured
10 retention deemed unacceptable to DISTRICT, and at the election of the
11 County's Risk Manager, CONTRACTOR'S carriers shall either: 1)
12 reduce or eliminate such self-insured retention with respect to this
13 Agreement with DISTRICT, or 2) procure a bond which guarantees
14 payment of losses and related investigations, claims administration, and
15 defense costs and expenses.
16

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

- 13 4) It is understood and agreed by the parties hereto that CONTRACTOR'S
14 insurance shall be construed as primary insurance, and DISTRICT'S
15 insurance and/or deductibles and/or self-insured retentions or self-
16 insured programs shall not be construed as contributory.
17
18 5) If, during the term of this Agreement or any extension thereof, there is a
19 material change in the scope of services; or there is a material change in
20 the equipment to be used in the performance of the scope of work which
21 will add additional exposures (such as the use of aircraft, watercraft,
22 cranes, etc.); or the term of this Agreement, including any extensions
23 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
24 types of insurance required under this Agreement and the monetary
25 limits of liability for the insurance coverage currently required herein, if,
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1 in the County Risk Manager's reasonable judgment, the amount or type
2 of insurance carried by CONTRACTOR has become inadequate.

3 6) CONTRACTOR shall pass down the insurance obligations contained
4 herein to all tiers of subcontractors working under this Agreement.

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

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

11 14. INDEMNIFICATION

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

22 CONTRACTOR shall defend, at its sole expense, including all costs and fees (including
23 but not limited to attorney fees, cost of investigation, defense and settlements or
24 awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and
25 appointed officials, employees, agents and representatives) in any claim, proceeding or
26 action for which indemnification is required.
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1 With respect to any of CONTRACTOR'S indemnification requirements,
2 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
3 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
4 action without the prior consent of DISTRICT; provided, however, that such
5 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
6 CONTRACTOR'S indemnification obligations to DISTRICT.

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

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

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

21 15. WORK PRODUCT

22 CONTRACTOR shall provide DISTRICT with all data, calculations, technical studies,
23 computer files, field notes, drawings, logs, report(s) and any other documents as set
24 forth in the approved Task Order(s). All data, calculations, technical studies, computer
25 files, field notes, drawings, logs, and reports and any other documents produced by
26 CONTRACTOR in the performance of the services as set forth in the approved Task
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1 Order(s) shall be and remain the sole property of DISTRICT. CONTRACTOR shall
2 not publish or transfer any material produced or resulting from activities supported by
3 this Agreement without the written consent of the General Manager-Chief Engineer of
4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
5 that the right to any and all copyright and/or trademark in and to the material is
6 expressly reserved to DISTRICT. If any such material is copyrighted, the parties hereto
7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
9 to authorize others to do so, provided written credit is given the author.
10

11 16. TERMINATION

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

13 A. Agreement

- 14 1) Terminate this Agreement without cause upon providing
15 CONTRACTOR thirty (30) days written notice stating the extent and
16 effective date of termination; or
17
18 2) Upon five (5) days written notice, terminate this Agreement for
19 CONTRACTOR default, if CONTRACTOR refuses or fails to comply
20 with the provisions of this Agreement or fails to make progress so as to
21 endanger performance and does not cure such failure within a reasonable
22 period of time. In the event of such termination, DISTRICT may
23 proceed with the work in a manner deemed proper to DISTRICT.
24

25 In the event DISTRICT issues a Notice of Termination, CONTRACTOR shall:

- 26 i) stop all work under this Agreement on the date specified in the Notice of
27 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
28

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

4 In the event DISTRICT terminates this Agreement, DISTRICT shall make
5 payment for all services satisfactorily performed in accordance with this
6 Agreement to the date of termination, a total amount which bears the same ratio
7 to the total maximum fee otherwise payable under this Agreement as the
8 services actually bear to the total services necessary for performance of this
9 Agreement. Notwithstanding any of the other provision of this Agreement,
10 CONTRACTOR rights under this Agreement shall terminate (except for fees
11 accrued prior to the date of termination) upon dishonesty, or a willful or material
12 breach of this Agreement by CONTRACTOR; or in the event of
13 CONTRACTOR'S unwillingness or inability for any reason whatsoever to
14 perform the duties hereunder; or if the Agreement is terminated pursuant to
15 Section 27 (NON-DISCRIMINATION). In such event, CONTRACTOR shall
16 not be entitled to any further compensation under this Agreement. The rights
17 and remedies of DISTRICT provided in this section shall not be exclusive and
18 are in addition to any other rights and remedies provided by law or under this
19 Agreement.
20
21

22 B. Approved Task Order
23

24 Terminate an approved Task Order or portion thereof without cause upon
25 providing CONTRACTOR fourteen (14) days written notice stating the extent
26 and effective date of termination. In the event DISTRICT issues a Notice of
27 Termination for an approved Task Order, CONTRACTOR shall: i) stop all work
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1 under the Task Order on the date specified in the Notice of Termination; and ii)
2 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
3 directed by DISTRICT, any equipment, data, reports or other documents which,
4 if the Task Order had been completed, would have been required to be furnished
5 to DISTRICT.

6 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
7 make payment for all services satisfactorily performed in accordance with the
8 negotiated Task Order to the date of termination, a total amount which bears the
9 same ratio to the total maximum fee otherwise payable under the Task Order as
10 the services actually bear to the total services necessary for performance of the
11 Task Order.
12

13 17. BASIC SERVICES OF CONTRACTOR

14 The scope of services associated with the performance of any specific Task Order under
15 this Agreement shall be expressly defined and agreed upon prior to the approval of the
16 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the
17 approved scope of services must be authorized by DISTRICT'S General Manager-Chief
18 Engineer, and shall be made in writing.
19

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

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

10 18. PREVAILING WAGE

11 All workers shall be paid not less than the general prevailing rate of wages and benefits
12 for work of a similar character in the locality in which the work is performed, as
13 provided in California Labor Code Sections 1770 et seq. Pursuant to the California
14 Labor Code, DISTRICT has obtained for the Board of Supervisors of DISTRICT from
15 the Director of the Department of Industrial Relations, State of California, his
16 determinations of general prevailing rates of per diem wages applicable to the work, and
17 for holiday and overtime work, including employer payments for health and welfare,
18 pension, vacation, apprentices and similar purposes for each craft, classification or type
19 of workman needed, as set forth on the schedule which is on file at DISTRICT office,
20 and which will be made available to any interested person upon request.
21

22 19. INDEPENDENT CONTRACTOR

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

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

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

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONTRACTOR shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of DISTRICT'S General Manager-Chief Engineer. If at any time during the performance of an approved Task

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

20 At any time during the performance of an approved Task Order, DISTRICT may
21 request that CONTRACTOR perform extra services. Any work which is determined by
22 DISTRICT to be necessary for the proper completion of the approved Task Order, but
23 which neither CONTRACTOR nor DISTRICT reasonably anticipated would be
24 necessary at the time the scope of services for the assigned Task Order was approved,
25 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
26 revised Task Order.
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1 At any time during the performance of the Task Order, Project Manager, upon
2 providing five (5) days written notice to CONTRACTOR, may delete services and the
3 associated fees from the Task Order. In the event DISTRICT requests deletion of
4 services from the Task Order, DISTRICT shall make payment for all services
5 satisfactorily performed in accordance with the negotiated Task Order up to the
6 effective date of deletion; the amount of the payment shall be prorated to the total
7 services necessary for completion of the Task Order. No work product for the deleted
8 services shall be provided to DISTRICT.
9

10 22. DISPUTES

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

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

C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONTRACTOR 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 CONTRACTOR without the prior written consent of DISTRICT.

24. CONFLICT OF INTEREST

CONTRACTOR 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. CONTRACTOR 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.

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

7 26. WAIVER

8 Any waiver by DISTRICT of any breach of any one or more of the terms of this
9 Agreement shall not be construed to be a waiver of any subsequent or other breach of
10 the same or any other term thereof. Failure on the part of DISTRICT to require exact,
11 full and complete compliance with any terms of this Agreement shall not be construed
12 as in any manner changing the terms hereof, or estopping DISTRICT from enforcement
13 hereof.
14

15 27. NON-DISCRIMINATION

16 In the performance of the terms of this Agreement, CONTRACTOR shall not engage in
17 nor permit others he may employ to engage in discrimination in the employment of
18 persons because of the race, color, national origin or ancestry, religion, physical
19 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
20 condition, marital status or sex of such persons, in accordance with the provision of
21 California Labor Code Section 1735.
22

23 28. CONFIDENTIALITY OF DATA

24 All financial, statistical, personal, technical or other data and information made
25 available to CONTRACTOR shall not be disclosed (in whole or in part) by
26 CONTRACTOR to any third parties and shall be protected by CONTRACTOR from
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1 unauthorized use and disclosure. The only exception to this shall be if disclosure is
2 approved in advance in writing by DISTRICT or if the disclosure is made to
3 CONTRACTOR'S subcontractors as anticipated by this Agreement.

4 CONTRACTOR shall refer all requests for information to DISTRICT. These same
5 requirements shall be applicable to any of CONTRACTOR'S subcontractors.
6 CONTRACTOR shall include the requirements stated in this section of the Agreement
7 with any of its subcontractors.

8
9 29. DISCREPANCIES

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

12 30. NON-APPROPRIATION OF FUNDS

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

22 //

23 //

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

SEP 10 2013

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By: Steve Thomas

WARREN D. WILLIAMS
General Manager-Chief Engineer

By: Marion Ashley

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: Neal R. Kipnis

NEAL R. KIPNIS
Deputy County Counsel

By: Kellie Hampton

Deputy

(SEAL)

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/SAF-r-DIG Utility Surveys, Inc. (FY 2013-14 to FY 2015-16)

07/25/2013

AMR:blj

SAF-R-DIG UTILITY SURVEYS, INC.

By:



NINA S. MARCINEK

President

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/SAF-r-DIG Utility Surveys, Inc. (FY 2013-14 to FY 2015-16)
07/25/2013
AMR:blj

ATTACHMENT "A"
SCOPE OF SERVICES

CONTRACTOR may be asked to perform underground utility potholing and ancillary services, including but not limited to one or more of the following types of services, as specifically directed in Task Order(s) issued to CONTRACTOR:

1. Preparatory Work
 - a. Utility research
 - b. Utility coordination
2. Field Work
 - a. Utility marking
 - b. Utility potholing
 - c. Design/Implementation of traffic control services

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

CONTRACTOR: _____

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

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

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

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

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

SAF-R-DIG UTILITY SURVEYS, INC.

By: _____
NINA L. MARCINEK
President

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Underground Utility Potholing and Ancillary Services
FY 2013-14 to FY 2015-16

The Riverside County Flood Control and Water Conservation District, hereinafter called "DISTRICT", and AZTEC Engineering California, Inc., hereinafter called "CONTRACTOR", hereby agree as follows:

1. PROJECT

CONTRACTOR shall provide on-call underground utility potholing and ancillary services in support of DISTRICT'S capital improvement programs, on an as-needed basis as requested by DISTRICT, in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONTRACTOR shall furnish all tools, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner those underground utility potholing and ancillary services as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof. During the term of this Agreement, CONTRACTOR 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" attached hereto and made a part hereof. CONTRACTOR understands and expressly agrees that the execution of this Agreement by CONTRACTOR and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

3. PERSONNEL

A. Project Manager

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

B. CONTRACTOR'S Representative

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

C. Substitution of Key Personnel

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

1 4. TERM

2 The term of this Agreement shall become effective on the date the Agreement is
3 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
4 required date for completion of an assigned Task Order, provided that such Task Order
5 was approved prior to June 30, 2016 and completed by June 30, 2017.

6 5. COMPENSATION

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

12 6. PAYMENT

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

10 7. PROJECT PERFORMANCE

11 A. Commencement of Services

12 CONTRACTOR shall commence performance of the services for each Task
13 Order upon receipt of DISTRICT'S approved Task Order(s).

14 B. Time of Completion

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

18 8. LICENSES

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

23 9. STANDARD OF CARE

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

6 10. ERRORS AND OMISSIONS

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

13 11. PERMITS AND RIGHTS OF ENTRY

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

AZTEC ENGINEERING
CALIFORNIA, INC.
18510 Pasadena Street, Unit C
Lake Elsinore, CA 92530
Attn: George Enriquez

13. REQUIRED INSURANCE

CONTRACTOR 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 CONTRACTOR'S obligation to indemnify or hold DISTRICT harmless, CONTRACTOR 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 CONTRACTOR has employees as defined by the State of California, CONTRACTOR 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 CONTRACTOR'S performance
6 of its obligations hereunder. Policy shall name the Riverside County Flood
7 Control and Water Conservation District, the County of Riverside, its agencies,
8 districts, special districts, and departments, their respective directors, officers,
9 Board of Supervisors, elected or appointed officials, employees, agents or
10 representatives as additional insureds. Policy's limit of liability shall not be less
11 than \$1,000,000 per occurrence combined single limit. If such insurance
12 contains a general aggregate limit, it shall apply separately to this Agreement or
13 be no less than two (2) times the occurrence limit. Said insurance must NOT
14 contain, as respects the work covered hereunder, any exclusions as to bodily
15 injury or death or property damage arising out of blasting, explosion, or
16 underground damage to wire, pipes, conduits, mains, sewers, tanks, tunnels or
17 any similar property, i.e. [the so-called "X C U" exclusions to not exist in the
18 policy(s)]; and that the District and the municipal corporation (i.e., City or
19 County) within which the work is being performed, as named as an additional
20 insured as respects the work covered hereunder.
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24 C. Vehicle Liability

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

9 D. Professional Liability

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

25 E. General Insurance Provisions – All Lines

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

5 2) CONTRACTOR must declare its insurance self-insured retention for
6 each coverage required herein. If any such self-insured retention
7 exceeds \$500,000 per occurrence each such retention shall have the prior
8 written consent of the County Risk Manager before the commencement
9 of operations under this Agreement. Upon notification of self-insured
10 retention deemed unacceptable to DISTRICT, and at the election of the
11 County's Risk Manager, CONTRACTOR'S carriers shall either: 1)
12 reduce or eliminate such self-insured retention with respect to this
13 Agreement with DISTRICT, or 2) procure a bond which guarantees
14 payment of losses and related investigations, claims administration, and
15 defense costs and expenses.
16

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

- 13 4) It is understood and agreed by the parties hereto that CONTRACTOR'S
14 insurance shall be construed as primary insurance, and DISTRICT'S
15 insurance and/or deductibles and/or self-insured retentions or self-
16 insured programs shall not be construed as contributory.
17
18 5) If, during the term of this Agreement or any extension thereof, there is a
19 material change in the scope of services; or there is a material change in
20 the equipment to be used in the performance of the scope of work which
21 will add additional exposures (such as the use of aircraft, watercraft,
22 cranes, etc.); or the term of this Agreement, including any extensions
23 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
24 types of insurance required under this Agreement and the monetary
25 limits of liability for the insurance coverage currently required herein, if,
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1 in the County Risk Manager's reasonable judgment, the amount or type
2 of insurance carried by CONTRACTOR has become inadequate.

3 6) CONTRACTOR shall pass down the insurance obligations contained
4 herein to all tiers of subcontractors working under this Agreement.

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

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

11 14. INDEMNIFICATION

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

22 CONTRACTOR shall defend, at its sole expense, including all costs and fees (including
23 but not limited to attorney fees, cost of investigation, defense and settlements or
24 awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and
25 appointed officials, employees, agents and representatives) in any claim, proceeding or
26 action for which indemnification is required.
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1 With respect to any of CONTRACTOR'S indemnification requirements,
2 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
3 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
4 action without the prior consent of DISTRICT; provided, however, that such
5 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
6 CONTRACTOR'S indemnification obligations to DISTRICT.

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

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

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

21 15. WORK PRODUCT

22 CONTRACTOR shall provide DISTRICT with all data, calculations, technical studies,
23 computer files, field notes, drawings, logs, report(s) and any other documents as set
24 forth in the approved Task Order(s). All data, calculations, technical studies, computer
25 files, field notes, drawings, logs, and reports and any other documents produced by
26 CONTRACTOR in the performance of the services as set forth in the approved Task
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1 Order(s) shall be and remain the sole property of DISTRICT. CONTRACTOR shall
2 not publish or transfer any material produced or resulting from activities supported by
3 this Agreement without the written consent of the General Manager-Chief Engineer of
4 DISTRICT. If any such material is subject to copyright or trademark, the parties agree
5 that the right to any and all copyright and/or trademark in and to the material is
6 expressly reserved to DISTRICT. If any such material is copyrighted, the parties hereto
7 understand and agree that DISTRICT reserves a royalty-free, non-exclusive, and
8 irrevocable license to reproduce, publish, and use such material, in whole or in part, and
9 to authorize others to do so, provided written credit is given the author.
10

11 16. TERMINATION

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

13 A. Agreement

- 14 1) Terminate this Agreement without cause upon providing
15 CONTRACTOR thirty (30) days written notice stating the extent and
16 effective date of termination; or
17
18 2) Upon five (5) days written notice, terminate this Agreement for
19 CONTRACTOR default, if CONTRACTOR refuses or fails to comply
20 with the provisions of this Agreement or fails to make progress so as to
21 endanger performance and does not cure such failure within a reasonable
22 period of time. In the event of such termination, DISTRICT may
23 proceed with the work in a manner deemed proper to DISTRICT.
24

25 In the event DISTRICT issues a Notice of Termination, CONTRACTOR shall:

- 26 i) stop all work under this Agreement on the date specified in the Notice of
27 Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the
28

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

4 In the event DISTRICT terminates this Agreement, DISTRICT shall make
5 payment for all services satisfactorily performed in accordance with this
6 Agreement to the date of termination, a total amount which bears the same ratio
7 to the total maximum fee otherwise payable under this Agreement as the
8 services actually bear to the total services necessary for performance of this
9 Agreement. Notwithstanding any of the other provision of this Agreement,
10 CONTRACTOR rights under this Agreement shall terminate (except for fees
11 accrued prior to the date of termination) upon dishonesty, or a willful or material
12 breach of this Agreement by CONTRACTOR; or in the event of
13 CONTRACTOR'S unwillingness or inability for any reason whatsoever to
14 perform the duties hereunder; or if the Agreement is terminated pursuant to
15 Section 27 (NON-DISCRIMINATION). In such event, CONTRACTOR shall
16 not be entitled to any further compensation under this Agreement. The rights
17 and remedies of DISTRICT provided in this section shall not be exclusive and
18 are in addition to any other rights and remedies provided by law or under this
19 Agreement.
20
21

22 B. Approved Task Order
23

24 Terminate an approved Task Order or portion thereof without cause upon
25 providing CONTRACTOR fourteen (14) days written notice stating the extent
26 and effective date of termination. In the event DISTRICT issues a Notice of
27 Termination for an approved Task Order, CONTRACTOR shall: i) stop all work
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1 under the Task Order on the date specified in the Notice of Termination; and ii)
2 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
3 directed by DISTRICT, any equipment, data, reports or other documents which,
4 if the Task Order had been completed, would have been required to be furnished
5 to DISTRICT.

6 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
7 make payment for all services satisfactorily performed in accordance with the
8 negotiated Task Order to the date of termination, a total amount which bears the
9 same ratio to the total maximum fee otherwise payable under the Task Order as
10 the services actually bear to the total services necessary for performance of the
11 Task Order.
12

13 17. BASIC SERVICES OF CONTRACTOR

14 The scope of services associated with the performance of any specific Task Order under
15 this Agreement shall be expressly defined and agreed upon prior to the approval of the
16 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the
17 approved scope of services must be authorized by DISTRICT'S General Manager-Chief
18 Engineer, and shall be made in writing.
19

20 All work prepared by CONTRACTOR shall be subject to the approval of Project
21 Manager. CONTRACTOR shall allow Project Manager to inspect and review
22 CONTRACTOR'S work in progress at any reasonable time. All reports, working
23 papers, and similar work products prepared for submission in the course of providing
24 services under this Agreement shall be submitted to the Project Manager in draft form.
25 In the event that Project Manager, in his or her sole discretion, determines the formally
26 submitted work product to be inadequate, CONTRACTOR may be required to revise
27
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1 and resubmit the work at no additional cost to DISTRICT. Should CONTRACTOR fail
2 to make requested corrections in a timely manner, such corrections may be made by
3 DISTRICT, and the cost thereof charged to CONTRACTOR. The responsibility for
4 accuracy and completeness of such items remains solely that of CONTRACTOR.
5 Neither DISTRICT'S review nor approval shall give rise to any liability or
6 responsibility on the part of DISTRICT, or waive any of DISTRICT'S rights, or relieve
7 CONTRACTOR of its professional responsibilities or obligations under this
8 Agreement.
9

10 18. PREVAILING WAGE

11 All workers shall be paid not less than the general prevailing rate of wages and benefits
12 for work of a similar character in the locality in which the work is performed, as
13 provided in California Labor Code Sections 1770 et seq. Pursuant to the California
14 Labor Code, DISTRICT has obtained for the Board of Supervisors of DISTRICT from
15 the Director of the Department of Industrial Relations, State of California, his
16 determinations of general prevailing rates of per diem wages applicable to the work, and
17 for holiday and overtime work, including employer payments for health and welfare,
18 pension, vacation, apprentices and similar purposes for each craft, classification or type
19 of workman needed, as set forth on the schedule which is on file at DISTRICT office,
20 and which will be made available to any interested person upon request.
21

22 19. INDEPENDENT CONTRACTOR

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

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

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

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONTRACTOR shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of DISTRICT'S General Manager-Chief Engineer. If at any time during the performance of an approved Task

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

20 At any time during the performance of an approved Task Order, DISTRICT may
21 request that CONTRACTOR perform extra services. Any work which is determined by
22 DISTRICT to be necessary for the proper completion of the approved Task Order, but
23 which neither CONTRACTOR nor DISTRICT reasonably anticipated would be
24 necessary at the time the scope of services for the assigned Task Order was approved,
25 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
26 revised Task Order.
27
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1 At any time during the performance of the Task Order, Project Manager, upon
2 providing five (5) days written notice to CONTRACTOR, may delete services and the
3 associated fees from the Task Order. In the event DISTRICT requests deletion of
4 services from the Task Order, DISTRICT shall make payment for all services
5 satisfactorily performed in accordance with the negotiated Task Order up to the
6 effective date of deletion; the amount of the payment shall be prorated to the total
7 services necessary for completion of the Task Order. No work product for the deleted
8 services shall be provided to DISTRICT.
9

10 22. DISPUTES

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

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

7
8 C. Neither the pendency of a dispute nor its consideration by arbitration shall
9 excuse CONTRACTOR from full and timely performance in accordance with
10 the terms of this Agreement.

11 23. ASSIGNMENT

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

14 24. CONFLICT OF INTEREST

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

21 25. JURISDICTION/LAW/SEVERABILITY

22 This Agreement is to be construed in accordance with the laws of the State of
23 California. If any provision of this Agreement is held by a court of competent
24 jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be
25 declared severable and shall be given full force and effect to the extent possible.
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1 Any legal action, in law or equity related to the performance or interpretation of this
2 Agreement shall be filed only in the Superior Court for the State of California located in
3 Riverside, California, and the parties waive any provision of law providing for a change
4 of venue to another location. Prior to the filing of any legal action, the parties shall be
5 obligated to attend a mediation session with a neutral mediator to try to resolve the
6 dispute.

7 26. WAIVER

8 Any waiver by DISTRICT of any breach of any one or more of the terms of this
9 Agreement shall not be construed to be a waiver of any subsequent or other breach of
10 the same or any other term thereof. Failure on the part of DISTRICT to require exact,
11 full and complete compliance with any terms of this Agreement shall not be construed
12 as in any manner changing the terms hereof, or estopping DISTRICT from enforcement
13 hereof.
14

15 27. NON-DISCRIMINATION

16 In the performance of the terms of this Agreement, CONTRACTOR shall not engage in
17 nor permit others he may employ to engage in discrimination in the employment of
18 persons because of the race, color, national origin or ancestry, religion, physical
19 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
20 condition, marital status or sex of such persons, in accordance with the provision of
21 California Labor Code Section 1735.
22

23 28. CONFIDENTIALITY OF DATA

24 All financial, statistical, personal, technical or other data and information made
25 available to CONTRACTOR shall not be disclosed (in whole or in part) by
26 CONTRACTOR to any third parties and shall be protected by CONTRACTOR from
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1 unauthorized use and disclosure. The only exception to this shall be if disclosure is
2 approved in advance in writing by DISTRICT or if the disclosure is made to
3 CONTRACTOR'S subcontractors as anticipated by this Agreement.

4 CONTRACTOR shall refer all requests for information to DISTRICT. These same
5 requirements shall be applicable to any of CONTRACTOR'S subcontractors.
6 CONTRACTOR shall include the requirements stated in this section of the Agreement
7 with any of its subcontractors.

8
9 29. DISCREPANCIES

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

12 30. NON-APPROPRIATION OF FUNDS

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

22 //

23 //

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

Sept 10 2013
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

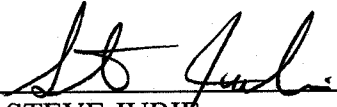
By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

By: Kellie Dayton
Deputy

(SEAL)

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/AZTEC Engineering California, Inc. (FY 2013-14 to FY 2015-16)
07/25/2013
AMR:blj

**AZTEC ENGINEERING
CALIFORNIA, INC.**

By: 
STEVE JUBIE
Vice President

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/AZTEC Engineering California, Inc. (FY 2013-14 to FY 2015-16)
07/25/2013
AMR:blj

ATTACHMENT "A"
SCOPE OF SERVICES

CONTRACTOR may be asked to perform underground utility potholing and ancillary services, including but not limited to one or more of the following types of services, as specifically directed in Task Order(s) issued to CONTRACTOR:

1. Preparatory Work
 - a. Utility research
 - b. Utility coordination
2. Field Work
 - a. Utility marking
 - b. Utility potholing
 - c. Design/Implementation of traffic control services

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

CONTRACTOR: _____

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

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

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

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

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

AZTEC ENGINEERING CALIFORNIA, INC.

By: _____
STEVE JUBIE
Vice President

MULTI-YEAR CONSULTING SERVICES AGREEMENT
For Underground Utility Potholing and Ancillary Services
FY 2013-14 to FY 2015-16

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

1. PROJECT

CONTRACTOR shall provide on-call underground utility potholing and ancillary services in support of DISTRICT'S capital improvement programs, on an as-needed basis as requested by DISTRICT, in accordance with applicable Federal, State, and local laws and regulations.

2. SCOPE OF SERVICES

As requested by DISTRICT, CONTRACTOR shall furnish all tools, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner those underground utility potholing and ancillary services as further described in the "Scope of Services", attached hereto as Attachment "A" and made a part hereof. During the term of this Agreement, CONTRACTOR 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" attached hereto and made a part hereof. CONTRACTOR understands and expressly agrees that the execution of this Agreement by CONTRACTOR and/or the submission of any proposal to furnish services does not guarantee the assignment or approval of any subsequent Task Order(s).

1 3. PERSONNEL

2 A. Project Manager

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

9 B. CONTRACTOR'S Representative

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

16 C. Substitution of Key Personnel

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

2 The term of this Agreement shall become effective on the date the Agreement is
3 executed by DISTRICT'S Board of Supervisors, and shall remain in effect through the
4 required date for completion of an assigned Task Order, provided that such Task Order
5 was approved prior to June 30, 2016 and completed by June 30, 2017.

6 5. COMPENSATION

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

13 6. PAYMENT

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

10 7. PROJECT PERFORMANCE

11 A. Commencement of Services

12 CONTRACTOR shall commence performance of the services for each Task
13 Order upon receipt of DISTRICT'S approved Task Order(s).

14 B. Time of Completion

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

18 8. LICENSES

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

23 9. STANDARD OF CARE

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

6 10. ERRORS AND OMISSIONS

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

13 11. PERMITS AND RIGHTS OF ENTRY

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

C BELOW, INC.
14280 Euclid Avenue
Chino, CA 91710
Attn: Nick Loera

13. REQUIRED INSURANCE

CONTRACTOR 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 CONTRACTOR'S obligation to indemnify or hold DISTRICT harmless, CONTRACTOR 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 CONTRACTOR has employees as defined by the State of California, CONTRACTOR 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 CONTRACTOR'S performance
6 of its obligations hereunder. Policy shall name the Riverside County Flood
7 Control and Water Conservation District, the County of Riverside, its agencies,
8 districts, special districts, and departments, their respective directors, officers,
9 Board of Supervisors, elected or appointed officials, employees, agents or
10 representatives as additional insureds. Policy's limit of liability shall not be less
11 than \$1,000,000 per occurrence combined single limit. If such insurance
12 contains a general aggregate limit, it shall apply separately to this Agreement or
13 be no less than two (2) times the occurrence limit. Said insurance must NOT
14 contain, as respects the work covered hereunder, any exclusions as to bodily
15 injury or death or property damage arising out of blasting, explosion, or
16 underground damage to wire, pipes, conduits, mains, sewers, tanks, tunnels or
17 any similar property, i.e. [the so-called "X C U" exclusions to not exist in the
18 policy(s)]; and that the District and the municipal corporation (i.e., City or
19 County) within which the work is being performed, as named as an additional
20 insured as respects the work covered hereunder.
21
22
23

24 C. Vehicle Liability

25 If vehicles or mobile equipment are used in the performance of the obligations
26 under this Agreement, CONTRACTOR shall maintain liability insurance for all
27 owned, non-owned or hired vehicles so used in an amount not less than
28

1 \$1,000,000 per occurrence combined single limit. If such insurance contains a
2 general aggregate limit, it shall apply separately to this Agreement or be no less
3 than two (2) times the occurrence limit. Policy shall name the Riverside
4 County Flood Control and Water Conservation District, the County of Riverside,
5 its agencies, districts, special districts, and departments, their respective
6 directors, officers, Board of Supervisors, elected or appointed officials,
7 employees, agents or representatives as additional insureds.
8

9 D. Professional Liability

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

24 E. General Insurance Provisions – All Lines

- 25
- 26 1) Any insurance carrier providing insurance coverage hereunder shall be
27 admitted to the State of California and have an A.M. BEST rating of not
28

1 less than an A: VIII (A: 8) unless such requirements are waived, in
2 writing, by the County Risk Manager. If the County's Risk Manager
3 waives a requirement for a particular insurer such waiver is only valid
4 for the specific insurer and only for one policy term.

5 2) CONTRACTOR must declare its insurance self-insured retention for
6 each coverage required herein. If any such self-insured retention
7 exceeds \$500,000 per occurrence each such retention shall have the prior
8 written consent of the County Risk Manager before the commencement
9 of operations under this Agreement. Upon notification of self-insured
10 retention deemed unacceptable to DISTRICT, and at the election of the
11 County's Risk Manager, CONTRACTOR'S carriers shall either: 1)
12 reduce or eliminate such self-insured retention with respect to this
13 Agreement with DISTRICT, or 2) procure a bond which guarantees
14 payment of losses and related investigations, claims administration, and
15 defense costs and expenses.
16

17
18 3) CONTRACTOR shall cause their insurance carrier(s) to furnish
19 DISTRICT with: 1) a properly executed original certificate(s) of
20 insurance and original certified copies of endorsements effecting
21 coverage as required herein; and 2) if requested to do so orally or in
22 writing by the County Risk Manager, provide original certified copies of
23 policies including all endorsements and all attachments thereto, showing
24 such insurance is in full force and effect. Further, said certificate(s) and
25 policies of insurance shall contain the covenant of the insurance
26 carrier(s) that thirty (30) days written notice shall be given to DISTRICT
27
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1 prior to any material modification, cancellation, expiration, or reduction
2 in coverage of such insurance. In the event of a material modification,
3 cancellation, expiration, or reduction in coverage, this Agreement shall
4 terminate forthwith, unless DISTRICT receives, prior to such effective
5 date, another properly executed original certificate of insurance and
6 original copies of endorsements or original certified policies, including
7 all endorsements and attachments thereto, evidencing coverages set forth
8 herein and the insurance required herein is in full force and effect.
9 Individual(s) authorized by the insurance carrier to do so on its behalf
10 shall sign the original endorsements for each policy and the certificate of
11 insurance.
12

- 13 4) It is understood and agreed by the parties hereto that CONTRACTOR'S
14 insurance shall be construed as primary insurance, and DISTRICT'S
15 insurance and/or deductibles and/or self-insured retentions or self-
16 insured programs shall not be construed as contributory.
17
- 18 5) If, during the term of this Agreement or any extension thereof, there is a
19 material change in the scope of services; or there is a material change in
20 the equipment to be used in the performance of the scope of work which
21 will add additional exposures (such as the use of aircraft, watercraft,
22 cranes, etc.); or the term of this Agreement, including any extensions
23 thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the
24 types of insurance required under this Agreement and the monetary
25 limits of liability for the insurance coverage currently required herein, if,
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1 in the County Risk Manager's reasonable judgment, the amount or type
2 of insurance carried by CONTRACTOR has become inadequate.

3 6) CONTRACTOR shall pass down the insurance obligations contained
4 herein to all tiers of subcontractors working under this Agreement.

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

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

11 14. INDEMNIFICATION

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

22 CONTRACTOR shall defend, at its sole expense, including all costs and fees (including
23 but not limited to attorney fees, cost of investigation, defense and settlements or
24 awards), DISTRICT (including its directors, officers, Board of Supervisors, elected and
25 appointed officials, employees, agents and representatives) in any claim, proceeding or
26 action for which indemnification is required.
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1 With respect to any of CONTRACTOR'S indemnification requirements,
2 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
3 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
4 action without the prior consent of DISTRICT; provided, however, that such
5 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
6 CONTRACTOR'S indemnification obligations to DISTRICT.

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

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

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

21 15. WORK PRODUCT

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

16. TERMINATION

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

A. Agreement

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

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

- i) stop all work under this Agreement on the date specified in the Notice of Termination; and ii) transfer to DISTRICT and deliver in the manner, and to the

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

4 In the event DISTRICT terminates this Agreement, DISTRICT shall make
5 payment for all services satisfactorily performed in accordance with this
6 Agreement to the date of termination, a total amount which bears the same ratio
7 to the total maximum fee otherwise payable under this Agreement as the
8 services actually bear to the total services necessary for performance of this
9 Agreement. Notwithstanding any of the other provision of this Agreement,
10 CONTRACTOR rights under this Agreement shall terminate (except for fees
11 accrued prior to the date of termination) upon dishonesty, or a willful or material
12 breach of this Agreement by CONTRACTOR; or in the event of
13 CONTRACTOR'S unwillingness or inability for any reason whatsoever to
14 perform the duties hereunder; or if the Agreement is terminated pursuant to
15 Section 27 (NON-DISCRIMINATION). In such event, CONTRACTOR shall
16 not be entitled to any further compensation under this Agreement. The rights
17 and remedies of DISTRICT provided in this section shall not be exclusive and
18 are in addition to any other rights and remedies provided by law or under this
19 Agreement.
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22 B. Approved Task Order
23

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

1 under the Task Order on the date specified in the Notice of Termination; and ii)
2 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
3 directed by DISTRICT, any equipment, data, reports or other documents which,
4 if the Task Order had been completed, would have been required to be furnished
5 to DISTRICT.

6 In the event DISTRICT terminates an approved Task Order, DISTRICT shall
7 make payment for all services satisfactorily performed in accordance with the
8 negotiated Task Order to the date of termination, a total amount which bears the
9 same ratio to the total maximum fee otherwise payable under the Task Order as
10 the services actually bear to the total services necessary for performance of the
11 Task Order.
12

13 17. BASIC SERVICES OF CONTRACTOR

14 The scope of services associated with the performance of any specific Task Order under
15 this Agreement shall be expressly defined and agreed upon prior to the approval of the
16 Task Order by DISTRICT'S General Manager-Chief Engineer. Any changes to the
17 approved scope of services must be authorized by DISTRICT'S General Manager-Chief
18 Engineer, and shall be made in writing.
19

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

10 18. PREVAILING WAGE

11 All workers shall be paid not less than the general prevailing rate of wages and benefits
12 for work of a similar character in the locality in which the work is performed, as
13 provided in California Labor Code Sections 1770 et seq. Pursuant to the California
14 Labor Code, DISTRICT has obtained for the Board of Supervisors of DISTRICT from
15 the Director of the Department of Industrial Relations, State of California, his
16 determinations of general prevailing rates of per diem wages applicable to the work, and
17 for holiday and overtime work, including employer payments for health and welfare,
18 pension, vacation, apprentices and similar purposes for each craft, classification or type
19 of workman needed, as set forth on the schedule which is on file at DISTRICT office,
20 and which will be made available to any interested person upon request.
21

22 19. INDEPENDENT CONTRACTOR

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

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

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

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

21. CHANGES TO TASK ORDER SCOPE OF SERVICES

CONTRACTOR shall not perform any additional work or services outside the scope of an approved Task Order without the prior written approval of DISTRICT'S General Manager-Chief Engineer. If at any time during the performance of an approved Task

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

20 At any time during the performance of an approved Task Order, DISTRICT may
21 request that CONTRACTOR perform extra services. Any work which is determined by
22 DISTRICT to be necessary for the proper completion of the approved Task Order, but
23 which neither CONTRACTOR nor DISTRICT reasonably anticipated would be
24 necessary at the time the scope of services for the assigned Task Order was approved,
25 must be authorized by DISTRICT'S General Manager-Chief Engineer by a new or
26 revised Task Order.
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1 At any time during the performance of the Task Order, Project Manager, upon
2 providing five (5) days written notice to CONTRACTOR, may delete services and the
3 associated fees from the Task Order. In the event DISTRICT requests deletion of
4 services from the Task Order, DISTRICT shall make payment for all services
5 satisfactorily performed in accordance with the negotiated Task Order up to the
6 effective date of deletion; the amount of the payment shall be prorated to the total
7 services necessary for completion of the Task Order. No work product for the deleted
8 services shall be provided to DISTRICT.
9

10 22. DISPUTES

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

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

C. Neither the pendency of a dispute nor its consideration by arbitration shall excuse CONTRACTOR 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 CONTRACTOR without the prior written consent of DISTRICT.

24. CONFLICT OF INTEREST

CONTRACTOR 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. CONTRACTOR 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.

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

7 26. WAIVER

8 Any waiver by DISTRICT of any breach of any one or more of the terms of this
9 Agreement shall not be construed to be a waiver of any subsequent or other breach of
10 the same or any other term thereof. Failure on the part of DISTRICT to require exact,
11 full and complete compliance with any terms of this Agreement shall not be construed
12 as in any manner changing the terms hereof, or estopping DISTRICT from enforcement
13 hereof.
14

15 27. NON-DISCRIMINATION

16 In the performance of the terms of this Agreement, CONTRACTOR shall not engage in
17 nor permit others he may employ to engage in discrimination in the employment of
18 persons because of the race, color, national origin or ancestry, religion, physical
19 handicap, disability as defined by the Americans with Disabilities Act (ADA), medical
20 condition, marital status or sex of such persons, in accordance with the provision of
21 California Labor Code Section 1735.
22

23 28. CONFIDENTIALITY OF DATA

24 All financial, statistical, personal, technical or other data and information made
25 available to CONTRACTOR shall not be disclosed (in whole or in part) by
26 CONTRACTOR to any third parties and shall be protected by CONTRACTOR from
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1 unauthorized use and disclosure. The only exception to this shall be if disclosure is
2 approved in advance in writing by DISTRICT or if the disclosure is made to
3 CONTRACTOR'S subcontractors as anticipated by this Agreement.

4 CONTRACTOR shall refer all requests for information to DISTRICT. These same
5 requirements shall be applicable to any of CONTRACTOR'S subcontractors.
6 CONTRACTOR shall include the requirements stated in this section of the Agreement
7 with any of its subcontractors.
8

9 29. DISCREPANCIES

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

12 30. NON-APPROPRIATION OF FUNDS

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

SEP 10 2013

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

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

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

APPROVED AS TO FORM:

ATTEST:

PAMELA J. WALLS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By: Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

By: Kellie Dayton
Deputy

(SEAL)

Multi-Year Consulting Services Agreement for
Underground Utility Potholing and Ancillary Services
w/C Below, Inc. (FY 2013-14 to FY 2015-16)

07/25/2013

AMR:blj

C BELOW, INC.

By: Chris Loera
CHRIS LOERA
Vice President of Operations

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23 Multi-Year Consulting Services Agreement for
24 Underground Utility Potholing and Ancillary Services
25 w/C Below, Inc. (FY 2013-14 to FY 2015-16)
26 07/25/2013
27 AMR:blj
28

ATTACHMENT "A"
SCOPE OF SERVICES

CONTRACTOR may be asked to perform underground utility potholing and ancillary services, including but not limited to one or more of the following types of services, as specifically directed in Task Order(s) issued to CONTRACTOR:

1. Preparatory Work
 - a. Utility research
 - b. Utility coordination
2. Field Work
 - a. Utility marking
 - b. Utility potholing
 - c. Design/Implementation of traffic control services

ATTACHMENT "B"
TASK ORDER APPROVAL FORM

CONTRACTOR: _____

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

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

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

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

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

C BELOW, INC.

By: _____
CHRIS LOERA
Vice President of Operations