

# **Zone 7 Water Agency**



## **REQUEST FOR PROPOSALS**

**RFP No. 2024-21**

**Environmental Health and  
Safety Program Assessment Services**

March 20, 2024

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### **I. INTRODUCTION**

To continuously improve the safety of our workplace and ensure compliance with all environmental, health and safety (EH&S) requirements, Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7) will conduct an independent, comprehensive assessment of our EH&S programs and practices (Assessment). The Assessment is intended to prepare a list of prioritized improvements to the EH&S program. The Assessment should be based primarily on Cal/OSHA General Industry Safety Orders, local and state regulatory requirements for environmental safety and reporting, and industry best practices. Expected methods of evaluation will be review of written programs and documentation, including regulatorily required tracking and reporting, review of injury reports and trends, interviews with employees and management, walkthrough surveys of work areas, and observation of employee work practices as needed. Findings and recommendations will be provided in a written report detailing methods and findings of the Assessment as well as a presentation of the findings to Zone 7.

### **II. DESCRIPTION OF THE AGENCY**

Zone 7 is one of ten active zones of the Alameda County Flood Control and Water Conservation District, which is a special district established by State legislature in 1949. Zone 7 was established by popular vote of the residents of the Livermore-Amador Valley in 1957 under an amendment to the District Act.

Today, Zone 7 owns about 40 miles of flood control channels and provides water to approximately 245,000 residents within a service area of approximately 425 square miles in eastern Alameda County (Service area comprised of Dublin, Pleasanton, Livermore, and unincorporated areas of eastern Alameda County).

As the major water supply and flood control agency in eastern Alameda County, Zone 7 has an ongoing commitment to plan for existing and future needs, implement needed projects, maintain a high quality, reliable water delivery and flood control system, and provide a quality product and service to the community. Zone 7 operates and maintains several industrial facilities, including two surface water treatment facilities, a reverse osmosis facility, several potable groundwater wells and groundwater treatment facilities, that require delivery, storage and use of hazardous chemicals and pose other industry-specific hazards. Zone 7 also maintains pump stations, transmission mains,

flood control channels, and administrative facilities. Zone 7 is governed by federal, state and local requirements for environmental, health and safety requirements, including but not limited to Alameda County Department of Environmental Health and the Livermore-Pleasanton Fire Department.

**Zone 7 is seeking Proposals from qualified firms to provide Environmental Health and Safety Program Assessment Services as described in the Scope of Work.**

**III. SCOPE OF WORK**

A preliminary scope of work, provided below, has been developed to assist the Proposer in gaining an understanding of Zone 7's goals as they relate to this effort. The final scope of work will be developed in cooperation with the selected Consultant and included as part of the contract between Zone 7 and the selected Consultant.

**Task 1 - Environmental, Health and Safety Program Assessment**

Complete a comprehensive Assessment, under the direction of a Certified Safety Professional (CSP) as awarded and conferred by the Board of Certified Safety Professionals. At a minimum the Assessment shall include, but not be limited to:

- Review written safety programs and policies to ascertain their relevance to the operation of Zone 7 and determine whether all regulatory requirements are being met. Conduct a comprehensive gap analysis to identify any deficiencies, including documentation, reporting, and tracking, including general safety training and job-specific training requirements.
- Review required safety-related documentation for at least the past twelve (12) months, including an analysis of whether Zone 7 could successfully reply to a Cal/OSHA Document Request.
- Review and assess key environmental and safety programs, including, but not limited to: confined space entry, control of hazardous energy (lock-out tag-out), fall protection, hazardous materials management, trench excavations, etc.
- Interview key personnel (employees and management) to gauge the current safety culture and effectiveness of the Safety Committee.
- Review the assignment of responsibilities for all elements of the EH&S program.
- Review injuries and trend analysis of at least the past three (3) years.
- Review reports of and approach to reporting near misses and unsafe conditions. Assess any barriers to reporting or trends indicating a lack of reporting.
- Review the quality and scope of support provided by the Safety Section to staff throughout Zone 7, including staff training, safety plan reviews, hazard analyses, confined space entry plan review and approval, provision of personal protective equipment, etc.

- Conduct a walkthrough inspection of Zone 7 administrative, operating facilities and other work areas, to identify unsafe physical and behavioral conditions as well as where physical and behavioral safety practices are strong and effective.
- Assess the effectiveness and sufficiency of tools used for planning, managing, tracking, and reporting related to the EH&S program, including databases, online resources, safety training and tracking services, etc.

### **Deliverables:**

Provide a draft and final written report summarizing, at a minimum, the areas described below. Present to Zone 7 management and key personnel the findings of the assessment summarized in the draft report and receive input and feedback for consideration in the final report. The draft Assessment and report will also be provided to the Association of California Water Agencies Joint Powers Insurance Authority (JPIA), Zone 7's insurance provider, for review and input by their risk management team, and incorporate their feedback into the final document and plan.

- Areas where programs and policies are out of compliance as well as whether additional programs are required.
- Effectiveness of Zone 7's approach to internal reporting of injuries, near-misses, and unsafe conditions with recommended corrective actions to increase reporting.
- Summary and opinion of Zone 7's safety culture and recommendations on how to enhance the safety culture, as applicable.
- Detail of physical and behavioral safety conditions identified including hazard summary, recommendations to remediate and Cal/OSHA (or other) citation of relevant standards.
- Written matrix of corrective actions organized by issue observed, detail of the issue, corrective action suggested, and space for assigning personnel responsible for remediation and date of completion.
- Recommend a strategy with prioritized improvements recommended to fill gaps identified during the assessment, including near-term and long-term approaches to achieve an effective and sustainable EH&S program.

### **Task 2 – Safety Program Resource Needs**

Following completion of the Assessment and Report, hold a workshop with Zone 7 leadership to review resources recommended to address the identified improvements, including the structure and staffing of the EH&S team, responsibilities of EH&S safety team, expertise and leadership, consulting support, tools for tracking and record keeping, and other resources. Prepare a draft and final Safety Program Resources Plan with an estimated level of effort and cost to inform future expenditure plans for Zone 7 review and input.

### Task 3 – Program Improvement Support

Provide the following support:

1. Benchmark Safety Survey - Conduct a benchmark safety perception survey of Zone 7 staff, such as the National Safety Council Safety Barometer Survey to gauge leadership engagement, supervisory support, employee participation, safety programs and activities and organizational climate. Support outreach to staff in advance, summarizing the results of the survey, and prepare materials to present the results to Zone 7 management and staff.
2. Program-Specific Support – Provide support to implement identified improvements to specific programs (e.g. confined space entry, LOTO, etc.). Provide updates to the program documentation and reporting and tracking forms, support implementation of tools, and provide staff training.
3. Safety Training – Develop a matrix of recommended job-specific safety training required for each job classification along with recommended frequency. Identify training resources as needed. Help with messaging to Zone 7 staff about updated training requirements, and aid in rollout.
4. Safety Performance Metrics – Recommend effective key performance indicators to track and gauge Zone 7’s performance toward implementing the recommended safety improvements and to assess Zone 7’s sustained safety practices toward continuous improvement.
5. Provide guidance to the Zone 7 Safety Committee, including as needed, writing the charter, setting recurrence frequency, staff participants, agendas, roles, etc.
6. Other Support. Provide other support identified in the Assessment Report.

### IV. CALENDAR OF EVENTS

Below are the major events planned to occur during the selection process in order to determine a consultant. Please note that the schedule is subject to change.

<b>Event</b>	<b>Scheduled Date</b>
RFP Issue Date	March 20, 2024
Questions Due	April 8, 2024 at 2:00 PM
Issue Addendum (if needed)	April 11, 2024
Proposals Due	April 17, 2024 at 2:00 PM
Panel Interviews	May 13 – May 16, 2024
Notify Consultants of Selection	May 22, 2024
Anticipated Board Award	June 11, 2024
Execute Consultant Contract	June 28, 2024

## **V. INSTRUCTIONS TO PROPOSERS**

### **A. Examination of Proposal Documents**

By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing timely and quality work to the level of Zone 7's expectations and achievement of its objectives.

### **B. Addenda/Clarifications**

Questions or comments regarding this RFP shall be emailed to Chris Hentz at [chentz@zone7water.com](mailto:chentz@zone7water.com) no later than 2:00 p.m. on April 8, 2024. Responses from Zone 7 will be posted on Zone 7's website at <https://www.zone7water.com/business/construction-business-opportunities>.

### **C. Submission of Proposals**

All Proposals shall be submitted to Chris Hentz by email at [chentz@zone7water.com](mailto:chentz@zone7water.com). Proposals must be received no later than **2:00 p.m. on April 17, 2024**. Proposals received after this time will not be accepted. It is the responsibility of the Proposer to ensure that the email was received by the Zone 7 Project Manager.

The Proposer's email shall be clearly marked as "**RFP for Environmental Health and Safety Program Assessment Services.**" The email shall include the Proposal and shall also include a separate file with the firm's Fee Proposal and rates.

### **D. Proposal Documents Inclusion**

At the sole discretion of Zone 7, the Proposal Documents may be deemed a part of the contract resulting from this RFP, if awarded.

### **E. Withdrawal of Proposals**

A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by sending a written request for withdrawal signed by, or on behalf of, the Proposer to the Zone 7 contact listed above. The time of receipt of email shall be the time such request is received in hand by Zone 7. The Proposer assumes the risk of any failed delivery. It is the responsibility of the Proposer to ensure that the email was received by the Zone 7 Project Manager.

### **F. Rights of Zone 7**

This RFP does not commit Zone 7 to enter into a contract, nor does it obligate Zone 7 to pay for any costs incurred in the preparation and submission of Proposals or in

anticipation of a contract.

Zone 7 may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence of qualifications to perform the services described in this RFP.

Zone 7 reserves the right to:

1. Reject any or all Proposals.
2. Issue subsequent Requests for Proposals.
3. Postpone opening for its own convenience.
4. Remedy technical errors in the Request for Proposal process.
5. Approve or disapprove the use of particular subcontractors.
6. Negotiate with any, all, or none of the Proposers.
7. Solicit best and final offers from all or some of the Proposers.
8. Award a contract to one or more Proposers.
9. Award a contract to a team created by Zone 7 from the Proposers and/or its subcontractors.
10. Award a contract to a Proposer other than the one with the lowest rates.
11. Waive informalities and irregularities in Proposals.

## **G. Contract Type**

Selection of a firm or firms will result in a Standard Agreement for Professional Services for Environmental Health and Safety Program Assessment Services that will begin on the date it is signed by the Zone 7 General Manager, which is expected to be in June 2024 and will conclude upon project completion. By submitting a Proposal to Zone 7 in response to this RFP, Proposer agrees that if selected by Zone 7 as the successful consultant, it will enter into this contract with Zone 7 containing the terms and conditions as set forth in the attached sample contract and insurance requirements (Attachment 1). No changes to the standard contract and insurance will be allowed. The total cost of services shall be proposed by each firm and is subject to negotiation between Zone 7 and the selected firm or firms. All services are to be billed on a time-and-materials basis.

## **VI. PROPOSER'S MINIMUM QUALIFICATIONS**

1. The Proposer shall submit the required Certificate(s) of Insurance (if consultant has been selected).
2. The Proposer shall comply with applicable federal, state and local regulations concerning equal employment opportunity requirements.
3. The Proposer shall possess expert knowledge and extensive experience in

the field related to environmental health and safety and shall be familiar with local conditions relating to these services in Zone 7's service area, including, but not limited to, the following:

1. Requirements of US Department of Labor, California Occupational Safety and Health Administration (OSHA);
  2. California Division of Occupational Safety and Health (aka Cal/OSHA)
  3. California Accidental Release Prevention Program;
  4. California Environmental Protection Agency Hazardous Materials Business Plans;
  5. Spill prevention and control;
  6. Workplace violence prevention and response;
  7. On-site inspections and risk assessments;
  8. Development of safety goal setting and strategic safety program planning and implementation;
  9. Industrial hygiene, noise survey and air monitoring;
  10. Lead and asbestos regulations;
  11. Job safety analysis and job hazard analysis;
  12. Traffic Control;
  13. Lockout tagout and control of hazardous energy;
  14. Personal Protective Equipment;
  15. Ergonomic evaluations;
  16. Safety training and integration; and,
  17. Safety benchmark surveys and interpretation.
4. The Proposer shall possess knowledge of regulations and ordinances regarding the subject of this RFP and shall be familiar with local conditions relating to these services in Alameda County.
5. The Proposer is required to list the key individuals who will be assigned to the project, their qualifications and disciplines, and each individual's degree of commitment.
6. The Proposer shall provide a resume for each named key personnel that includes but is not limited to the following information:
- a. Name and proposed assignment (do not include home addresses or phone numbers)
  - b. Years of experience
  - c. Education – degrees, schools and years obtained
  - d. Professional registration(s)
  - e. Experience directly related to proposed assignment
  - f. At least two client references, including contact names, addresses and telephone numbers
  - g. Description of projects of a similar nature worked on in the past 5



years

7. If Consultant intends to use drones, the following items shall also apply:
  - a. Drone Insurance (Attachment 2) will also be required (in addition to standard insurance).
  - b. Consultant shall have a Remote Pilot Certification and registration from the Federal Aviation Administration (FAA) per Code of Federal Regulations, Title 14, Part 107 when operating drones on District property. Additionally, drone operators working on District property shall have a certified operator if the drone is less than 55 pounds. If the drone is greater than 55 pounds, Contractor shall have a certified operator and an FAA Section 333 exemption that encompasses the intended operation; Contractor shall also confirm that the District's operations comply with the third party operator's FAA Section 333 exemption. Drone data or video collected on District property shall be provided to the District. Contractor shall have insurance coverage and indemnity for any drone accident or incident that may result in liability.

## **VII. PROPOSAL FORMAT AND CONTENT**

### **A. Format**

Please submit an electronic copy of your Proposal, which shall be organized and prepared according to the **Content** section that follows, with attention given to the following:

1. The project team including the organization chart and commitment (hours/%) of the team during the course of the project. The Project Manager listed should be available for, and lead, the oral presentation.
2. A record of experience and qualifications of the project members. Zone 7 is interested in the experience of the project members themselves in addition to the firm. Provide relevant examples of the project personnel experience as it relates to the Preliminary Scope of Work, local experience, and water supply and flood control projects/issues.
3. Any additional relevant services performed by your firm that were not outlined in the Preliminary Scope of Work.
4. **Submittals shall be submitted by email in PDF format only, and shall also include a separate PDF file with the firm's rates. The rate sheet must identify the proposed job classifications and**

**corresponding hourly rates (for the duration of the contract) for performing the services. Indicate your firm's name on all file names. The rate information will not be used during the Proposals review.** It must show proposed staff including, at a minimum, the project manager, and corresponding hourly rates for performing the services discussed in the Preliminary Scope of Work.

## **B. Content**

1. **Summary and Overview** - Use this section to summarize your approach to the topics identified in the Preliminary Scope of Work, the strengths of your project team, and why your firm should be selected.
2. **Team Personnel** - Identify the key project personnel and their roles associated with the tasks in the Preliminary Scope of Work. Identify the team and individual personnel experience as it relates to the Preliminary Scope of Work, local experience and water supply/flood control projects/issues. List other major projects the team or its personnel are involved with currently including project title, percent workload, and project responsibility.
3. **Comments on the Scope of Work** - This may be used as an opportunity to expand upon your team's specific experience and expertise which may be applicable to the Preliminary Scope of Work.
4. **Work Plan** - Describe how the project team will fulfill the Preliminary Scope of Work. Include a matrix of personnel and tasks. To illustrate your strategy, describe tools and techniques you will use, and challenges you anticipate, in addressing specific issues identified in the Preliminary Scope of Work.
5. **References** - From recent applicable experience of the Project Manager and key project personnel, list three (3) relevant projects, and include the agency name, staff contact name, address, and telephone number for each. Experience with public agencies will be prioritized over private companies.
6. **Resumes** of the proposed project team may also be submitted.
7. **The total proposal length** (including cover letter) should not exceed 10 pages, not including resumes.

## **VIII. EVALUATION AND SELECTION**

Evaluation and selection will be based on a two-step process, with proposals and interviews receiving equal points toward a total maximum potential score of 200 points.

### **A. Evaluation Procedure**

A Review Board, generally made up of Zone 7 staff, will review the proposals submitted, establish a list of finalists based on pre-established review criteria, interview the finalist firms if necessary, and select the successful proposer based on demonstrated competence and necessary qualifications. Negotiations of the contracts, the detailed scope of work, and the fee are not within the scope of the Review Board.

Members of the Review Board will review the Proposals to determine those firms to be invited for an in-person or virtual interview. Approximately 45 minutes will be allowed for each oral interview and questions and answers. The proposed Project Manager must lead the presentation before the Review Board. Proposers should also be aware that award might be made without interviews or further discussion.

Interviews are tentatively scheduled as shown above in the Calendar of Events.

### **B. Evaluation Criteria**

The following criteria will be used to evaluate written proposals that are submitted. Quality and experience will be weighted most heavily. All others will be weighted approximately the same.

1. General response to the RFP (20 points): Approach and understanding of Zone 7 goals.
2. Quality and experience (30 points): Technical experience in performing work of closely similar nature; qualifications of key personnel; key personnel's level of involvement in performing related work; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel; experience working with water supply, flood control or other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors.
3. Comments/suggestions on Preliminary Scope of Work. (10 points)
4. Demonstrated understanding of the project requirements, potential problem areas, and project approach. (30 points)
5. Assessments by client references. (10 points)

### **C. Award**

When the Review Board has completed its review, Proposers will be advised of the number one selection. A contract will then be negotiated with the selected firm for the extent of services to be rendered and for the method of compensation. The recommendations for approval of a Consultant Services Agreement is expected to be made to the Zone 7 Board of Directors at the June Board meeting.

### **IX. Compliance with Laws; Conflict of Interest**

Consultant agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, collusion and conflicts of interest.

### **X. Public Records Act Requests**

Zone 7 believes that the public interest is served by securing the best quality work at the lowest price. Accordingly, we request information about your company's qualifications, past experience and other similar items. Under California law, if requested to provide a copy of your proposal to a third party, we will do so in order to comply with the California Public Records Act.

If you believe that any information that you will be providing to Zone 7 is confidential or is subject to protection as a trade secret, please clearly mark that information as confidential in your submittal. You may highlight the confidential information in yellow or otherwise mark it so that Zone 7 personnel clearly know that it is confidential or trade secret information.

Zone 7 will do its best not to disclose confidential or trade secret information that is clearly marked as such, but you should know that you bear the risk of marking the confidential/trade secret information sufficiently clearly so as to allow Zone 7 personnel to redact that information prior to providing it to a requestor. Zone 7 assumes no responsibility for any failure on your part to mark the information sufficiently clearly so as to allow our staff to redact the information at the appropriate time.

Prior to disclosing your proposal to a requestor, Zone 7 will provide you with reasonable notice of the request and a reasonable opportunity to seek a protective order from a court of competent jurisdiction. Zone 7 will not contest your request for a protective order but will also not contest a request for your response to the request for proposals. Zone 7 will comply with any order regarding disclosure from a court of competent jurisdiction.

## **XI. ATTACHMENTS**

1. Sample Professional Services Agreement with Insurance
2. Additional Drone Insurance (if drones will be used)

**ATTACHMENT 1**

**Sample Professional Services Agreement with Insurance**

**SERVICES AGREEMENT**

**between**

**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT, ZONE 7**

**and**

**Consultant Name**

**for**

**Environmental Health and Safety Program  
Assessment Services**

**Contract No.** \_\_\_\_\_

**Dated** \_\_\_\_\_

This Professional Services Agreement ("**Agreement**") is made effective as of \_\_\_\_\_, by and between the Alameda County Flood Control and Water Conservation District, Zone 7 commonly known as ZONE 7 WATER AGENCY, hereinafter referred to as ("**Agency**"), a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California and \_\_\_\_\_, a DESCRIBE BUSINESS ENTITY, E.G., PROFESSIONAL CORPORATION ("**Consultant**") (collectively, the "Parties"), at Livermore, California, with reference to the following facts and intentions:

WHEREAS, The Agency is engaging in \_\_\_\_\_ ("**Project**"); and

WHEREAS, The Agency requires a highly qualified consultant with the requisite knowledge, skill, ability and expertise to provide the necessary services for the Project ("**Services**"); and

WHEREAS, Consultant represents to the Agency that it is fully qualified and available to perform the Services for and as requested by the Agency.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and terms and conditions herein, the Parties agree as follows:

## **1. SCOPE OF WORK**

- 1.1. Consultant shall provide all services set out in Appendix A, Scope of Work, attached and incorporated here to the satisfaction of the Agency.
- 1.2. **Independent Contractor; Agency** - The Consultant is acting hereunder as an independent contractor and not as an agent or employee of the Agency. The Consultant is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in the Alameda County Employees' Retirement Association (ACERA). Except as expressly provided herein, the Consultant is not eligible to receive overtime, vacation or sick pay. The Consultant shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the Agency.
- 1.3. **Extra Services** - Before performing any services outside the scope of this Agreement ("**Extra Services**"), Consultant shall submit a written request for approval of such Extra Services and receive written approval from the Agency. The Agency shall have no responsibility to compensate Consultant for any Extra Services provided by Consultant without such prior written approval.
- 1.4. **Methods** - Consultant shall have the sole and absolute discretion in determining the methods, details and means of performing the Services



required by the Agency. The Agency shall not have any right to direct the methods, details and means of the Services; however, Consultant must receive prior written approval from the Agency before assigning or changing any assignment of Consultant's project manager or key personnel and before using any Sub-consultants ("Sub-consultants") or Sub-consultant agreements for services or materials under this Agreement and any work authorizations.

- 1.5. **Review** - Consultant shall furnish the Agency with reasonable opportunities from time to time to ascertain whether the Services of Consultant are being performed in accordance with this Agreement. All work done and materials furnished shall be subject to final review and approval by the Agency. The Agency's review and approval of the Services shall not; however, relieve Consultant of any of its obligations under this Agreement.

## 2. COMPENSATION

- 2.1. **Amount** – As consideration for the Services described above, THE AGENCY will pay the Consultant an amount not to exceed \$ \_\_\_\_\_ ("Maximum Amount"). DESCRIBE ANY PERIODIC BILLING REQUIREMENTS, EXPECTATIONS OR OTHER PARTICULARS, E.G., NOT TO EXCEED \$ \_\_\_\_\_ PER MONTH, OR CONSULTANT SHALL NOTIFY THE AGENCY WHEN TOTAL INVOICED AMOUNT EQUALS 80% OF MAXIMUM AMOUNT.

Payments will be made at the rates set forth in the Fee Schedule which is attached hereto within and incorporated herein as though fully set forth ("Fee Schedule" – Appendix B). Consultant shall submit an invoice within ten (10) days after the end of each month during the term of this Agreement describing the Services performed for which payment is requested.

- 2.2. **Invoicing** – The invoice shall identify and describe the activities performed by Consultant and state the total cost of the Services for the period of the invoice; the hours worked; the name and title of the person(s) performing the work; the hourly rate for the person(s) performing the work; the accrued reimbursable expenses; and the budget amount and percentage remaining (after invoice payment), without reduction for retentions. The invoice shall also identify expenses for which reimbursement is requested and attach supporting documentation, including original receipts and/or bills. Any expenses exceeding \$500 shall require written approval from the Agency. Reimbursable costs shall not include any administrative or overhead expenses and shall be reimbursable as described in the Fee Schedule.

Costs or expenses not designated or identified in the Fee Schedule shall not be reimbursable unless otherwise provided in this Agreement. Only actual time in providing the Services will be charged. The Agency will not make any payments for Consultant's travel time incurred in providing the Services, and

Consultant agrees not to invoice the Agency for any travel time incurred in providing the Services.

The Agency shall review and approve all invoices prior to payment. Consultant agrees to submit additional supporting documentation to support the invoice if requested by the Agency. If the Agency does not approve an invoice, the Agency shall send a notice to the Consultant setting forth the reason(s) the invoice was not approved. Consultant may re-invoice the Agency to cure the defects identified in the Agency notice. The revised invoice will be treated as a new submittal. If the Agency contests all or any portion of an invoice, the Agency and the Consultant shall use their best efforts to resolve the contested portion of the invoice.

The Agency shall pay approved invoice amounts within thirty (30) days of receipt. The Agency's determinations regarding verification of Consultant's performance, accrued reimbursable expenses, and percentage of completion shall be binding and conclusive. Consultant's time records, invoices, receipts and other documentation supporting the invoices shall be available for review by the Agency upon reasonable notice and shall be retained by Consultant for three (3) years after completion of the Project.

All invoices submitted for payment must indicate the Agreement number and either are to be emailed to [accountspayable@zone7water.com](mailto:accountspayable@zone7water.com) or a hard copy mailed to Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, CA 94551, Attention: Accounts Payable.

- 2.3. **Withholding Payment** – In the event the Agency has reasonable grounds for believing Consultant will be unable to materially perform the Services under this Agreement or unable to complete the Services within the Maximum Amount described in this Agreement, or if the Agency becomes aware of a potential claim against Consultant or the Agency arising out of Consultant's negligence, intentional act or breach of any provision of this Agreement, including a potential claim against Consultant by the Agency, then the Agency may withhold payment of any amount payable to Consultant that the Agency determines is related to such inability to complete the Services, negligence, intentional act, or breach.

### **3. TAXES; INSURANCE; PERMITS; LICENSES**

- 3.1. **Taxes** - Consultant shall be solely responsible for the payment of all federal, state and local income tax, social security tax, worker's compensation insurance, state disability insurance, and any other taxes or insurance Consultant, as an independent contractor, is responsible for paying under federal, state or local law. Consultant is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant

shall comply with such provisions before commencing the performance of the Services under the Agreement. Consultant and its Sub-consultants shall maintain applicable workers' compensation insurance for their employees in effect during all work covered by the Agreement.

- 3.2. **Permits and Licenses** - Consultant shall procure and maintain all permits, and licenses and other government-required certification necessary for the performance of the Services, all at the sole cost of Consultant. None of the items referenced in this section shall be reimbursable to Consultant under the Agreement. Consultant shall comply with any and all applicable local, state, and federal regulations and statutes including Cal/OSHA requirements.

#### **4. RISK TRANSFER PROVISIONS**

- 4.1. **Workers' Compensation Insurance** - By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this Agreement.
- 4.2. **Indemnification** - To the fullest extent permitted by law, Consultant will immediately defend, indemnify and hold harmless the Agency, its directors, officers, employees, or authorized volunteers, and each of them (collectively "the Agency") from and against:
- 4.2.1. All claims, demands, liabilities and losses arising out of the performance (or actual or alleged non-performance) of the services by Consultant, including its agents and employees, under this Agreement, for damages to persons or property arising, pertaining to or relating to the Consultant's negligent acts or omissions or willful misconduct or the failure of Consultant to comply with any professional standard of care applicable to Consultant's services.
- 4.2.2. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the intentional or negligent violation of any governmental law or regulation, compliance with which is the responsibility of Consultant.
- 4.2.3. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, including but not only costs of counsel acceptable to the Agency, which the Agency may incur with respect to the failure, neglect, or refusal of Consultant to perform the Services or its obligations under the Agreement. Such costs, expenses, and damages shall include all costs,

including attorneys' fees, incurred by the Agency in any lawsuit to which it is a party. Upon the Agency's tender, Consultant shall immediately defend, at its own cost, expense and risk, any and all such suits, actions or other legal proceedings, with counsel acceptable to the Agency. Consultant shall further defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of performance or non-performance of the work hereunder, and shall not tender such claims to the Agency nor to its directors, officers, employees, or authorized volunteers, for defense or indemnity.

4.2.4. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Agency or its directors, officers, employees, or authorized volunteers, in any and all such aforesaid suits, actions, or other legal proceedings if arising as provided in the previous subsections of this Section.

4.2.5. Consultant shall reimburse the Agency or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith.

Consultant's indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant, its agents, employees under any applicable Worker Compensation Act, Disability Benefits Act, or other employee benefit act. Consultant's obligation to defend and indemnify shall not be restricted by the insurance requirements of this Agreement or to insurance proceeds, if any received by the Agency, or its directors, officers, employees, or authorized volunteers.

Notwithstanding the foregoing obligations, Consultant shall not at any time be responsible for any claims, liabilities or demands to the extent that they arise from the negligence or willful misconduct of the Agency, provided, however, that contributory negligence will not relieve Consultant of its obligation to defend unless the claims, liabilities or demand are the result of the sole negligence or willful misconduct of Agency.

The indemnity provided under this indemnification provision is intended to and will survive the expiration or termination of the Agreement and remain in full force and effect until barred by the applicable statute of limitations.

## 5. GENERAL CONDITIONS

5.1. **Laws, Regulations and Permits** -The Consultant shall give all notices required by law and comply with all laws, ordinances, rules, and regulations pertaining to the conduct of the work. The Consultant shall be liable for all violations of the law in connection with work furnished by the Consultant. If the Consultant performs any work knowing it to be contrary to such laws,

ordinances, rules and regulations, the Consultant shall bear all costs arising therefrom.

- 5.2. **Safety** - The Consultant shall execute and maintain his/her work so as to avoid injury or damage to any person or property.

In carrying out his/her work, the Consultant shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulatory requirements including State of California, Department of Industrial Relations (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act. Safety precautions, as applicable, shall include but shall not be limited to: adequate life protection and life-saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

- 5.3. **Labor Compliance Requirements** - Labor Compliance requirements (Prevailing Wage, SB 854): Contractor/Vendor must comply with all labor compliance requirements including but not limited to prevailing wage requirements, SB 854, Labor Code sections 1771.1(a) & 1725.5, Public Works Contractor Registration Program, and Electronic Certified Payroll Records to Labor Commissioner. Additional information about these requirements and the new public works program regarding compliance monitoring, administration and enforcement are available at the Department of Industrial Relations. **[For Public Works Contracts]** Copies of the rate of per diem prevailing wage shall be on file at the principal office of the Agency, and shall be made available to any interested party upon request.

## 6. REQUIRED INSURANCE

**Liability Insurance** - The Consultant shall provide and maintain at all times during the performance of the work under this Agreement, the following commercial general liability, professional liability and automobile liability insurance. All of the insurance shall be provided on policy forms and through companies satisfactory to the Agency.

- 6.1. **Coverage** - Coverage shall be at least as broad as the following or as provided in Appendix C:

- 6.1.1. Coverage for Professional Liability appropriate to the Consultant's profession covering Consultant's wrongful acts, negligent actions, errors

or omissions. **If Claims Made Policies:** the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work; insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work;** and if coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

- 6.1.2. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
- 6.1.3. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (non-owned and hired automobiles).
- 6.2. **Limits** - The Consultant shall maintain limits no less than the following:
  - 6.2.1. Professional Liability – One million dollars (\$1,000,000) per claim and Two million (\$2,000,000) annual aggregate.
  - 6.2.2. Commercial General Liability – Two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater for bodily injury, personal injury and property damage and products & completed operations liability. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 25 03, or ISO CG 25 04, or insurer's equivalent endorsement provided to the Agency) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
  - 6.2.3. Automobile Liability – One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
  - 6.2.4. Excess Liability – The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Agency (if agreed to in a written contract or agreement) before the Agency's own primary or self-Insurance shall be called upon to protect it as a named insured.
- 6.3. **Required Provisions** - The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 6.3.1. The Agency, its directors, officers, employees, and authorized volunteers are to be given insured status at least as broad as ISO endorsement CG 20 10 10 01 specifically naming all of the Agency parties required in this Agreement, or using language that states "as required by contract"). All Sub-consultants hired by Consultant must also have the same forms or coverage at least as broad; as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; and automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its directors, officers, employees, or authorized volunteers.
- 6.3.2. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Agency. Additionally, Consultant shall give Agency thirty (30) days written notice prior to any material change or cancellation of said coverage.
- 6.3.3. For any claims related to this project, the Consultant's insurance shall be primary insurance as respects the Agency, its directors, officers, employees, or authorized volunteers, using the ISO CG 20 01 04 13 or coverage at least as broad. Any insurance, self-insurance, or other coverage maintained by the Agency, its directors, officers, employees, or authorized volunteers shall be in excess of the insurance required under this Agreement, and shall not contribute to it.
- 6.3.4. Any failure to comply with the reporting or other provisions of the policies including breaches and warranties shall not affect coverage provided to the Agency, its directors, officers, employees, or authorized volunteers.
- 6.3.5. Such liability insurance shall indemnify the Consultant and his/her Sub-consultants against loss from liability imposed by law upon, or assumed under contract by, the Consultant or his/her Sub-consultants for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.
- 6.3.6. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability.
- 6.3.7. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.
- 6.4. **Workers' Compensation and Employer's Liability Insurance** - The Consultant and all Sub-consultants shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through Sub-consultants in carrying out the

work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof, with statutory limits. The Consultant shall provide employer's liability insurance with limits of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee. **Waiver of Subrogation:** The insurer(s) named above agree to waive all rights of subrogation against the Agency, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not the Agency has received a waiver of subrogation from the insurer.

- 6.5. **Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be declared to and approved by the Agency. At the option of the Agency, the insurer shall either reduce or eliminate such deductibles or self-insured retentions. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured.
- 6.6. **Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise approved by the Agency.
- 6.7. **Evidences of Insurance** - Prior to execution of the Agreement, the Consultant shall file with the Agency a certificate of insurance (Acord Form 25 or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include (1) attached additional insured endorsements with primary & non-contributory wording, (2) Workers' Compensation waiver of subrogation. The Agency reserves the right to obtain complete, certified copies of all required insurance policies, at any time. Consultant shall maintain the Insurance required by this Agreement throughout the term of the Agreement and for a period of not less than 5 years following the termination of completion of this Agreement. Consultant further waives all rights of subrogation under this Agreement. Failure to continually satisfy the Insurance requirements is a material breach of contract.

The Consultant shall, upon demand of the Agency, deliver to the Agency such policy or policies of insurance and the receipts for payment of premiums thereon.

- 6.8. **Continuation of Coverage** - If any of the required coverages expire during the term of this Agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the Agency at least ten (10) days prior to the expiration date. Failure to



comply with any of the Insurance requirements shall constitute material breach of contract. The insurance requirements in this Agreement do not in any way represent or imply that such coverage is sufficient to adequately cover the Consultant's obligations under this Agreement. All Insurance or self-insurance coverage and limits applicable to a given loss or available to the named insured shall be available and applicable to the additional insured. The insurance obligations under this Agreement are independent of and in addition to the defense and indemnity obligations contained elsewhere in this Agreement and shall not in any way act to limit or restrict the defense or indemnity or additional insure obligations of the Consultant or the Consultant's insurance carrier, and shall be for (1) the full extent of the insurance or self-insurance overages and limits carried by or available to the Consultant, or (2) the minimum insurance coverage and amounts shown in this Agreement; whichever is greater. Agency reserves the right to add such other parties as may be required in the future to the indemnity and additional insured requirements of this Agreement.

- 6.9. **Sub-Consultants** - In the event that the Consultant employs other consultants ("Sub-consultants") as part of the services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each Sub-consultant meets the minimum insurance requirements specified above.

## 7. LABOR AND MATERIALS

Consultant shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the Services to be performed under this Agreement. Consultant shall give its full attention and supervision to the fulfillment of the provisions of this Agreement by its employees and Sub-consultants and shall be responsible for the timely performance of the Services required by this Agreement. Consultant's standard schedule of fees and charges is attached, which is incorporated herein as though fully set forth in the Fee Schedule attached hereto (Appendix B). All compensation for Consultant's Services under this Agreement shall be pursuant to the Fee Schedule.

## 8. TERM OF THE AGREEMENT

- 8.1. **Period of Services** – This Agreement between the Agency and Consultant is for a term of NUMBER OF MONTHS, beginning DATE and ending DATE, subject to the termination provisions herein.
- 8.2. **Termination** – The Agency may terminate this Agreement for any reason by giving Consultant at least thirty (30) days or earlier (depending on nature of services) prior written notice of such termination. Such termination shall not relieve the Agency from responsibility for payment for Services rendered by Consultant prior to the date of termination but shall relieve the Agency of

its obligations for the full payment of compensation due under the Agreement for the Services of Consultant after the notice of termination.

8.3. **Termination for Cause** – The Agency may terminate the Agreement for cause, effective immediately upon written notice of such termination to Consultant, based upon the occurrence of any of the following events:

8.3.1. Material breach of the Agreement by Consultant

8.3.2. Cessation of Consultant to be licensed, as required by law

8.3.3. Failure of Consultant to substantially comply with any applicable federal, state or local laws or regulations

8.3.4. The voluntary or involuntary filing of any petition under any law for the relief of debtors with respect to Consultant

8.3.5. Conviction of Consultant of any crime other than minor traffic offenses

8.4. **Compensation Upon Termination** - If the Services of Consultant are terminated, in whole or in part, Consultant shall be compensated as provided herein for all Services and approved Extra Services performed prior to the date of such termination.

## 9. CALIFORNIA LABOR CODE REQUIREMENTS

9.1. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the Agency, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all sub-consultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

9.2. **Effective March 1, 2015**, if the services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all sub-consultants must be registered with the Department of Industrial Relations (“DIR”). Consultant shall maintain registration for the

duration of the project and require the same of any sub-consultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

## **10. INTERESTS OF CONSULTANT**

- 10.1. Consultant represents and warrants that it presently has no interests, and covenants that it will not acquire any interests, direct or indirect, financial or otherwise, that would conflict with the performance of the Services to be provided by Consultant under the Agreement. Consultant further covenants that, in the performance of the Agreement, it will not employ any Sub-consultant or employee with any such interest. Consultant certifies that no one who has or will have any financial interest under this Agreement or within Consultant is a director, officer or employee of the Agency.
- 10.2. Although Consultant is retained as an independent contractor, Consultant's employees or agents may still be required under the California Political Reform Act and the Agency Conflict of Interest Code to file annual financial disclosure statements. Consultant agrees that its employees and/or agents will file with the Agency in a timely manner those financial disclosure statements that the Agency determines Consultant is required to file pursuant to the Political Reform Act. Failure to file such financial disclosure statements by Consultant and any of its employees or agents is grounds for termination of this Agreement.

## **11. COMPLETED WORK AND WORK PRODUCT**

In the event of termination or completion of the Services under the Agreement, Consultant shall, at the Agency's request, promptly surrender to the Agency all completed work and work in progress and all materials, records and notes developed, procured, or produced pursuant to the Agreement. Consultant may retain copies of such work product as a part of its record of professional activity.

## **12. CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE**

- 12.1. **Confidential Nature of Materials** - The Consultant understands that all documents, records, reports, data, or other materials (collectively "Materials") provided by the Agency to the Consultant pursuant to the Agreement, including but not limited to draft reports, final report(s) and all data, information, documents, graphic displays and other items that are not proprietary to the Consultant and that are utilized or produced by the Consultant pursuant to the Agreement are to be considered confidential for all purposes.

12.2. **No Disclosure of Confidential Materials** - The Consultant shall be responsible for protecting the confidentiality and maintaining the security of the Agency documents and records in its possession. All Materials shall be deemed confidential and shall remain the property of the Agency. The Consultant understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or Sub-consultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, nor other materials except as provided herein or as authorized, in writing, by the Agency. The Consultant agrees not to make use of such Materials for any purpose not related to the performance of the Services under the Agreement. The Consultant shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of the Agency. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as may be required by law, or by a court of competent jurisdiction.

12.3. **Protections to Ensure Control over Materials** - All confidential Materials saved or stored by the Consultant in an electronic form shall be protected by adequate security measures to ensure that such confidential Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

The provisions of this Section survive the termination or completion of the Agreement.

### **13. OWNERSHIP OF DOCUMENTS AND DISPLAYS**

All original written or recorded data, documents, graphic displays, reports or other materials which contain information relating to the Consultant's performance hereunder and which are originated and prepared for the Agency pursuant to the Agreement shall be "work for hire" and shall be the property of the Agency. The Consultant hereby assigns all of its right, title and interest therein to the Agency, including but not limited to any copyright interest. In addition, the Agency reserves the right to use, duplicate and disclose in whole, or in part, in any manner and for any purpose whatsoever all such data, documents, graphic displays, reports or other materials delivered to the Agency pursuant to this Agreement and to authorize others to do so.

To the extent that the Consultant utilizes any of its property (including, without limitation, any hardware or software of Consultant or any proprietary or confidential information of Consultant or any trade secrets of Consultant) in performing services hereunder, such property shall remain the property of Consultant, and the Agency shall acquire no right or interest in such property.

#### 14. ASSIGNMENT PROHIBITED

The Consultant shall not assign, transfer, convey, or otherwise dispose of its rights, title or interest in or to this Agreement or any part thereof without the previous written consent of the Agency.

#### 15. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES

15.1. **Designated Representatives** – The Agency representative designated below shall be the principal representative of the Agency for purposes of the Services that are the subject of this Agreement. Consultant shall designate, in writing, Consultant's project engineer and/or project manager for the performance of the Services under this Agreement, which designation shall be subject to the Agency's reasonable approval.

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

##### **ZONE 7 WATER AGENCY Representative:**

Name  
Title  
Zone 7 Water Agency  
100 N. Canyons Parkway  
Livermore, CA 94551

##### **Consultant:**

Name  
Title  
Firm Name  
Address  
Firm Tax ID

15.2. **Notices** - Formal notices, demands and communications to be given hereunder by either Party shall be made in writing and may be effected by personal delivery or fax or by registered or certified mail, postage prepaid, return receipt requested to the address set out below and shall be deemed communicated as of the date of mailing. If the name or address of the person to whom notices, demands or communications shall be given changes, written notice of such change shall be given, in accordance with this section within five (5) working days.

## **16. MISCELLANEOUS PROVISIONS**

- 16.1. Integration – This Agreement represents the complete Agreement of the parties and supersedes any other Agreements between the parties, whether written or oral.
- 16.2. No Waiver – No waiver by either parties of any term or condition of this Agreement shall be a continuing waiver thereof.
- 16.3. Modification – This Agreement only may be amended in writing, signed by all parties.
- 16.4. Attorneys' Fees – In any proceeding to enforce this Agreement, the prevailing party shall be entitled to attorneys' fees and costs in any amount determined by the court.
- 16.5. Choice of Laws/Venue – This Agreement shall in all respects be governed by the laws of the State of California applicable to Agreement executed and to be wholly performed with the State. Any action regarding this Agreement shall be brought in Alameda County Superior Court.
- 16.6. Counterparts – This Agreement may be executed in separate counterparts that, together, shall constitute and be one and the same instrument.
- 16.7. No Third Party Beneficiaries – This Agreement is for the sole benefit of the parties hereto and their permitted assigns (if any), and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such assigns any legal or equitable rights hereunder.
- 16.8. No Presumption Regarding Drafter – The parties to this Agreement acknowledge that its terms and provisions have been negotiated and discussed among them and that it reflects their mutual agreement regarding its subject matter. Therefore, neither party shall be deemed to be the drafter of this Agreement nor shall there be no presumption for or against the drafter in its interpretation or enforcement.

IN WITNESS WHEREOF, the Parties have executed this Agreement at the place and as of the date first written above.

ALAMEDA COUNTY FLOOD CONTROL and WATER  
CONSERVATION DISTRICT, Zone 7, commonly known as  
ZONE 7 WATER AGENCY ("Agency")

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Valerie L. Pryor  
General Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
TIN or SS Number

APPROVED AS TO FORM:

Downey Brand LLP

By: \_\_\_\_\_

Rebecca Smith, General Counsel

Date: \_\_\_\_\_

**APPENDIX A**

**PLACEHOLDER FOR FINAL SCOPE OF WORK**

SAMPLE



**APPENDIX B**

**PLACEHOLDER FOR CONSULTANT FEE SCHEDULE**

SAMPLE

## APPENDIX C – INSURANCE

This is an appendix attached to, and made a part of, the Services Agreement dated \_\_\_\_\_ (“Agreement”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 commonly known as ZONE 7 WATER AGENCY (“District”) and \_\_\_\_\_ (“Consultant”), for the provision of services agreement (“Services”).

**Minimum Insurance Requirements:** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or sub-contractors.

**Coverage** - Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Consultant has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Waiver of Subrogation: The insurer(s) named above agree to waive all rights of subrogation against the District, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer.
4. **Professional Liability** - (Also known as Errors & Omission – \*Technology Exposure – Other Contractual Considerations) Insurance appropriate to the Consultant profession, with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If Claims Made Policies:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

**Other Required Provisions** - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Zone 7 Water Agency, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
2. **Primary Coverage:** For any claims related to this project, the Consultant's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Zone 7 Water Agency, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Member Water Agency its directors, officers, employees and authorized volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

**Self-Insured Retentions** - Self-insured retentions must be declared to and approved by the District. The District may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the District.

**Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by the District.

**Verification of Coverage** – Consultant shall furnish the District with certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

**Sub-contractors** - Consultant shall require and verify that all sub-contractor maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Zone 7 Water Agency, its directors, officers, employees, and authorized volunteers are an additional insured are an additional insured on Commercial General Liability Coverage.

SAMPLE

**ATTACHMENT 2**  
**DRONE INSURANCE**

## APPENDIX C – INSURANCE (DRONES)

This is an appendix attached to, and made a part of, the Services Agreement dated \_\_\_\_\_ (“Agreement”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 commonly known as ZONE 7 WATER AGENCY (“District”) and \_\_\_\_\_ (“Vendor”), for the provision of services agreement (“Services”).

**Minimum Insurance Requirements:** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or sub-contractors.

**Coverage** - Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Consultant has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Waiver of Subrogation: The insurer(s) named above agree to waive all rights of subrogation against the District, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not the District has received a waiver of subrogation from the insurer.
4. **Professional Liability** - (Also known as Errors & Omission – Insurance appropriate to the Consultant profession, with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If Claims Made Policies:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

**5. Aviation Liability Insurance** - on an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate or the full per occurrence limits of the policies available, whichever is greater. This coverage may also be provided by endorsement to a **Commercial General Liability** policy. In that event then: **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01 ) including, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Member Water Agency) or the general aggregate limit shall be twice the required occurrence limit.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

**Other Required Provisions** - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Zone 7 Water Agency, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
2. **Primary Coverage:** For any claims related to this project, the Consultant's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Zone 7 Water Agency, its directors, officers, employees and

authorized volunteers. Any insurance or self-insurance maintained by the Member Water Agency its directors, officers, employees and authorized volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

**Self-Insured Retentions** - Self-insured retentions must be declared to and approved by the District. The District may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the District.

**Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by the District.

**Verification of Coverage** – Consultant shall furnish the District with certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration pages and Endorsement pages.

**Sub-contractors** - Consultant shall require and verify that all sub-contractor maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Zone 7 Water Agency, its directors, officers, employees, and authorized volunteers are an additional insured are an additional insured on Commercial General Liability Coverage.