Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA  94551

Request for Proposal (RFP) No. 2020-06
for
Professional Auditing Services
For Fiscal Years 2020, 2021, and 2022
With an option for two (2) one-year extensions

February 19, 2020
Zone 7 Water Agency
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I. INTENT

Alameda County Flood Control and Water Conservation District, Zone 7, dba Zone 7 Water Agency, (hereinafter referred to as “the Agency”) is requesting proposals for the purpose of retaining qualified certified public accounting firms licensed to practice in the State of California to provide financial audit services to the Agency for fiscal years ending June 30, 2020, June 30, 2021, and June 30, 2022 with an option of extending for two additional one-year periods.

II. DESCRIPTION OF THE AGENCY

A. Zone 7 Water Agency

Zone 7 Water Agency is a dependent special district established under the Alameda County Flood Control and Water Conservation District Act. The Act (Chapter 55 of the California Water Code Appendix) was passed by the State Legislature in 1949. The Agency was established by a vote of the residents of the Livermore-Amador Valley area in 1957, with its own independent elected board to provide local control of integrated water resources. The Agency’s Administrative Office is located in the City of Livermore in Alameda County. Livermore was founded in 1869 and is one of California’s oldest wine regions. The Agency currently serves a population of over 260,000 people and it is responsible for providing wholesale treated (drinking) and untreated (agricultural) water, flood control and groundwater management throughout eastern Alameda County.

The Agency provides wholesale potable (treated) water to retail water suppliers, untreated irrigation water, and flood protection services. Its territory includes 425 square miles of eastern Alameda County. Zone 7 derives its revenues from property taxes, water sales, development fees, and interest. The Agency has broad power to finance, construct and operate a system for the transportation, storage, treatment and distribution of water.

The Agency’s four retail water customers are: the City of Livermore, the City of Pleasanton, Dublin-San Ramon Services District and California Water Service Company – Livermore District. These retailers distribute the water to municipal and industrial customers in Dublin, Livermore, Pleasanton, and through special agreement with Dublin-San Ramon Services District, the Dougherty Valley portion of San Ramon.

B. Joint Powers Authority (JPA)

The Livermore Valley Water Financing Authority (the “Authority”) was formed on November 1, 2017 to assist in the financing of public capital improvements. The Authority is a joint exercise agency organized under the laws of the State of California and was composed of the Alameda County Flood Control and Water Conservation District, Zone 7 and the California Statewide Communities Development Authority. The Agency Board of Directors serves as the governing board of the Authority. The Authority transactions are reported in Water Enterprise Operations and Water Enterprise Capital Expansion funds. Related debt is included in the long-term obligations of the Agency on the business-type activities column of
the statement of net position. As part of the Joint Power Agreement, the Agency must file
the annual Special Districts Financial Transaction Report to the State Controller’s Office.

C. Fund Structure

The Agency has 10 different funds to meet the needs of its flood control and water
enterprise functions comprising of:

- Governmental Funds
- Proprietary Funds
- Fiduciary Funds

D. Financial Information Systems

Zone 7 utilizes two separate electronic financial information systems:

- Tyler Technologies New World ERP (NWS): The Agency uses NWS for budget,
procurement, general ledger, project accounting, accounts payable, billing and
accounts receivable, asset management, and revenue collections.
- Oracle Government Financials (Alcolink Financials): The Agency uses the Alameda
County’s Alcolink Financials for budget, procurement, accounts payable and other
related general ledger functions.

III. SCOPE OF SERVICES

Zone 7 Water Agency desires a Comprehensive Annual Financial Report (CAFR) and its
financial statements to be prepared by the independent auditor and be fully compliant with
all current GASB pronouncements. The Agency will submit the CAFR to the Government
Finance Officers Association (GFOA) for review in their Certificate of Achievement for
Excellence in Financial Reporting program.

A. Responsibilities of the Selected Accounting Firm

1. Perform a financial audit of all funds of the Agency. The audit services will be
conducted in accordance with generally accepted auditing standards, the AICPA
Audit and Accounting Guide for audits of state and local governmental units,
Government Auditing standards issued by the Comptroller General of the United
States (Yellow Book), and the Single Audit Act and OMB Circular A133. The auditor
will adhere to all appropriate auditing standards and procedures specified by federal,
state and other applicable statutes, ordinances and regulations.

2. Provide an opinion as to whether the financial statements are fairly presented in
accordance with generally accepted accounting principles and the opinion should
indicate that any supplemental information included as part of the basic financials
statements is fairly stated in all material respects in relation to the basic financial statements.

3. Submit a management report of its comments and recommendations concerning the Agency’s financial management system based upon observations made during the course of the auditor’s examination of the Agency’s financial statements, records, internal controls, systems, and internal procedures. Comment on the nature and impact of any noted instances of non-compliance with applicable state and federal laws and regulations.

4. Advise the Agency on the applicability of accounting and reporting standards and other accounting issues and provide guidance on for new note disclosures, GASB implementations, and other reporting requirements. Provide training, resources, and information on topics relevant to the Agency’s financial reporting and operations.

5. Perform a single audit, if required, on the expenditures of federal grants in accordance with the Office of Management and Budget (OMB) Uniform Guidance requirements and render the appropriate audit reports. A single audit for fiscal year 2020 is not anticipated.

6. Prepare the Agency’s Comprehensive Annual Financial Report (CAFR), including its basic financial statements and footnotes to the financial statements. The audit firm will prepare, word-process, format, and design the layout of the CAFR. The final signed-off CAFR and Management Letter will be delivered in electronic portable document format (pdf) to the Agency by the November 25th following the end of the fiscal year. Twenty (20) printed, tabbed, and bound paper copies of the CAFR and Management Letter will be delivered to the Agency.


8. Prepare and file the Agency’s Special Districts Financial Transactions Report for the State Controller’s Office pursuant to Government Code Section 53891.


10. Audit debt issues to review accounting treatment and determine compliance with the bond covenants. Special compliance and financial reports may be required for future bond issues.

11. An audit partner will present the audit report to the Finance Committee at the Agency’s Finance Committee meeting typically scheduled the first week in December
and again to the Board of Directors at the Agency’s Board of Directors meeting typically scheduled on the third Wednesday of December.

12. Provide the Agency technical assistance throughout the fiscal year, including answers to accounting, reporting, and/or internal control questions. Additionally, upon the request of the Assistant General Manager, Finance (or designee), the auditor may provide optional professional services to address areas of special emphasis defined by the Agency. These services may include but are not limited to applying agreed-upon procedures or compliance reviews. Due to the specialized scope of said optional professional services, the costs for these services will need to be determined and mutually agreed upon by the Agency and the auditor and approved by the General Manager before the commencement of work.

13. All working papers and reports must be retained, at the auditor’s expense, for a minimum of seven (7) years, unless the firm is notified in writing by the Agency of the need to extend the retention period.

The proposer must address each of the above tasks in their proposal. Other tasks, activities, or services that the proposer believes are appropriate to the overall objectives of the audit should be included in the proposal for consideration.

B. Agency Assistance Provided

The Accounting staff and responsible management personnel will be available during the audit to assist the firm by providing information, documentation, and explanations. The Assistant General Manager, Finance will be responsible for acting as the liaison between the audit firm and Agency personnel. Consideration must be given to the on-going tasks of the Accounting section.

The Agency will provide the auditor with a reasonable workspace, internet connectivity, a computer with access to the Agency’s ERP (NWS), photocopying machines, access to telephone lines, and a fax machine.

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.

<table>
<thead>
<tr>
<th>EVENT</th>
<th>SCHEDULED DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Issue Date</td>
<td>February 19, 2020</td>
</tr>
<tr>
<td>Questions Due</td>
<td>March 4, 2020</td>
</tr>
<tr>
<td>Issue Addendum (if needed)</td>
<td>March 11, 2020</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>March 19, 2020</td>
</tr>
<tr>
<td>Panel Interview (if needed)</td>
<td>Week of March 30, 2020</td>
</tr>
<tr>
<td>Notice of Intent to Award</td>
<td>April 10, 2020</td>
</tr>
<tr>
<td>Zone 7 Board Approval</td>
<td>May 20, 2020</td>
</tr>
</tbody>
</table>
V. QUESTIONS

Please direct any questions regarding this RFP to Karen Bartels, Buyer II. Email the questions to kbartels@zone7water.com. It is expected that each firm may have different needs for information. Thus, it is incumbent upon each firm to make the inquiries it deems necessary in order to respond to the RFP. An addendum will be issued by March 11, 2020.

VI. SUBMITTAL INSTRUCTIONS

Response Deadline: March 19, 2020 by 2:00 p.m. PST at Zone 7 Water Agency.

Submit proposals to:

Proposal for Professional Auditing Services
Karen Bartels, Buyer II
Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA  94551

Be sure to include Proposer’s name and return address on the mailing package.

Late and/or unsealed responses will not be accepted. RFP responses will be received only at the address shown below, must be SEALED, and must be received at the Agency by 2:00 p.m. on the due date specified in the Calendar of Events. Any RFP response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened. All RFP responses must be received and time stamped at the stated address by the time designated. The Agency’s time stamp shall be considered the official timepiece for purpose of establishing the actual receipt of proposals.

RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses or those sent by electronic email (“email”).

Please submit four (4) printed copies of the proposals. Each copy must have all supporting materials and documentation.

The Agency reserves the right to reject any or all proposals received in response to this request. The Agency will not pay for any information contained in the responses nor will it reimburse proposers for costs incurred in preparation of the responses.

Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt. Any language purporting to render the entire proposal confidential or proprietary will be ineffective and will be disregarded.

All property rights, including publication rights of all reports produced by proposer in connection with services performed under this agreement shall be vested in the Agency. The proposer shall not publish or release any of the results of it examination without the expressed written permission of the Agency.
The Agency requires that, at the conclusion of the selection process, the contents of all proposals be placed in the public domain and be open to inspection by interested parties upon written request. Trade secrets and/or proprietary information that are recognized as such and protected by law may be withheld if clearly identified as such in the proposal.

The Agency reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether the proposal was selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Agency and the firm selected.

All proposals become the property of the Agency and shall not be returned to the bidder.

VII. PROPOSAL CONTENT

Proposals are to be clear, concise and specific to the information requested. Responses are to be in the sequence set forth herein. In order for proposals to be considered complete, proposers must provide all the information requested.

A. Format for Proposal

The format of the proposal shall be as follows:

1. **Title Page.** Show the RFP subject, name of the audit firm, local address, telephone number, name and title of contact person, and date of submission.

2. **Table of Contents.** Include a clear and complete identification of the materials submitted by section and page number. Cross-referencing to section and page number in the RFP would be helpful.

3. **Letter of Transmittal.** Include a description of the Proposer’s capabilities and approach in providing its services to the Agency, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the Agency. This synopsis should not exceed three (3) pages in length and should be easily understood.

4. **Detailed Proposal.** The detailed proposal should follow the format set out in Section B below.

B. Contents of Proposal

All of the specific documentation listed below is required to be submitted. While additional data may be presented, the areas detailed below must be included.
Mandatory Requirements

1. **License to Practice in California.** An affirmative statement should be included that the firm and all assigned personnel are properly licensed to practice in the state of California.

2. **Independence.** The proposer should provide an affirmative statement that it is independent of the Agency as defined by generally accepted auditing standards and the U.S. General Accounting Office’s Government Auditing Standards.

3. **Insurance.** Exhibit B of the RFP is a sample of the Agency’s Agreement for Professional Services ("Agreement") that contains the insurance requirements. The selected firm will maintain the minimum insurance requirements during the entire term of the engagement. To confirm this requirement, within 15 days from the execution of the Agreement, the selected firm shall furnish the Agency satisfactory evidence of the insurance requirement and evidence that each carrier is required to give at least 30 days prior written notice of the cancellation of any policy during the effective period of the Agreement. The Agency shall be named as an additional named insured under the selected firm's policies as noted in the Agreement.

4. **Peer Review.** The proposer is required to submit a copy of the most recent results from the AICPA Peer Review Program or comparable quality control programs.

Firm Qualifications and Experience

5. The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, the number and specifics of the professional staff to be employed in this engagement on a full-time basis and the number and specifics of the staff to be so employed on a part-time basis.

6. If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be noted, if applicable.

7. If the proposer will be subcontracting any portion of the audit to another individual or firm, the proposal must include a list of all subcontractors to be used. No substitutions of subcontractors may be made without prior written consent of the Agency.

8. The proposer shall provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the proposer shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

9. The proposer shall provide an indication of the level of expertise of the local office personnel in providing comparable services to water and flood control districts and enterprise and governmental accounting clients as demonstrated by listing the
names of the organizations, type(s) of service performed and year(s) of engagement for services of this nature.

**Partner, Supervisory and Staff Qualifications and Experience.**

10. Identify the principal supervisory and management staff, including engagement partners, managers, and other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in California.

11. Also, provide information on the years on each job, their position on each audit, relevant governmental and educational work experience of each person, including information on continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

12. Principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists may be changed during the course of the agreement; however, the Agency reserves the right to approve or reject replacements. Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

**Similar Engagements with Other Government Entities and References.**

13. Provide a separate listing of current and prior audit clients similar in size, nature and scope to Zone 7, indicating the following:
   • The type(s) of service performed and the number of years served for each.
   • The names, addresses and phone numbers of personnel who may be contacted by the selection committee as references.
   • Also please indicate whether the audit was part of a Comprehensive Annual Financial Report.

The local office must have performed all services for such clients.

**Description of the Proposed Services.**

14. RFP response shall include a description of proposed services to be provided during the contract term including response times. The description may:

   a. Specify how the services in the RFP response will meet or exceed the requirements of the Agency;
   b. Explain any special resources or approaches that make the services of the Proposer particularly advantageous to the Agency; and
   c. Identify any limitations or restrictions of the Proposer in providing the services that the Agency should be aware of in evaluating its RFP response to this RFP.

15. The accounting firm should include information regarding its ability to provide information on auditing a governmental water agency. The accounting firm may also
include additional information as necessary that would be relevant to Zone 7's proposal evaluation process.

16. A written statement outlining in detail how the accounting firm proposes to perform the services required, including the proposed use of sub-contract auditing firms.

17. A tentative schedule of completing the audit within deadlines specified in the RFP.

18. The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required in Section III of this request for proposal.

19. The proposer should include sample formats for the required reports (excluding financial statements).

Pricing.

20. The cost shall be submitted with all pricing information relative to performing the audit engagement as described in the request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses. The Agency will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs should not be included in the proposal.

21. The cost proposal should include the following information: (a) name of firm; (b) certification that the person signing the proposal is authorized to represent the firm, empowered to submit the bid, and authorized to sign a contract with the Agency; and (c) a total all-inclusive maximum price for each of the three (3) years and each of the optional two (2) one-year extensions for a total five-year cost proposal.

22. The cost proposal shall also include the following detailed information: a) work plan tasks in chronological order; b) estimated number of hours to be dedicated to the Agency’s engagement, delineated by staffing level (partner, supervisory, and staff) and billing rate and including all additional expenses to support the total all-inclusive maximum price. Billing rates listed in these schedules will be used if any additional work is requested outside the scope of this proposal. A cost proposal should be presented for each of the fiscal years (FY 19/20, 20/21, 21/22, 22/23, and 23/24).

VIII. EVALUATION AND SELECTION

All proposals that followed the RFP instructions and meet the mandatory requirements will be evaluated by a Selection Committee. The Selection Committee may be composed of Agency staff and other parties that have expertise or experience in this type of procurement. The Selection Committee will select qualified proposers in accordance with the evaluation criteria set forth in this RFP and develop a short list of proposers to be invited to an interview, if needed. Proposers should also be aware that award might be made without interviews or further discussion. The evaluation of the RFP responses shall be within the
sole judgment and discretion of the Selection Committee. The names of the Selection Committee and the individual or composite rating and/or evaluation forms prepared by committee members will not be revealed. Negotiations of the contracts, the detailed scope of work, and the fee are not within the scope of the Selection Committee.

The Selection Committee will evaluate each RFP response meeting the qualification requirements set forth in this RFP. Proposer should bear in mind that any RFP response that is unrealistic in terms of the technical or schedule commitments, or unrealistically high or low in cost, will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the Agency’s requirements as set forth in this RFP.

RFP responses will be evaluated using three (3) sets of criteria: mandatory, technical, and price. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria, which will be considered during the evaluation process:

- The number and qualifications of local office staff to be used in the audit.
- The level of expertise and experience of local personnel in performing government and utility audits.
- A well-defined audit plan as set forth in the bid.
- The education and training of personnel as it relates to governmental/enterprise accounting and auditing.
- The proposed schedule for completion of the required functions within the specified deadlines.
- The willingness of the proposer to accept the contract terms described in this RFP.
- The extent to which the audit plan has addressed making the final audit documents readable, understandable, useful as an internal management tool, and accurately communicating Zone 7’s financial position to readers with non-financial backgrounds.
- Experience with similar water and flood control organizations/agencies preferably in the Livermore-Amador Valley.
- The willingness to perform in an informal advisory capacity to Zone 7.
- Pricing.
- Participation in and results from the AICPA Peer Review Program or comparable quality control programs.
- Involvement in achieving the GFOA Certificate of Achievement for Excellence in Financial Reporting award.
- The established relationship or longevity of the working relationship of the audit team.

When the Selection Committee has completed its review, proposers will be advised of the number one ranked selection. Zone 7 makes a recommendation as to the selection of the consultant. This recommendation will be reviewed by the General Manager and if accepted furthered to the Board of Directors. The Board of Directors will make the final selection decision and authorize a contract with funding.

A contract will then be negotiated with the selected firm for the extent of services to be rendered and for the method of compensation. If satisfactory agreement is not reached with
the first-ranked firm, the negotiations will be terminated and the firm will be notified in writing
to that effect. Negotiations will then be held with the second-ranked firm and so forth.

IX. PROTEST

Protests must be in writing and must be received no later than seven (7) business days after
the Agency issues the Notice of Intent to Award, which is sent to all entities who submitted a
proposal. The Agency will reject the protest as untimely if it is received after this specified
time frame. Protests will be accepted from proposers or potential proposers only.

If the protest is mailed and not received by the Agency, the protesting party bears the
burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent in a
timely manner so that it would be received by the Agency within the RFP protest period.

Bid protests must contain a detailed and complete written statement describing the
reason(s) for protest. The protest must include the name and/or number of the bid, the name
of the firm protesting, and include a name, telephone number, email address, and physical
address of the protester. If a firm is representing the protester, they shall include their
contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to Karen Bartels, Buyer II, Zone 7 Water Agency,
100 North Canyons Parkway, Livermore, CA 94551. Facsimile and electronic mail protests
must be followed by a mailed or hand delivered identical copy of the protest and must arrive
within the seven (7) day time limit.

The bid protester can appeal the determination to the General Manager. The appeal must
be submitted to the General Manager no later than five business days from the date of
receipt of the requesting organization’s determination on the protest.

Such an appeal must be made in writing and must include all grounds for the appeal and
copies of the original protest and the Agency’s response. The bid protester must also send
the Accounting section a copy of all materials sent to the General Manager. The General
Manager will make a determination of the appeal and respond to the protester by certified
mail in a timely manner. If the appeal is denied, the letter will include the date, time, and
location of the Board of Directors meeting at which staff will make a recommendation for
award and inform the protester it may request to address the Board of Directors at that
meeting.

The Agency may transmit copies of the protest and any attached documentation to all other
parties who may be affected by the outcome of the protest. The decision of the Agency as to
the validity of any protest is final. This Agency’s final decision will be transmitted to all
affected parties in a timely manner.

X. CONTRACT AWARD

Zone 7’s Board of Directors does the final award of contracts. The anticipated award date is
May 20, 2020. The date may vary depending on Zone 7 needs. The contract period will
cover audits for the three (3) fiscal year periods that run from July 1, through June 30
starting with fiscal year 2019-2020. The Agency reserves the right to extend the term of this contract for two (2) additional one-year terms subject to the annual review and recommendation of the Assistant General Manager, Finance.

XI. TERMS AND CONDITIONS

A. Contract Conditions

The Agency reserves the right to negotiate the actual contract details after the contractor has been selected. The successful proposer will be required to conform to all of the terms of and conditions of the Agency. A sample agreement, which will be used as the basis for this project, is included for your information (Exhibit B).

The contract will be subject to termination by the Agency upon ten (10) days advance written notice of intention to terminate. The Agency may terminate the contract at any time without written notice upon a material breach of contract by the contractor.

B. Invoicing

Progress payments will be made on the basis of actual audit work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's proposal. Detail of staff hours with billing rates will be required to be included on each invoice. Payment will be made based upon actual costs not to exceed the maximum outlined in the proposal.

C. Confidentiality

Zone 7 shall make available to the consultant such materials from its files as may be required to perform the services under this agreement. These materials and information remain the property of Zone 7 while in the consultant’s possession and must be treated as confidential information. This material may not be released or disclosed without the written permission of Zone 7.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review work papers.
Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 2019

The Comprehensive Annual Financial Report (CAFR) for the year ended June 30, 2019 can be viewed here or by going to the Zone 7 website at www.zone7water.com (Library> Financial Information).
SAMPLE SERVICES AGREEMENT

between

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT, ZONE 7

and

Consultant Name

for

Professional Auditing Services

Contract No. ____________

Dated _________________
EXHIBIT B

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 ____________, ("Consultant") (collectively, the "Parties"), at Livermore, California, with reference to the following facts and intentions:

WHEREAS, The Agency is engaging in professional auditing services ("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
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:

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 be emailed to 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.

EXHIBIT B

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.

The Agency shall comply with such provisions before commencing the performance of the Services under the Agreement. Consultants shall 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.
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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.

1. GENERAL CONDITIONS

1.1. 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.

1.2. 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;
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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.

1.3. **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.

2. **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.

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

2.1.1. 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.

2.1.2. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).

2.1.3. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (non-owned and hired automobiles).

2.2. **Limits** - The Consultant shall maintain limits no less than the following:

2.2.1. Professional Liability – Two million dollars ($2,000,000) per claim and annual aggregate.

2.2.2. 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.

2.2.3. Automobile Liability – One million dollars ($1,000,000) for bodily injury and property damage each accident limit.

2.2.4. 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.

2.3. **Required Provisions** - The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

2.3.1. 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
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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.

2.3.2. 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.

2.3.3. 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.

2.3.4. 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.

2.3.5. 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.

2.3.6. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability.

2.3.7. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

2.4. **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.

2.5. **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.

2.6. **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.

2.7. **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.
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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.

2.8. **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 of 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 insurance 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.

2.9. **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.

3. **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.

4. **TERM OF THE AGREEMENT**

4.1. **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.

4.2. **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.

4.3. **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:

4.3.1. Material breach of the Agreement by Consultant

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

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

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

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

4.4. **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.
5. CALIFORNIA LABOR CODE REQUIREMENTS

5.1. 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.

5.2. 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.

6. 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.

7. 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.

8. CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE

8.1. 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.

8.2. 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
8.3. **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.

9. **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.

10. **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.

11. **Representatives of the Parties and Service of Notices**

11.1. **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

11.2. **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
12. MISCELLANEOUS PROVISIONS

12.1. Integration – This Agreement represents the complete Agreement of the parties and supersedes any other Agreements between the parties, whether written or oral.

12.2. No Waiver – No waiver by either parties of any term or condition of this Agreement shall be a continuing waiver thereof.

12.3. Modification – This Agreement only may be amended in writing, signed by all parties.

12.4. 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.

12.5. 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.

12.6. Counterparts – This Agreement may be executed in separate counterparts that, together, shall constitute and be one and the same instrument.

12.7. 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.

12.8. 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

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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 officials, directors, officers, employees and its vendors, agents, consulting engineers, its representatives, employees, and subcontractors 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 appropriates 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 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
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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.