

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



Request for Proposal (RFP) No. 2023-03
for
MUNCIPAL ADVISORY SERVICES

Issued on: December 28, 2022, at 2:00 PM

Proposal Deadline: January 23, 2023, by 2:00 PM PST

Zone 7 Water Agency
Request for Proposal No. 2023-03
For Municipal Advisory Services

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I. INTENT

The Zone 7 Water Agency (hereafter referred to as “Agency or Zone 7”) is soliciting proposals from qualified firms to establish a contract for municipal advisory services. The Agency plans to engage a single qualified professional firm to assist the Agency with issuing debt to finance water system capital improvement projects. The firm will serve as lead municipal advisor for a revenue bond issue and other potential debt obligations issued by the Agency. Firms may also be engaged for other advisory services related to public finance matters. The selected firm/advisor shall be registered with the Securities and Exchange Commission (“SEC”) and the Municipal Securities Rule Rulemaking Board as required under Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

II. DESCRIPTION OF THE AGENCY

Zone 7 Water Agency

The Agency is a dependent special district established under the Alameda County Flood Control and Water Conservation District Act (the “District Act”). The District Act (Act 20 of the Uncodified Acts of the California Water Code) was passed by the state Legislature in 1949. The Agency was established by a vote of the residents of the Livermore-Amador Valley (the “Livermore Valley”) area in 1957, with its own independently elected board to provide local control of integrated water resources. The Agency is responsible for providing wholesale treated (drinking) and untreated (agricultural irrigation) water, flood control, and groundwater management throughout eastern Alameda County.

The Agency is further authorized by the District Act to prevent interference with or diminution of, or to declare rights in the natural flow of any stream or surface or subterranean supply of waters used or useful for any purpose of the Agency and to prevent contamination, pollution or otherwise rendering unfit for beneficial use the surface or subsurface water used or useful in the Agency. The Agency has broad powers to finance, construct, and operate a system for the transportation, storage, treatment, and distribution of water. The Agency is also authorized to levy replenishment assessments upon the production of groundwater from all water-producing facilities, whether public or private, within the Agency’s service area.

In 2003, the legislature passed Assembly Bill 1125 and gave the Agency Board full authority and autonomy to govern matters solely affecting the Agency independently of the Alameda County Board of Supervisors. The Alameda County Board of Supervisors, acting as the Board of Supervisors of the Alameda County Flood Control and Water Conservation District (the “District”), governs the other nine zones of the District. The other zones are operationally and financially independent from the Agency.

Livermore Valley Water Financing Authority

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 is composed of the Zone 7, and the California Statewide Communities Development Authority. The Agency’s Board of Directors serves as the governing Board of the Authority.

On March 28, 2018, the Agency issued the Livermore Valley Water Financing Authority Water Revenue Bonds, 2018 Series A to finance the 2018 Water Project which included \$57 million for Del Valle Water Treatment Plant (DVWTP) and Patterson Pass Water Treatment Plant (PPWTP) ozone projects and refunding of \$14.1 million capital payments in connection with the Cawelo Water District Certificates of Participation, Series 2006 for the Groundwater Banking Program. The Agency had \$59.9 million in outstanding debt as of 6/30/22.

In 2018, S&P Global Ratings and Fitch Ratings Inc. (“Fitch”) assigned municipal bond ratings of “AA+” and “AA”, respectively, to the 2018 Series A bonds. In 2020, Fitch upgraded The Agency’s bond rating from AA to AA+. In June 2022, Fitch affirmed the bond rating of AA+ with a stable outlook. The Agency’s bond ratings can be found at <https://www.zone7water.com/investors>.

III. PROJECT BACKGROUND

The Agency plans to construct treatment facilities for Per- and Polyfluoroalkyl substances (PFAS) (the “Water Project”) and seeks to issue long-term debt to finance the Water Project and other water system capital improvements

IV. REQUEST FOR PROPOSAL OBJECTIVE

The purpose of the RFP is to solicit proposals from qualified firms to establish a contract for municipal advisory services. The Agency seeks to award a contract to a single registered municipal advisory firm to assist the Agency with issuing debt to finance the Project.

V. SCOPE OF SERVICES

The primary role for the municipal advisor is to advise and represent the Agency and make recommendations relating to the Agency's proposed debt issuance, including the preparation of a bond financing strategy.

Phase one of the scope of services includes the following tasks:

Phase One – Analysis, Modeling and Recommendations

- a. Financial Review - Review the overall financial status of the Agency and provide advice regarding the Agency's debt capacity and feasibility of debt issuance.
- b. Finance Plan - Evaluate possible financing options for the Agency:
 - i. Provide financing options by conducting studies and analyses determining the appropriate and cost-effective financing methods, terms, security, and repayment structures relative to the Agency's current finances.
 - ii. Provide debt affordability/capacity analysis in relation to existing debt. Evaluate the feasibility of utilizing existing revenue sources and the need for additional revenue sources.
 - iii. Develop a pro-forma financial model and prepare a capital financing plan for the Agency's 10-year Water System CIP.
- c. Recommendation – Provide advice and recommendations related to the issuance of debt.
 - i. Advise on the amount, type of financing vehicle, maturity structure and market timing of the transaction, as well as the credit structure, call provisions, and repayment terms to obtain the lowest practical interest cost.
 - ii. Develop a debt financing strategy in the form of a memo and PowerPoint presentation.
- d. Workshops and Presentations – Prepare and present debt financing strategy presentations for the Agency's Finance Committee and Board of Directors, as needed.

Phase Two – Debt Issuance Process/Transaction Phase

Under this phase, the municipal advisor shall perform the following tasks:

- a. Advise on the amount, type of financing vehicle, maturity structure and market timing of the transaction, as well as the credit structure, call provisions, and repayment terms to obtain the lowest practical interest cost.
- b. Assist with preparation of RFP's and evaluation of proposals (as needed) to complete the financing team, including the following services:
 - i. Underwriting Services
 - ii. Bond Counsel
 - iii. Disclosure Counsel
 - iv. Bond Insurer, if needed
 - v. Financial printer
 - vi. Paying Agent or Trustee
 - vii. Escrow Agent, if required
 - viii. Rating Agency
 - ix. Verification Agent, if required
- c. Take a lead role in preparing a schedule and detailed description of the responsibilities of each member on the Financing Team and develop a financing timetable.
- d. Credit Ratings - In cooperation with Agency staff and the Financing team, prepare the credit presentation for rating agencies.
- e. Coordinate and manage all aspects of the debt issuance process, including but not limited to the following tasks:
 - a. Prior to the marketing of each bond transaction, provide an independent evaluation of bond? market and economic conditions.
 - b. Assist in the preparation of the Official Statement.
 - c. Compute sizing and structure of the debt issue.
 - d. Evaluate the terms and recommendation of acceptance, rejection or renegotiation with respect to sale bids or final pricing as applicable.
 - e. Negotiate terms of bond sales with underwriters.
 - f. Draft closing memorandum and coordinate among all parties to arrange for the delivery of the bonds.
 - g. Assist in the preparation and review of transaction specific legal and master financing documents in coordination with the Agency's legal counsel, bond counsel, and disclosure counsel.
 - h. Assist in the preparation/review of the preliminary and final official statements, notices of sale (competitive offerings), other appropriate

information to prospective bond investors, and any materials required to facilitate the sale of the bonds.

- i. Prepare a comprehensive “Final Pricing Book” for the financing transaction.

OTHER AS-NEEDED SERVICES

- Assist the Agency with other financial planning effort/special projects, based on your firm’s expertise, on a time and materials basis.

VI. CALENDAR OF EVENTS

Below is the anticipated RFP selection process schedule. Please note that the schedule of events outlined below is subject to change.

EVENT	SCHEDULED DATE
RFP Issue Date	December 28, 2022
Questions Due	January 9, 2023
Issue Addendum (if needed)	January 13, 2023
Proposals Due	January 23, 2023
Panel Interviews (if needed)	January 31, 2023
Notice of Intent to Award	February 1, 2023
Zone 7 Board Approval	February 15, 2023
Contract Start Date	March 1, 2023

VII. QUESTIONS

Please direct any questions regarding this RFP to Karen Bartels, Buyer II. Questions should be emailed 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 to respond to the RFP. An addendum will be issued by January 13, 2023.

VIII. SUBMITTAL INSTRUCTIONS

Response Deadline: January 23, 2023, by 2:00 p.m. PST

Submit proposals via email to kbartels@zone7water.com. Please include RFP No. 2023-03 in the subject of the email.

Late responses will not be accepted. Any RFP response received after 2:00PM PST on January 23, 2023, cannot be considered. All RFP responses must be received, and time stamped at the above email address by the response deadline. The Agency’s time stamp shall be considered the official timepiece for the purpose of establishing the actual receipt of proposals.

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 its 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.

IX. PROPOSAL CONTENT

Proposals are to be clear, concise, and specific to the information requested. Responses are to be in the sequence set forth herein. 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:

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

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.

Detailed Proposal. The detailed proposal should follow the format set out in Section b below.

b. **Contents of Proposal**

All 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. **Executive Summary:** This section should summarize responding firm's approach to the topics identified in the scope of work, the strengths of the team, and why the firm should be selected. Please also include the names, the business address and telephone numbers of your firm's officers, directors and associates, along with the names and addresses of any parent or subsidiary of your company. Your information should describe the nature of the work and the line of authority of these individuals as they relate to this scope of work. If appropriate, include the name, office address and telephone number of your team's primary point of contact.
2. **Qualifications and Experience of Key Team Members.** The responding firm should provide an organizational chart and brief description of the anticipated role for each team member. The responding firm(s) shall identify the lead contact and other key team members and their responsibilities. Include the expected amount of involvement for each key team member. Describe the key team members' experience with similar work. Include resumes (two pages maximum) of key team members to be assigned to the project. Resumes should include information on specific projects the individual has been involved with, clearly showing experience relevant to the project requested in this RFP. Include proof of registration of with the MSRB as a municipal advisory firm.
3. **Project Experience and Examples.** The responding firm shall include 3-5 examples of bond transactions of similar scale and complexity, including the issuer, bond rating, and par amount. If applicable, please provide information for any California water/wastewater revenue bond transactions completed in the past five years.
4. **Scope of Services Delivery.** The responding firm(s) shall outline their suggested approach to delivering the scope of services. This suggested approach shall include a detailed approach to Phase 1 - Analysis, Modeling and Recommendations, expanding upon the framework provided in this RFP. The

responding firm(s) shall also outline their suggested approach to Phase 2 - Debt Issuance Process/Transaction Phase.

5. **Other Financial Consulting Services.** Please describe other financial services your firm may provide, such as rate and fee studies, cost allocation plans, assessment districts, etc.)
6. **References.** Please provide the names, addresses and telephone numbers for three (3) municipal issuers with whom you have worked over the years, and who are able to attest to your firm's expertise, quality of work, and services provided. Water district references are preferred.
7. **Contract Exceptions.** The responding firm(s) should address the acceptability of the terms and conditions for the Agency's standard Contract for Services contained in Exhibit A. Any proposed deviations and modifications to the agreement should be noted, with reasons given. Proposed contract changes will require approval by the Agency's Attorney.
8. **Insurance.** Exhibit A of the RFP is a sample of the Agency's Agreement for Professional Services ("Agreement") containing the Agency's insurance requirements. The selected firm is required to 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.
9. **Cost Proposal.** While fees and compensation are an important factor in the evaluation of responses, the Agency is not required to select the lowest cost bidder. We reserve the right to select the proposal that demonstrates the best value overall. Please provide the following information in the cost proposal:
 - i. Currently, Zone 7 proposed to issue approximately \$50 million revenue bonds in parity with the 2018 Series A bonds. Assuming that this will be issued at one time, what is your firm's proposed fee on this transaction. Please provide a detailed bid for Phases 1 and 2 including hourly rates and estimated number of hours for each task.
 - ii. The Agency may, from time to time, elect to hire an advisor for special projects. What is the hourly rate structure for your firm? Please provide for all key personnel.
 - iii. Please provide a list of all out-of-pocket items for which you will seek reimbursement during a transaction.

X. EVALUATION AND SELECTION

Vendor Qualification Criteria

1. Be a legal business authorized to do business in the State of California and registered as a Municipal Advisor with the Municipal Securities Rulemaking Board (MSRB).
2. Have at least one person with a minimum of five (5) years of experience in providing services related to municipal advisor for municipal debt in accordance with MSRB Professional Qualification Program and MSRB Rule G-3.
3. The firm must have a minimum of five (5) years of experience in providing municipal advisory services to agencies with a similar size and scope as the Agency.
4. The firm must demonstrate that it has all the resources, capabilities and commitment to complete aspects of the scope of work.

Selection Criteria

All proposals that follow 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. While interviews are expected, proposers should be aware that an 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.

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:

	Evaluation Criteria	Weight
A.	Meets the minimum requirements outlined in Vendor Qualification Criteria	Pass/Fail
B.	Completeness of Response: Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent Addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.	Pass/Fail
C.	Firm Qualifications and Relevant Experience: Responses will be evaluated against the RFP specifications and the following: 1. Firm’s experience in areas of municipal finance; 2. Records of performance serving as municipal advisors for obligations issued for local California issuers, and water/wastewater districts.	30 Points
D.	Staff Qualifications Responses will be evaluated against the RFQ specifications and the following: 1. Qualifications, expertise and availability of the individual assigned as lead municipal advisor. 2. Resumé for each team member.	20 Points
E.	Understanding of the Project/Approach: 1. Responses will be evaluated against the RFP specifications and the availability of team to work with Agency staff; and 2. Suggested approach to delivering the scope of services	25 Points
F.	Overall Proposal	15 Points

	Organization, presentation and content of the responses	
G.	References	5 Points
H.	Interview (if required)	5 Points

When the Selection Committee has completed its review, proposers will be advised of the number one ranked selection. The Agency 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.

XI. 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 Procurement, 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 Assistant General Manager, Finance. The appeal must be submitted to the Assistant General Manager, Finance 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 Assistant General Manager, Finance. The Assistant General Manager, Finance 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.

XII. CONTRACT AWARD

The Agency's Board of Directors awards the final contracts. The anticipated award date is February 15, 2023. The date may vary depending on Zone 7 needs. The contract period will cover services for March 1, 2023 - December 31, 2023, and the two (2) calendar year periods running from January 1 through December 31 thereafter. The Agency reserves the right to extend the term of this contract for one (1) additional one-year term subject to the review and recommendation of the General Manager.

XIII. 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 A).

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

Invoice payments will be made on the basis of actual 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 firm 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.

EXHIBIT A

SAMPLE SERVICES AGREEMENT

between

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

and

Consultant Name

for

Project/Program Name

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 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 – Two million dollars (\$2,000,000) per claim and 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. **Evidence 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 coverages 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 affected 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

INSURANCE REQUIREMENTS

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-contractors 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.

Other Contractual considerations:

Professional Services – Professional Liability coverage is normally required if the Consultant is providing a professional service regulated by the state (Examples of service providers regulated by the state are insurance agents, doctors, certified public accountants, lawyers, etc.). However, other professional Consultants, such as computer or software designers, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk management or JPIA Member Services.

If Technology Vendor Provider - include:

Cyber Liability Insurance (Technology Professional Liability – Errors and Omissions), with limits not less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate or the full per occurrence limits of the policies available, whichever is greater. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.