

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



Request for Proposal (RFP)
No. 2024-10
For

ASSET MANAGEMENT PLAN UPDATE
AND
TEN-YEAR CAPITAL IMPROVEMENT PLAN

Issued: October 3, 2023

Proposal Deadline: October 25, 2023, 2:00 PM

Zone 7 Water Agency

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I. INTENT

Zone 7 Water Agency (hereafter referred to as “Agency” or “Zone 7”) is soliciting proposals from qualified firms for Engineering Consulting Services to assist Zone 7 with the development of a comprehensive Ten-Year Water System Capital Improvement Plan (CIP) framework and document, and an update of its Water System Asset Management Plan (AMP). The scope also includes selection and implementation of capital improvement planning software.

II. DESCRIPTION OF THE 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.

Zone 7 is a public water agency serving wholesale treated water to four major retailers, City of Pleasanton, City of Livermore, Dublin San Ramon Services District, and the Livermore District of the California Water Service Company. Zone 7 currently has two conventional surface water treatment plants, namely Del Valle Water Treatment Plant (DVWTP) and Patterson Pass Water Treatment Plant (PPWTP), with a combined rated capacity of 64 million gallons per day (MGD). Both treatment plants recently underwent major upgrades to install ozone treatment and related improvements. Zone 7 currently owns and operates ten municipal supply wells located in four wellfields, namely Hopyard, Mocho, Stoneridge, and Chain of Lakes, with a total combined

pumping capacity of approximately 45.6 MGD. To treat water that is high in total dissolved solids (TDS) within the Mocho wellfield, Mocho Groundwater Demineralization Plant uses reverse osmosis (RO) membrane technology to produce up to 6 MGD of demineralized water. Zone 7 recently constructed a PFAS treatment facility at the Stoneridge well, with another facility under construction to treat the Chain of Lakes wells. In addition, Zone 7 has three transmission system booster pump stations, five treated water storage reservoirs (including clearwells at the plants), and approximately 41 miles of large diameter treated water transmission pipelines with associated system appurtenances.

III. PROJECT BACKGROUND

The last comprehensive Ten-Year Water System CIP was completed in October 2017, with the interim Five-Year CIP adopted in June 2023. Within the Water System are three strategies, which are Renewal/Replacement, System-Wide Improvements, and Expansion. The Expansion Program within the Water System is funded through connection fees from new development. The Renewal/Replacement and System-Wide Improvement components are funded through water rates; Zone 7's AMP documents how Zone 7 funds and implements such projects for existing or planned assets. The most recent comprehensive update of the AMP was completed in 2011, with an additional update in 2017 for the long-term funding forecast. An annual funding level of \$12.3 million with the addition of debt service payments was recommended and incorporated into the Ten-Year CIP. A major component of the Consultant's scope of work will be to recommend the appropriate AMP annual funding allowance as well as a funding plan to support it.

Zone 7 has in the past used a Microsoft (MS) Access-based database for developing the CIP, and most recently used MS Excel and MS Word for developing the Five-Year CIP. Zone 7 currently utilizes HDR's AM Tools software, an MS Access-based database, to maintain an inventory of each major asset and its remaining useful life, with the analysis of near-term renewal and long-term funding needs performed in MS Excel. Zone 7 utilizes the Tabware Computerized Maintenance Management System (CMMS) database to generate and track maintenance activities for our assets via work orders based on routine maintenance schedules and work requests, and is currently evaluating the CMMS software for an upgrade with a possible AMP component. To develop Zone 7's upcoming budget book, Zone 7 plans to use ClearGov's software, which has not been evaluated to support the CIP and AMP programs. Zone 7 utilizes New World ERP accounting software, which will remain separate from the CIP and AMP programs.

IV. REQUEST FOR PROPOSAL OBJECTIVE

The purpose of the RFP is to solicit proposals from qualified firms to complete the Ten-Year Water System CIP and Water System AMP Update. The Agency seeks to award a contract to a single firm.

V. PRELIMINARY SCOPE OF SERVICES

A preliminary scope of work, included below, has been developed to assist the Proposer in gaining an understanding of Zone 7's goals as they relate to this effort. The final scope of work will be developed in cooperation with the selected Consultant and be included as part of the contract between Zone 7 and the selected Consultant. It is anticipated that the AMP and CIP update processes will be performed in parallel. Specific key tasks may include, but not be limited to:

A. AMP UPDATE

1. Review existing 2011 and 2017 AMP documents and other planning documents. Sources of information include, but are not limited to, the Zone 7 reports located on the Zone 7 website at <https://www.zone7water.com/post/financial-documents>.
2. Perform a condition assessment of above-ground assets that are nearing the end of their original useful life and a risk analysis of below-ground assets to determine remaining useful life and true replacement costs under current conditions. This task includes incorporating the findings of Zone 7's draft Pipeline Inspection Study and updating Zone 7's asset management inventory with the condition assessment findings and with new or replaced assets which have been installed since the previous assessment.
3. Review current CIP documents to determine the appropriate priority and sequencing of projects based on current agency level of service (LOS), goals for water supply reliability and water quality, and the condition assessment findings. Identify necessary renewal/replacement projects to be completed based on the new condition assessment and asset condition rankings and provide necessary information (e.g., project description, justification, cost estimate, and schedule) in order to incorporate the projects into the Ten-Year CIP.
4. Analyze both renewal and replacement and system-wide improvement funding needs to meet established LOS goals and policies in order to identify gaps in existing and future funding. The identified funding gaps should be incorporated into the basis of asset value and appropriate funding placeholders shall be established.
5. Perform funding analysis to determine appropriate long-term funding strategies, such as pay-as-you-go and debt financing, for a forty-year planning horizon. This task includes reviewing and evaluating the current annual funding level, recommending the appropriate AMP annual funding allowance as well as a funding plan to support it, and evaluating the impacts to Zone 7's treated water rates.
6. Evaluate risk, costs, and impacts to LOS goals associated with various approaches to replacement and/or improvements of fixed assets.
7. Produce an updated AMP, which incorporates the findings above.

8. Coordinate with staff to prepare a presentation and present draft findings to Zone 7's retailers.
9. Coordinate with staff to prepare a presentation and present the draft and final reports to the Zone 7 Board.
10. Incorporate comments from Zone 7 retailers, staff, and Board of Directors into the final report.
11. Submit draft and final documents in standard MS Office programs so that they may be readily edited and maintained by Zone 7 staff.

B. TEN-YEAR CIP

1. Assist Zone 7 with the evaluation, selection, purchase, installation, training, and implementation of capital project and program management software that has the capability to handle project prioritization, project data management including projects with multiple funding sources, different cost escalation factors depending on the nature of the capital project, various CIP scenarios to quickly show impact on rates, and generation of tables and graphs for report preparation. The CIP software to be selected is to be used for the development of the Ten-Year Water System CIP and should have the capability to expand to include the Flood System CIP as well as AMP for both the Flood and Water Systems should Zone 7 desire to use it for asset management near-term and long-term planning in the future. Zone 7 reserves the right to acquire the software through a separate process.
2. Develop a CIP framework that aligns with Zone 7's vision and mission as outlined in the Strategic Plan.
3. Review existing Five-Year and Ten-Year CIPs and other planning documents. Sources of information include, but are not limited to, the Zone 7 reports located on the Zone 7 website at <https://www.zone7water.com/post/financial-documents>. Develop a summary table listing the planning documents and their completion date and next scheduled update.
4. Document the status of the projects in the CIPs, such as completed, underway, no longer required, accelerated, deferred, and/or rescope and update the projects' status as needed.
5. Incorporate capital projects from the AMP Update and any existing planning documents and studies that Zone 7 has already completed or that are in progress.
6. Interview project managers and appropriate supervisors from different sections, including Integrated Planning, Groundwater, Operations, Maintenance, and Engineering, to identify ten-year capital needs and priorities.

7. Identify potential projects based on future regulatory requirements.
8. For each project in the Ten-Year CIP, develop or update project descriptions, justifications, total and annual cost estimates including appropriate escalation factors, project schedules, and funding sources.
9. Develop project prioritization criteria and matrix, and facilitate the prioritization of the proposed projects.
10. Build a new CIP report template and publish a Ten-Year CIP document that addresses the Water System CIP components of Renewal/Replacement, System-Wide Improvements, and Expansion.
11. Coordinate with staff to prepare a presentation and present the draft findings to Zone 7's retailers.
12. Coordinate with staff to prepare a presentation and present the draft and final reports to the Zone 7 Board.
13. Incorporate comments from Zone 7 retailers, staff, and Board of Directors into the final report, which may include identification of additional CIP needs.
14. Submit draft and final documents in standard MS Office programs so that they may be readily edited and maintained by Zone 7 staff.

Integration with other Zone 7 Planning Efforts. Zone 7's treated water connection fees are collected from developers upon connecting to the Agency's water system. The fee is assessed to pay for the cost of new facilities and water supplies, and other capital projects made necessary by increased water demands from new development. Treated water rates are the source of funding for the AMP. In summer/fall 2024, Zone 7 will perform a mid-cycle review of the treated water rates adopted by the Board for calendar years 2025 and 2026. In order to provide timely communication to its Board of Directors, employees, and the public regarding what replacement, improvement, and expansion projects are necessary to maintain level of service and the potential impacts on future treated water rates and connection fees, it is Zone 7's goal to provide the Board of Directors with the preliminary AMP and 10-Year CIP findings by early summer 2024.

The Consultant shall perform in the role of Assistant Project Manager, and will coordinate with, and report directly to, Zone 7's Project Manager. The Consultant shall provide all services required to fulfill the intent of the scope of work and achieve the project's goals and objectives. The Consultant shall work effectively and in a timely manner to the expectations of Zone 7, including its governing Board, Executive Management, and other appropriate Zone 7 staff. The Consultant shall work in close coordination with Engineering and Finance staff with the expectation that the AMP and CIP development will be an iterative process.

It is important to note that Zone 7 works closely with its retailers, other local agencies, and the public to promote communication and develop an accurate understanding of their needs and requirements. As a result, the Consultant must be capable of representing Zone 7, as an extension of its staff, when addressing Zone 7's Board of Directors, agencies, and the public. It is anticipated that the Consultant will organize and conduct meetings with Zone 7 staff and other project partners, as appropriate, for the purposes of information gathering and communication of project progress.

VI. ANTICIPATED SCHEDULE

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

EVENT	SCHEDULED DATE
RFP Issue Date	October 3, 2023
Questions Due	October 11, 2023
Proposals Due	October 25, 2023
Panel Interviews (if needed)	Week of November 13, 2023
Zone 7 Board Approval	December 20, 2023
Contract Start Date	January 1, 2024
Draft Findings to Zone 7 Staff & Stakeholders	June 2024
Presentation the Zone 7 Finance Committee	August 2024
Presentation to the Zone 7 Board of Directors	September 2024
Board of Directors Adoption of AMP and CIP	October 2024

VII. QUESTIONS

Questions or comments regarding this RFP must be e-mailed to Mona Olmsted at molmsted@zone7water.com no later than 2:00 p.m. Pacific Time (PT) on **Wednesday, October 11, 2023**. Responses from Zone 7 will be communicated by e-mail to all recipients of this RFP and posted at <http://www.zone7water.com/business/construction-business-opportunities>.

VIII. SUBMITTAL INSTRUCTIONS

All Proposals are to be submitted electronically to the Zone 7 Project Manager, Mona Olmsted, at molmsted@zone7water.com no later than **2:00 p.m. PT on Wednesday, October 25, 2023**. Proposals received after this time will not be accepted and cannot be considered. It is the responsibility of the Proposer to ensure that the email was received by the Zone 7 Project Manager.

The Proposer’s email shall be clearly marked with consultant name, “RFP for AMP Update and Ten-Year CIP,” and RFP No. 2024-10 in the subject line of the email.

Public Record Act Requests

Zone 7 believes that the public interest is served by securing the best quality work at the lowest price. Accordingly, we request information about your company's qualifications, past experience, and other similar items. Under California law, if requested to provide a copy of your Proposal to a third party, we will do so in order to comply with the California Public Records Act (Government Code Sec. 6250 et seq.).

Any language purporting to render the entire Proposal confidential or proprietary will be ineffective and will be disregarded. If you believe that any information that you will be providing to Zone 7 is confidential or is subject to protection as a trade secret, please clearly mark that information as confidential in your submittal. You may highlight the confidential information in yellow or otherwise mark it so that Zone 7 personnel clearly know that it is confidential or trade secret information.

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

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

Proposal Documents Inclusion

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

Withdrawal of Proposals

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

Rights of Zone 7

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

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

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 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 Proposer.

Zone 7 reserves the right to:

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

IX. PROPOSAL FORMAT AND CONTENT

Format

Proposals are to be clear, concise, and specific to the information requested. Proposals shall be organized and prepared according to the Content section that follows, with attention given to the following:

1. **Title Page.** Show the RFP subject and number, name of the 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. **Project Team.** The project team, including the organization chart and commitment (hours/%) of the team during the course of the work. The Project Manager listed should be available for, and lead, the oral presentation.
4. **Experience.** A record of experience and qualifications of the project members. Zone 7 is interested in the experience of the project members themselves in addition to the firm. Provide relevant examples of the project personnel experience as it relates to the Preliminary Scope of Work, local experience, and water supply and water treatment projects/issues.
5. **Additional Relevant Services.** Any additional relevant services performed by your firm that were not outlined in the Preliminary Scope of Work.
6. **Cost/Pricing Information.** Submittals shall also include one (1) electronic copy of the firm's rates in a separate file. The cost/pricing information shall include the complete cost for providing all proposed services and a fee schedule and a matrix that identifies the proposed staff and corresponding hourly rates for performing the services discussed in the scope of work. Include a cost breakdown by task of task or subtask performed, individual hours, and hourly rates, and other direct costs.
7. **Proposal Length.** The total proposal length should not exceed fifteen (15) pages, not including the title page, cover letter (optional), table of contents, resumes, and fee proposal.

Content

1. **Summary and Overview.** Use this section to summarize your firm's approach to the topics identified in the Preliminary Scope of Work, the strengths of the team, and why the firm should be selected. Please also include the names, 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. Include the name, office address, and telephone number of your team's primary point of contact.
2. **Qualifications and Experience of Key Team Members.** Provide an organizational chart and brief description of the anticipated role for each team member. Identify the lead contact and other key team members and their responsibilities. Include the expected amount of

involvement for each key team member. Include three to five (3 to 5) examples of a comprehensive CIP development/preparation and an AMP update of similar scale and complexity. Describe the key team members' experience with work similar to the Preliminary Scope of Work. Zone 7 is interested in the experience of the project members themselves in addition to the firm.

3. **Scope of Services Delivery/Project Plan.** Outline your suggested approach to delivering the Preliminary Scope of Work, including a detailed preliminary project schedule and a matrix of personnel and tasks. To illustrate your strategy, describe tools and techniques you will use, and challenges you anticipate, in addressing specific issues identified in the Preliminary Scope of Work. Also use this section to comment on the Preliminary Scope of Work and any additional tasks and recommendations based on your team's specific experience and expertise, expanding upon the framework provided in this RFP.
4. **References.** Please provide the names, addresses, and telephone numbers for three (3) water agencies with whom you have worked for on similar scope, and who are able to attest to your firm's expertise, quality of work, and services provided.
5. **Resumes.** Resumes of the proposed key team members must also be submitted. Resumes should include information on specific projects the individual has been involved with, clearly demonstrating experience relevant to the Preliminary Scope of Work requested in this RFP.

X. EVALUATION AND SELECTION

Proposer's Minimum Qualifications

By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing timely and quality work to the level of Zone 7's expectations and achievement of its objectives. Furthermore, Proposer, if selected, agrees with and ensures compliance with the terms and conditions of the attached sample Professional Services Agreement (Exhibit A).

1. Proposer shall submit the required Certificate of Insurance (if Consultant has been selected for this study).
2. Proposer is required to list the key individuals who will be assigned to the Project, their qualifications and disciplines, and each individual's degree of commitment. These individuals shall demonstrate the knowledge, skills, and abilities necessary to perform the proposed scope of work. The Proposer's Project Manager and key individuals who will be assigned to the Project will be an important factor considered by the selection committee. There can be no change of key personnel once the Proposal is submitted without the prior approval of Zone 7's Project Manager.

3. Proposer must demonstrate that it has all the resources, capabilities, and commitment to complete the described scope of work.
4. Proposer shall possess knowledge in asset management and capital planning concepts and techniques, software/database integration, capital asset inventory principals and techniques, Governmental Accounting Standards Board Statement 34 (GASB 34), financial analysis and planning, development of asset management plan, and development of a framework for a capital improvement program, and shall be familiar with local conditions relating to these services in Zone 7's service area.
5. Proposer shall have experience with the evaluation, selection, purchase, installation, training, and implementation of capital project and program management software.
6. Proposer shall have a minimum of five (5) years of experience performing work of similar type, scope, and size.
7. Proposer shall comply with applicable federal, state, and local regulations concerning equal employment opportunity requirements.

Evaluation Criteria

The following criteria and allocations may be used to evaluate written Proposals that are submitted.

1. General response to the RFP: Approach and understanding of Zone 7 goals (10%).
2. Quality and experience: Technical experience in performing work of closely similar nature; qualifications of key personnel; key personnel's level of involvement in performing related work; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel; experience working with water supply, flood control, or other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors (30%).
3. Comments on preliminary scope of work (25%).
4. Demonstrated understanding of specific project requirements, potential problem areas, and project approach (30%).
5. Assessments by client references (5%).

Evaluation Procedure

A Review Panel, generally made up of Zone 7 staff, will review the qualifications submitted, establish a list of finalists based on pre-established review criteria, interview the finalist firms if

necessary, and select the successful Proposer based on demonstrated competence and necessary qualifications. The names of the Review Panel Members will not be revealed prior to the interviews. The individual or composite rating and/or evaluation forms prepared by the Review Panel members will not be revealed. Negotiation of a contract, the detailed scope of work, and the fee are not within the scope of the Review Panel.

Members of the Review Panel will review the Proposals to determine those firms to be invited for an oral interview, if needed. It is expected that approximately 90 minutes will be allowed for each oral interview and questions and answers. Each Consultant's Project Manager must lead the presentation before the Review Panel. Proposers should also be aware that award may be made without interviews or further discussion.

Award

When the Review Panel has completed its review, Proposers will be advised of the selected firm(s) by email. The Review Panel will make a recommendation as to the selection of the consultant to the General Manager and if accepted, brought 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 a 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. CONTRACT TYPE AND AWARD

It is anticipated that this contract will be a Professional Services Agreement with Zone 7 that will begin on the date that it is signed by the Zone 7 General Manager and will end with completion of the scope of work. The anticipated Zone 7 Board approval date is December 20, 2023. This date is subject to change. The contract period is anticipated to last for approximately 12 months.

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 overages and limits carried by or available to the Consultant, or (2) the minimum insurance coverage and amounts shown in this Agreement; whichever is greater. Agency reserves the right to add such other parties as may be required in the future to the indemnity and additional insured requirements of this Agreement.

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

7. LABOR AND MATERIALS

Consultant shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the Services to be performed under this Agreement. Consultant shall give its full attention and supervision to the fulfillment of the provisions of this Agreement by its employees

and Sub-consultants and shall be responsible for the timely performance of the Services required by this Agreement. Consultant's standard schedule of fees and charges is attached, which is incorporated herein as though fully set forth in the Fee Schedule attached hereto (Appendix B). All compensation for Consultant's Services under this Agreement shall be pursuant to the Fee Schedule.

8. TERM OF THE AGREEMENT

8.1. **Period of Services** – This Agreement between the Agency and Consultant is for a term of NUMBER OF MONTHS, beginning DATE and ending DATE, subject to the termination provisions herein.

8.2. **Termination** – The Agency may terminate this Agreement for any reason by giving Consultant at least thirty (30) days or earlier (depending on nature of services) prior written notice of such termination. Such termination shall not relieve the Agency from responsibility for payment for Services rendered by Consultant prior to the date of termination but shall relieve the Agency of its obligations for the full payment of compensation due under the Agreement for the Services of Consultant after the notice of termination.

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

8.3.1. Material breach of the Agreement by Consultant

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

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

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

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

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

9. CALIFORNIA LABOR CODE REQUIREMENTS

9.1. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public

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

- 9.2. **Effective March 1, 2015**, if the services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all sub-consultants must be registered with the Department of Industrial Relations (“DIR”). Consultant shall maintain registration for the duration of the project and require the same of any sub-consultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

10. INTERESTS OF CONSULTANT

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

11. COMPLETED WORK AND WORK PRODUCT

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

12. CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE

- 12.1. **Confidential Nature of Materials** - The Consultant understands that all documents, records, reports, data, or other materials (collectively "Materials") provided by the Agency to the Consultant pursuant to the Agreement, including but not limited to draft reports, final report(s) and all data, information, documents, graphic displays and other items that are not proprietary to the Consultant and that are utilized or produced by the Consultant pursuant to the Agreement are to be considered confidential for all purposes.
- 12.2. **No Disclosure of Confidential Materials** - The Consultant shall be responsible for protecting the confidentiality and maintaining the security of the Agency documents and records in its possession. All Materials shall be deemed confidential and shall remain the property of the Agency. The Consultant understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or Sub-consultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, nor other materials except as provided herein or as authorized, in writing, by the Agency. The Consultant agrees not to make use of such Materials for any purpose not related to the performance of the Services under the Agreement. The Consultant shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of the Agency. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as may be required by law, or by a court of competent jurisdiction.
- 12.3. **Protections to Ensure Control over Materials** - All confidential Materials saved or stored by the Consultant in an electronic form shall be protected by adequate security measures to ensure that such confidential Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

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

13. OWNERSHIP OF DOCUMENTS AND DISPLAYS

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

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

14. ASSIGNMENT PROHIBITED

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

15. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES

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

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

ZONE 7 WATER AGENCY Representative:

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

Consultant:

Name

Title

Firm Name

Address

Firm Tax ID

- 15.2. **Notices** - Formal notices, demands and communications to be given hereunder by either Party shall be made in writing and may be 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

Appendix C 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.