

Zone 7 Water Agency

100 North Canyons Parkway
Livermore, CA 94551



Request for Qualifications (RFQ) No. 2024-01

for

**Engineering Design Services for Repairs of Storm Damages to
Flood Protection Facilities**

POSTED:	August 24, 2023
QUESTIONS:	August 31, 2023, 3:00pm
DUE:	September 14, 2023, 3:00pm

**Zone 7 Water Agency
Request for Qualifications (RFQ) No. 2024-01
Engineering Design Services for Repairs of Storm Damages
to Flood Protection Facilities**

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I. OBJECTIVES

Alameda County Flood Control and Water Conservation District, Zone 7, (hereinafter referred to as “the Agency” or “Zone 7”) is requesting Statement of Qualifications for Engineering Design Services for Repairs of Storm Damages to Flood Protection Facilities. This Request for Qualifications (RFQ) is intended to develop a short list of preapproved, qualified consultants for engineering design services for Flood Protection facilities damage repairs. Zone 7’s flood protection facilities suffered channel bank damages at 178 locations during the 2023 storm events that may need repairs and the list of damaged sites may expand over the next few years as repair projects are implemented. Zone 7 may group the damaged sites into several design and construction projects to be implemented over the next three to five years depending on issuance of regulatory agency permits. From the short list, at Zone 7’s discretion, consultants will be selected to participate in Request for Proposals (RFP) to provide engineering design services for the projects to perform repairs to Flood Protection facilities. The actual scope of work will be determined once Zone 7 has identified the number of projects to be implemented, but will generally entail: project management, project planning, assistance and coordination during environmental permitting, preparation of detailed engineering design plans and specifications, construction cost estimates, engineering during construction services, and post construction services as discussed in Section III, Scope of Services.

II. DESCRIPTION OF THE AGENCY

Zone 7 Water Agency

Zone 7 is the wholesale treated drinking water supplier to retailers serving over 266,000 people in Pleasanton, Livermore, Dublin, and the Dougherty Valley area of San Ramon (through special agreement with the Dublin San Ramon Services District). Zone 7 also supplies untreated water for irrigation of about 5,000 acres of agriculture property, primarily South Livermore Valley vineyards. Zone 7 also provides regional flood protection within the service area and administers oversight of the local groundwater basin—the Livermore Valley Groundwater Basin.

Zone 7 is governed by a Board of Directors that represents the public in an open and transparent process. The Board consists of seven publicly elected members and provides strategic guidance and planning for Zone 7’s policies, programs, and finances.

Zone 7 Flood Protection Services and Facilities

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

Zone 7 also manages the stormwater flows into the Livermore-Amador Valley area within the major drainage ways of the Valley floor. Of the 120 miles of drainage ways within the Valley, Zone 7 owns and maintains approximately 37 miles of both improved and unimproved flood protection channels.

The January and March 2023 storm events caused extensive damage at 178 different locations across several miles of flood protection channels. Currently, the total estimated damages are estimated to be more than \$26.5 million. The Federal Government issued two Declarations that may provide public assistance grant funding from the United States Army Corps of Engineers (USACE) and/or the Federal Emergency Management Agency (FEMA) via the State of California's Office of Emergency Services (Cal OES). Cal OES acts as the grant recipient, administrator, and auditor, while Zone 7 is the sub-recipient. Zone 7 is coordinating with the Federal agencies to determine which sites may qualify for public assistance.

Zone 7 has identified 178 bank damage sites within 15 channels, but at this time, due to ongoing coordination with the USACE and FEMA/Cal OES, it has not yet been determined which sites will be addressed by the Federal agencies or Zone 7. Zone 7 needs Engineering Design Services to design, assist in permits and expedite construction of the permanent repairs. This includes support for project management, project planning, environmental permitting assistance, preparation of detailed engineering design plans and specifications, construction cost estimates, engineering during construction services, and post construction services as discussed in Section III, Scope of Services.

It is Zone 7's intent to qualify respondents, and from that qualification list, issue a RFP to those qualified firms, to provide the aforementioned services on one or more projects, as it becomes clear as to what sites the USACE will provide public assistance on.

III. SCOPE OF SERVICES

A preliminary scope of work, provided below, has been developed to assist the Respondent in gaining an understanding of Zone 7's goals as they relate to this effort. The final scope of work will be developed, once Zone 7 has determined the number of projects that will be required to address all storm damages.

The Consultant(s) may perform the following services as part of a future Professional Services Agreement:

1. Project Management:

- a. The selected 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 services required to fulfill the intent of the scope of work and achieve the project's goals and objectives. The selected Consultant shall work effectively and in a timely manner to the expectations of Zone 7, including its Board of Directors, executive management, and other appropriate Zone 7 staff.

Project management shall consist of 1) budget and schedule monitoring and reporting to Zone 7; 2) overall project coordination between the project team members; and 3) overall project coordination between Consultant and Zone 7 staff. Project and technical communications will occur, in part, in the form of design meetings and workshops between Zone 7 and the Consultant's design team.

Consultant shall use the following means of regular progress reporting:

- i. Consultant will produce and submit a monthly project invoice and Monthly Summary Progress Report that includes a status report by task and subtask breakdown, a brief description of the work performed, cost status including employees' names, classifications, hours and hourly rates, original budget, current invoice, cost to date, remaining budget, percent budget, and percent of project completed to date, work projected for the next 30-day period, and identification of critical path items and potential issues.
- ii. Weekly meetings by Consultant's project manager will be scheduled to provide Zone 7 with project updates.
- iii. Consultant will maintain a Decision Log as a record of all decisions made, and pending decisions, during the design phase. The Decision Log will be continuously updated and available for review.

2. Project Planning:

- a. Review existing flood protection channel and access roads drawings and documentation.
- b. Review preliminary damage assessments performed by Zone 7, FEMA and Cal OES.
- c. Perform topographical survey of flood protection channel repair project sites to prepare for design.
- d. Perform geotechnical work for each project site necessary to prepare for design.
- e. Perform a Geomorphology/Ecology Survey for the flood protection repair projects.
- f. Project specific hydraulic assessment may be performed, as necessary.
- g. After reviewing existing documents and holding discussions with Zone 7 staff, the Consultant shall identify and document the objectives, design criteria, assumptions, and guidelines to be used in developing the projects.
- h. Identify and describe foreseeable construction constraints and challenges and provide recommendations to resolve these challenges.

3. Project Environmental Permitting Assistance and Coordination:

- a. The Consultant shall assist (as-needed basis) with all required permits and regulatory approvals for the program projects and provide a Regulatory Permit Advisor to assist in developing all documentation necessary for these permits and approvals including, but not limited to: California Environmental Quality Act (CEQA), Regional Water Quality Control Board (RWQCB), United States Army Corps of Engineers (USACE), California Department of Fish and Wildlife (DFW).
- b. Incorporate mitigation monitoring and reporting services in support of the CEQA and permit requirements, in Specifications.
- c. As necessary, coordinate with the FEMA Environmental and Historic Preservation (EHP) specialist through the National Environmental Policy Act (NEPA) process for the projects.

4. Prepare Detailed Engineering Plans and Specifications:

- a. The Consultant shall prepare engineering drawings and project specifications suitable for construction of repairs of storm damages to Flood Protection facilities. The drawings shall be prepared in accordance with Zone 7 Standards. At a minimum, submittals to Zone 7 are required at the following points during the final design development process: 35%, 65%, 95%, and 100%. At each stage, except for the 100% complete stage, draft drawings and specifications shall be submitted to Zone 7 for review and input, and a design review workshop shall be held to review each submittal and Zone 7 comments on that submittal. During each workshop, Consultant shall present and thoroughly discuss with Zone 7 the design plans and other deliverables submitted. The Consultant shall update the probable cost estimate and schedule with each design submittal. Consultant shall prepare Meeting Minutes and submit them to Zone 7 within one week after each workshop. Consultant will record in the workshop minutes all direction received from Zone 7 and all decisions reached during the meeting. Within three working days from receipt of the Minutes, Zone 7 shall submit any additional written comments to consultant regarding the design package submitted and its contents. Consultant shall incorporate Zone 7's comments into the subsequent submittal or provide a written explanation of why the comments cannot be incorporated. This task will culminate in bid-ready contract documents for the specific project.

5. Provide Engineering During Construction Services:

- a. Consultant shall provide construction phase engineering support including, but not limited to, reviewing submittals, responding to requests for information (RFIs), providing clarifications, reviewing change orders, performing site observation visits, and preparing record drawings. Zone 7 intends to have third-party construction management services. A partnering approach to construction will be used. Additionally, Consultant shall provide necessary project information and other related assistance for compliance with the construction phase requirements of regulatory agencies as described in Task 3.
- b. Consultant may provide Special Testing and Inspection as needed during construction.

6. Post Construction Services:

- a. Consultant may perform a post construction topographic survey of the repaired flood protection channels utilizing unmanned aerial vehicles (UAVs), of which the user is FAA certified. The UAVs shall utilize LiDAR or photogrammetry and provide 1-foot topographic contours and an orthographic photo of the repaired flood protection channels. A ground truthing survey shall be performed in conjunction utilizing RTK GPS surveying or conventional survey methods.
- b. Consultant shall provide assistance on compliance with the regulatory agencies for post construction as described in Task 3, as necessary.

IV. RFQ SCHEDULE

Below are the major events planned to occur during the selection process to determine a list of qualified consultants. Schedule is subject to change.

EVENT	DATE
RFQ Issue Date	August 24, 2023
Questions Due	August 31, 2023 @ 3:00 p.m. PST
Qualifications Due	September 14, 2023 @ 3:00 p.m. PST
Review Qualifications	September, 2023
Interviews, if applicable	September, 2023
Board Authorize Engineering Design Effort and Qualifications List	October 18, 2023

V. SUBMITTAL INSTRUCTIONS

A. Examination of RFQ Documents

By submitting a Statement of Qualifications (SOQ), the proposer represents that it has thoroughly examined and become familiar with the work required under this RFQ and that it can perform timely and quality work to the level of Zone 7's expectations and achievement of its objectives. Furthermore, Proposer agrees with and ensures compliance, if selected, with the terms and conditions of the attached Professional Services Agreement and Insurance (see Appendix A) or similar. Changes to this Agreement will not be allowed.

B. Addenda/Clarifications

Questions or comments regarding this RFQ shall be addressed in writing to the Zone 7 Project Manager, **Justin Pascual**, at jpascual@zone7water.com **no later than 3:00 p.m. PST on August 31, 2023**. Responses from Zone 7 will be posted on Zone 7's website at www.zone7water.com/construction-business-opportunities.

C. Submission of SOQ

All SQQs shall be submitted to the Zone 7 Project Manager, **Justin Pascual**, by email at jpascual@zone7water.com. SQQs must be received no later than **3:00 p.m. PST on September 14, 2023**. SQQs received after this time will not be accepted. It is the responsibility of the proposer to ensure that the email was received by the Zone 7 Project Manager, prior to the deadline. Zone 7 is not responsible for any "lost" emails that may be blocked or sent to SPAM folders.

The proposers e-mail shall be clearly marked as **"SOQ for Engineering Design Services for Repairs of Storm Damages to Flood Protection Facilities"**.

D. SOQ Documents Inclusion

At the sole discretion of Zone 7, the SOQ documents may be deemed a part of the contract resulting from a future RFP, if awarded.

E. Withdrawal of SOQs

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

F. Public Records Act Requests

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

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

Zone 7 will do its best not to disclose confidential or trade secret information that is clearly marked as such, but you should know that you bear the risk of marking the confidential/trade secret information sufficiently clearly 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 to allow our staff to redact the information at the appropriate time.

Prior to disclosing your SOQ 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 SOQ. Zone 7 will comply with any order regarding disclosure from a court of competent jurisdiction.

G. Rights of Zone 7

This RFQ 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 SOQs 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 RFQ.

Zone 7 reserves the right to:

1. Reject any or all Statements of Qualifications.
2. Issue subsequent Requests for Qualifications.

3. Postpone opening for its own convenience.
4. Remedy technical errors in the Request for Qualifications process.
5. Approve or disapprove the use of certain subconsultants.
6. Request proposals from any, all or none of the qualified list of consultants
7. Negotiate with any, all, or none of the proposers.
8. Solicit best and final offers from all or some of the proposers.
9. Award a contract to one or more proposers.
10. Award a contract to a team created by Zone 7 from the proposers and/or its subcontractors.
11. Award a contract to a proposer other than the one with the lowest rates.
12. Waive informalities and irregularities in SOQs.

Some of the categories in Section III, Scope of Services include anticipated project information over the next five years. These lists of projects are preliminary, provided as an example, and subject to further additions or deletion. Zone 7 can use a firm on the short list that it feels is best suited to perform engineering services for any future projects within the next five years that are not identified in the preliminary list of projects.

H. Contract Type and Timeline

The resulting contract(s) will be a Professional Services Agreement with Zone 7 to provide engineering design services for repairs of storm damages to our Flood Protection facilities and would be expected to last for a term of approximately 36 to 48 months, depending on the project(s) size. The contract will begin on the commencement date indicated in the Contract as signed by the Zone 7 General Manager and will end with completion of the project(s).

By submitting a SOQ to Zone 7 in response to this RFQ, and through the actual RFP process, proposer agrees that they are able to meet the terms and conditions as set forth in the attached sample Professional Services Agreement and Insurance requirements (Appendix A). Qualified consultants will be selected through a RFP process to award the contract for the project.

VI. PROPOSER'S MINIMUM QUALIFICATION

1. Proposer must respond to this RFQ in a responsible and thoughtful manner.
2. Proposer must demonstrate suitable education and experience in one or more discipline areas noted in this RFQ for which the proposer is submitting qualifications. Proposer need not have competency in all areas.
3. Consultant(s) submitting a SOQ, agree to execute Zone 7's standard professional services agreements if selected for a future project or service and shall have their insurance carrier(s) submit the necessary Certificate(s) of Insurance at the time the contract is drafted, and they shall be made a part of the final contract with Zone 7. Refer to Appendix A, which contains Zone 7's Services Agreement and Insurance requirements. It is the responsibility of each Proposer, before submitting the SOQ, to thoroughly examine the Zone 7's standard Professional Services Agreement and

Insurance requirements attached to this RFQ, to ensure they are able to meet all requirements, when an RFP is issued.

4. The consultant shall work effectively and in a timely manner with Zone 7's governing Board, executive management, and all staff levels of Zone 7.
5. The Proposer shall comply with applicable Federal, State, and local regulations concerning equal employment opportunity requirements.

VII. SOQ FORMAT AND CONTENT

The total SOQ length (items 2 through 5, below) should not exceed 10 pages, excluding resumes. Responses need only be limited to those categories of work listed within Section III, Scope of Services.

1. **Introduction-** Brief firm profile including history, staff size, office location(s), and areas of expertise. *Approximately 1-2 pages.*
2. **Qualifications & Experience of the Team** – For up to five key team members (including one contract manager), include a summary of their qualifications, education, expertise, certifications, and project experience as it relates to the proposed services. Key team members are individuals who would be responsible for task planning and management, as well as those who would be assigned to carry out assignments. One of these individuals must be designated as the contract manager, who would be the primary point of contact for Zone 7 on contracting, task orders, and invoicing. Provide brief summaries of recent relevant project experience as they relate to the proposed team, proposed services, local experience, and flood protection projects/issues. The contract manager listed should be available for, and lead, the oral presentation (if interviews are requested). Sample work products should not be included but may be requested. *Approximately 3-4 pages*
3. **Approach to Work** – Use this section to summarize your approach to the categories identified in the scope of work, the unique strengths of your project team, and why your firm should be selected. This may be used as an opportunity to expand upon your firm's specific experience and expertise as applicable to the proposed services. *Approximately 1-2 pages.*
4. **Team References** – From recent applicable experience of the key team members (up to 5) list three (3) relevant projects, and include the agency, staff contact name, address, and telephone number for each. *Approximately 1 page/relevant project*
5. **Agreement/Insurance Issues Statement** - if any.
6. **Resumes** – Resumes for the five key team members (the same individuals identified under Qualifications & Experience). Resumes can expand on the information provided for the team members under Qualifications and Experience. *Not included in page count, but brevity is appreciated.*
7. **Rate Information (Separate page)** – Rate Schedule shall be submitted in a separate page. It shall include a fee schedule and a matrix that identifies the proposed staff,

their title and position in firm, and corresponding hourly billing rates (2023 and 2024) for performing the services discussed in the scope of work.

VIII. EVALUATION AND SELECTION

A. Evaluation Criteria

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

1. **General responses to the RFQ**
2. **Quality and Experience:** Technical experience in performing work of closely similar nature; qualifications of key personnel; experience working with water supply, flood protection or other public water or wastewater agencies; strength and stability of the firm; technical experience and strength and stability of proposed subconsultants.
3. **Assessments by Client References:** Input from client references on the Proposers and all included resources on work of closely similar nature.

B. 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 prepare the eligible list of firms based on demonstrated competence and qualifications. Proposers should also be aware that selection list may be made without interviews or further discussion. The names of the Review Board Members, individual or composite rating and/or evaluation forms prepared by the Review Board will not be revealed.

IX. AWARD

When the Review Panel has completed its review, Proposers will be advised of the selected firm(s) by email. A list of selected firms will be kept on file for five years and used for on-call services contracts and project specific contracts. For project specific contracts, a proposal may be sought from one or more firms on the list prior to negotiating a project specific scope and executing the contract. The contract may require approval from the Board of Directors.

X. TERMS AND CONDITIONS

A. Contract Conditions

The Agency reserves the right to negotiate the actual contract details after the consultant(s) has been selected. The successful proposer will be required to conform to all the terms of and conditions of the Agency. A sample of the Professional Services

Agreement and Insurance requirement, which will be used as the basis for this project, is included for your information (Appendix A).

B. Invoicing

Progress payments will be made based on work completed during the course of the engagement. Details 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 or contract.

C. Confidentiality

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

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review work paper.

Appendix A
Sample Agreement and Insurance
Requirements

SAMPLE

SERVICES AGREEMENT

between

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

and

Consultant Name

for

Project/Program Name

Contract No. _____

Dated _____

SAMPLE

Zone 7 Water Agency

Appendix A - Sample Agreement and Insurance Requirements

RFQ No. 2024-01

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 be emailed to accountspayable@zone7water.com and to the Project Manager.

- 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 B:

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. **Evidences of Insurance** - Prior to execution of the Agreement, the Consultant shall file with the Agency a certificate of insurance (Acord Form 25 or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include (1) attached additional insured endorsements with primary & non-contributory wording, (2) Workers' Compensation waiver of subrogation. The Agency reserves the right to obtain complete, certified copies of all required insurance policies, at any time. Consultant shall maintain the Insurance required by this Agreement throughout the term of the Agreement and for a period of not less than 5 years following the termination of completion of this Agreement. Consultant further waives all rights of subrogation under this Agreement. Failure to continually satisfy the Insurance requirements is a material breach of contract.

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

- 6.8. **Continuation of Coverage** - If any of the required coverages expire during the term of this Agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the Agency at least ten (10) days prior to the expiration date. Failure to comply with any of the Insurance requirements shall constitute material breach of contract. The insurance requirements in this Agreement do not in any way represent or imply that such coverage is sufficient to adequately cover the Consultant's obligations under this Agreement. All Insurance or self-insurance coverage and limits applicable to a given loss or available to the named insured shall be available and applicable to the additional insured. The insurance obligations under this Agreement are independent of and in addition to the defense and indemnity obligations contained elsewhere in this Agreement and shall not in any way act to limit or restrict the defense or indemnity or additional insure obligations of the Consultant or the Consultant's insurance carrier, and shall be for (1) the full extent of the insurance or self-insurance 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

Zone 7 Water Agency

Appendix A - Sample Agreement and Insurance Requirements

RFQ No. 2024-01

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 party 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.

Zone 7 Water Agency

Appendix A - Sample Agreement and Insurance Requirements

RFQ No. 2024-01

- 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 A
INSURANCE

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

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

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

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

If Claims Made Policies:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

Zone 7 Water Agency

Appendix A - Sample Agreement and Insurance Requirements

RFQ No. 2024-01

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

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

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

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

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

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

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

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

Sub-contractors - Consultant shall require and verify that all sub-contractor maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Zone 7 Water

Agency, its directors, officers, employees, and authorized volunteers are an additional insured are an additional insured on Commercial General Liability Coverage.

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.