

ZONE 7 WATER AGENCY



REQUEST FOR PROPOSALS

2018 FLOOD PROTECTION AND STORM WATER DRAINAGE DEVELOPMENT IMPACT FEE STUDY AND INITIAL FINANCING STRATEGY FOR THE STREAM MANAGEMENT MASTER PLAN (SMMP)

All Proposals shall be submitted to:

Jeff Tang, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, CA 94551 no later than close of business **(5:00 pm) on December 12, 2017.**

Proposals received after this time will not be accepted and will be returned to the Proposers unopened.

The Proposer shall submit the complete proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address, and clearly marked as "*2018 FLOOD PROTECTION AND STORM WATER DRAINAGE DEVELOPMENT IMPACT FEE STUDY AND INITIAL FINANCING STRATEGY FOR THE SMMP.*" The envelope shall include:

- **Five (5) copies** of the Proposal and
- **One (1) copy** of the cost proposal in a sealed envelope.

November 27, 2017

Mission Statement:

Zone 7 Water Agency is committed to providing a reliable supply of high quality water and an effective flood control system to the Livermore-Amador Valley. In fulfilling our present and future commitments to the community, we will develop and manage the water resources in a fiscally responsible, innovative, proactive, and environmentally sensitive way.

Vision Statement:

To be recognized as the platinum standard water and flood control district in which to live, work and do business by enhancing the quality of life, economic vitality and environmental health of the communities we serve.

Values:

1. **OPEN AND TRANSPARENT** - The Board's meetings and communications shall be open and public, except when the Brown Act authorizes otherwise.
2. **CUSTOMER SERVICE** - Our commitment to the community requires prompt, respectful and courteous relations with our customers, both internal and external, as well as pursuing community partnerships and collaboration with other area public agencies when beneficial to the public.
3. **INTEGRITY** - We practice the highest ethical standards and maintain open, honest communications at all levels of the organization at all times.
4. **FISCALLY RESPONSIBLE** - We will operate in a productive, cost effective, transparent and efficient manner to ensure sound financial stability.
5. **ENVIRONMENTALLY SENSITIVE** - In carrying out our mission, we are dedicated to preserving and enhancing the environment while complying with regulations.
6. **INNOVATIVE/PROACTIVE** - We encourage innovation, creativity and ingenuity; seeking constant improvement; and keeping up with the latest economical technologies and management practices.
7. **SAFETY** - We are committed to public and employee safety to maintain a healthy work environment. We work safely and provide safe products and services.
8. **EMPLOYEE DEVELOPMENT** - We foster a respect for diversity, equality, a spirit of performance-based accountability and productivity along with personal and professional growth for all team members so as to achieve excellence through the collective energy that comes from a work environment where each employee can flourish and succeed to their highest potential.

1 GENERAL INFORMATION

1.1 Introduction

The Zone 7 Water Agency, or Zone 7 of the Alameda County Flood Control and Water Conservation District (Zone 7), is soliciting proposals to conduct a 2018 Flood Protection and Storm Water Drainage Development Impact Fee Study and an Initial Financing Strategy for the Stream Management Master Plan (SMMP). This Request for Proposals (RFP) describes the project, the anticipated scope of services and the information that must be included in the proposal submitted.

1.2 Background

Zone 7 Water Agency is a dependent special district of Alameda County with an independently-elected Board of Directors. Zone 7 is one of ten active Flood Control Zones of the Alameda County Flood Control and Water Conservation District (ACFCWCD), which was established by District Act 205. Zone 7 provides regional flood protection services within the Alameda Creek Watershed of Eastern Alameda County, including the Cities of Dublin, Livermore, Pleasanton and the community of Sunol; wholesale treated water to residents and businesses in Dublin, Livermore, Pleasanton and the Dougherty Valley portion of San Ramon; untreated agricultural and irrigation water primarily to local vineyards; and groundwater management services throughout Eastern Alameda County. Zone 7's revenues come from property taxes, Development Impact Fees, water sales, water connection fees, interest income and other miscellaneous revenue. Zone 7 employs approximately 110 full time staff at four separate sites.

The SMMP, developed in 2006, is a multi-disciplinary planning document that emphasizes the interrelationships between flood protection, adequate water supply, healthy habitats for plants and animals, and recreation. It is a roadmap for stream management projects and practices that will address all these issues as development continues in Livermore, Dublin, Pleasanton, and the unincorporated Livermore-Amador Valley area in keeping with area adjusted general plans.

The more environmentally friendly SMMP's vision over the next three decades is to create a flood protection program that relies largely on using the future Chain of Lakes, a series of gravel quarries between Livermore and Pleasanton that will be mined out and transferred to Zone 7 by 2030, to detain high stormwater flood events in the Valley. The stored water would then be released downstream only after storms pass through the area – meaning downstream arroyos would require lower capacities and therefore can be kept in a more natural state than under the conveyance method.

The SMMP originally proposed 45 project locations to provide fundamental flood protection and collateral benefits for an estimated cost of \$768 million; \$560 million represented flood protection-type projects. It was envisioned that the cost would not solely be borne by Zone 7, but through collaborations with other local Agencies. In 2017, a Draft amended SMMP was prepared to identify the actual flood impacts in the Livermore-Amador Valley, based on new hydrologic

and hydraulic models. The Draft amended SMMP identifies five (5) major flood protection management areas to focus Zone 7's 10-year Capital Improvement Program efforts on, at an estimated cost of \$300 million, which is much lower than the initial \$560 million cost. However, 31 of the arroyo water quality and habitat enhancement projects of the original SMMP's 45 projects, still plan to be incorporated in the future, as opportunities to collaborate with local Agencies or grant funding becomes available; the 2017 estimated cost of those 31 projects is \$420 million.

In 2009, an initial Development Impact Fee Study for Flood Protection and Storm Water Drainage Systems was prepared to determine how much Development could contribute to the original \$768 million SMMP cost. The Development Impact Fee Study was used to establish Zone 7's Ordinance 2009-01, a Flood Protection and Storm Water Drainage Development Impact Fee.

1.3 Objective

Zone 7's Flood Control Development Impact Fee is collected from developers and residents within Eastern Alameda County when they create new impervious surfaces as part of development or parcel improvements. The fee is assessed to pay for the cost of flood protection improvements necessitated by the increase in impervious surfaces created from new development. Zone 7 seeks the assistance of a consultant to evaluate Zone 7's Draft amended SMMP project costs and update Zone 7's Development Impact Fee to ensure that it represents the reasonable costs of providing service. The recommendations from this project will be presented to the local Cities served by Zone 7, developers, Zone 7's Finance Committee, and Board of Directors for consideration. In addition, Zone 7 is seeking a consultant to prepare an initial financing strategy that identifies potential sources of funding that may be available for the SMMP.

1.4 RFP Outline

The RFP is organized into the following sections:

Section 1: Contains general Information to Proposers.

Section 2: Contains specifications for the RFP including the anticipated Scope of Work and required Proposal Contents.

Section 3: Includes the process instructions including specific submittal instructions and a description of the proposal evaluation process.

2 RFP SPECIFICATIONS

2.1 Scope of Work

The Scope of Work includes two phases to be addressed: 1) a Flood Protection and Storm Drainage Development Impact Fee Study; and 2) an Initial Financing Strategy for the SMMP. The Development Impact Fee Study is expected to recommend a Development Impact Fee sufficient to fund the developer-driven portion of the SMMP. The Development Impact Fee Study shall include the following tasks:

1. **Project Meetings:** Conduct initial project “kick-off” meeting and follow-up with bi-weekly status update meetings
2. **Data Collection:** Collect information from and conduct meetings (two to four) with Zone 7 staff, cities, developers, and other stakeholders as needed to assist in the Development Impact Fee Study.
3. **Review and analyze Zone 7’s existing SMMP Program and Development Impact Fee Ordinance:** Review includes the Draft 2017 amended SMMP Report and the supporting 2006 SMMP document, the 2009 Flood Protection and Storm Water Drainage Development Impact Fee Ordinance 2009-01, and other relevant documents as necessary. Recommend changes to the existing fee, and/or its calculation methodology.
4. **Review and analyze proposed SMMP Project costs:** Development of the Study will be based on the updated project costs identified in the Draft 2017 amended SMMP Report.
5. **Prepare a Development Impact Fee Study:** Consultant to prepare a draft and final report that includes a description of the overall methodology, findings, supporting justification, recommended connection fee and the calculations that provide the legal nexus between the fee recommendations and new development. While District Act 205 grants Zone 7 the authority to impose a Development Impact Fee, the Mitigation Fee Act may be used as a guideline for implementation. Incorporate review comments from Zone 7 staff into a final report.
6. **Present findings to Zone 7 and Public:** the Zone 7 Finance Committee and Board, Cities, developers, and other stakeholders as necessary (assume a minimum of five public meetings).

The Initial Financing Strategy for the SMMP, in concurrence with the Development Impact Fee Study, will identify potential sources of funding that may be available for the SMMP. The preliminary scope of work shall include:

1. **Review and analyze proposed SMMP Projects cost estimates:** Consultant shall, as part of their review of the SMMP Projects cost estimates, identify any potential funding gaps based on the current levels of funding.
2. **Develop a financing strategy based on the current level of funding available to Zone 7:** Consultant shall prepare a financing plan, assuming no new fees or funding sources.
3. **Recommend new funding sources:** Consultant to recommend new types of funding to bridge the gap identified in Task 1 above.

4. **Develop a matrix of funding and financing options:** Consultant to compile funding and financing options and discuss the pros and cons and feasibility of each option. Recommend the best funding options for the Agency resulting from the analysis.
5. **Develop a proposed long-term financing strategy:** Consultant to prepare a proposed long-term financing plan based on the recommended funding options.
6. **Prepare a SMMP Financing Strategy Report:** Consultant to prepare a draft and final report documenting the findings and recommendations. Consultant to submit technical progress updates, as needed and directed by Zone 7.
7. **Present findings:** Consultant to attend meetings, prepare outreach documents and give presentations to the Zone 7 Finance Committee and/or Board, and stakeholders, as necessary (minimum of four meetings).

2.2 Proposal Format and Content

A. Format

Please submit five (5) copies of your Proposal, which shall be organized and prepared according to the Content section that follows, with attention given to the following:

- The project team including the organization chart and commitment (hours/%) of the team during the course of the project. The Project Manager listed should be available for, and lead, the oral presentation.
- A record of experience and qualifications of the project team 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 Scope of Work.
- Any additional relevant services performed by your firm that were not outlined in the Scope of Work.
- Submit one (1) copy of the itemized cost proposal in a sealed envelope, including all projected reimbursable cost for travel, professional services, supplies and other related cost. Please provide separate cost proposals for the Flood Protection and Storm Water Drainage Development Impact Fee Study and the Initial Financing Strategy for the SMMP.

B. Content

- **Summary and Overview** - Use this section to summarize your approach to the topics identified in the Scope of Work, the strengths of your project team, and why your firm should be selected.

- **Team Personnel** - Identify the key project personnel and their roles associated with the tasks listed in the Scope of Work. Identify the team and individual personnel experience as it relates to the Scope of Work. List other major projects the team or its personnel are involved with currently, including project title, percent workload, and project responsibility.
- **Comments on Scope of Work** - Comments on the proposed Scope of Work. This may be used as an opportunity to expand upon your team's specific experience and expertise, and to outline any changes you believe would be helpful in achieving Zone 7's goals and objectives.
- **Work Plan** - Describe how the project team will fulfill the scope of work, including a detailed preliminary project schedule. Include a matrix of personnel, tasks and estimate of effort in hours. To illustrate your strategy, describe tools and techniques you will use, and challenges you anticipate, in addressing specific issues identified in the Scope of Work.
- **References** - From recent applicable experience of the Project Manager and key staff, list up to five (5) relevant projects, and include the agency, staff contact name, address, and telephone number for each.
- **Resumes** of the proposed project team may also be submitted.
- **The Total Proposal Length** should not exceed fifteen (15) pages, excluding resumes.

3 INSTRUCTIONS TO PROPOSERS

3.1 Submittal Instructions

A. Examination of Proposal Documents

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

B. Addenda/Clarifications

Questions or comments regarding this RFP shall be addressed in writing to Jeff Tang, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, CA 94551, or E-mailed* to jtang@zone7water.com no later than December 1, 2017. Responses from Zone 7 will be communicated in writing or by E-mail to all recipients of this RFP. Note that providing E-mail addresses early in the process will facilitate such distributions. Zone 7 will not be responsible for late receipt of written communications if email addresses have not been provided for this purpose.

*Please note that Zone 7 is limited to receiving E-mails with attachments of less than 10 MB; any E-mails with attachments larger than 10 MB will not be delivered. Please provide a suitable link to download attachments larger than 10 MB, as necessary.

C. Submission of Proposals

All Proposals shall be submitted to: Jeff Tang, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, CA 94551. Proposals must be delivered and received no later than close of business (5:00 pm) on December 12, 2017. Proposals received after this time will not be accepted and will be returned to the Proposers unopened.

The Proposer shall submit the complete proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address, and clearly marked as "**2018 FLOOD PROTECTION AND STORM WATER DRAINAGE DEVELOPMENT IMPACT FEE STUDY AND INITIAL FINANCING STRATEGY FOR THE SMMP PROPOSAL.**" The envelope shall include:

- One (1) Cover letter;
- Five (5) copies of its Proposal; and
- One (1) copy of the cost proposal, including rate schedule, in a sealed envelope.

D. Proposal Documents Inclusion

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

E. Withdrawal of Proposals

A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer, to: Jeff Tang, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, California 94551,. The time of delivery shall be the time such request is received and in hand by Zone 7. The Proposer assumes the risk of any failed delivery.

F. Rights of Zone 7

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

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

Zone 7 reserves the right to:

1. Reject any or all Proposals.
2. Issue subsequent Requests for Proposals.
3. Postpone opening for its own convenience.

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

G. Contract Type

It is anticipated that this contract will be a Standard Professional Services Agreement with Zone 7 that will begin on the date it is signed by the Zone 7 General Manager. By submitting a Proposal to Zone 7 in response to this RFP, Proposer agrees that if selected by Zone 7 as the successful consultant, it will enter into such a contract with Zone 7, generally containing the terms and conditions as set forth in the attached sample agreement (Exhibit B).

Basis of payment will be on an hourly rate up to a not-to-exceed amount, as negotiated between Zone 7 and the selected consultant. Mark-ups for other direct costs shall not exceed ten percent (10%) and mileage reimbursement shall be set at the Zone 7 internal rate (currently 53.5 cents per mile, per the IRS).

3.2 Proposal Evaluation and Selection

A. Evaluation Criteria

The final award will be based on the best value to the Agency, meaning the proposal will be evaluated on, but not limited to, proposal completeness, ability to meet requested service needs, and experience in providing cost of service studies. 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 a similar nature; qualifications of key personnel; key personnel's level of involvement in performing related/ similar work; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel; experience working with connection fee setting for other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors (35%).
3. Comments on preliminary scope of work (20%).
4. Demonstrated understanding of specific project requirements, potential problem areas and project approach (30%).
5. Assessments by client references (5%).

B. Evaluation Procedure

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

Members of the Committee will review the Proposals and will determine if firms will be invited for an oral interview. It is expected that approximately 60 minutes will be allowed for each oral interview and questions and answers, should interviews be required. Each Consultant's Project Manager must lead the presentation before the Committee. Proposers should also be aware that award may be made without interviews or further discussion.

C. Award

When the Committee has completed its review, Proposers will be advised by December 18, 2017 of the need for interviews or of the number one selection. A contract will then be negotiated with the selected firm for the extent of services to be rendered and for the method of compensation.

3.3 Schedule

The draft project schedule is shown in the table below:

<u>Event</u>	<u>Date</u>
Request for Proposals Issued	November 27, 2017
Deadline for questions or comments regarding this RFP	December 1, 2017
Deadline for Submittal of Proposals	December 12, 2017
Presentation/interview (if needed)	Week of December 18, 2017
Zone 7 Board Approval	January 17, 2018
Contract Start Date	February 1, 2018
Draft Development Impact Fee Study/Financing Strategy	April 20, 2018
Developer/City/Finance Committee Meetings	May 1-31, 2018
Final Report	June 15, 2018
Zone 7 Board Presentation	June 20, 2018
Zone 7 Board 2 nd Presentation*	July 18, 2018

**Depending on whether Board approval is required.*

Exhibit A: Key Background Documents

Zone 7's reports, Ordinance 2009-01, and District Act 205 are available at:

2006 SMMP Report

<http://www.zone7water.com/flood-stream/36-public/content/35-final-smmp>

2009 Flood Protection and Storm Drainage DIF Ordinance

http://www.zone7water.com/images/pdf_docs/smmp/dif-ordinance_2009.pdf

Draft 2017 Amended SMMP Report

https://www.dropbox.com/s/zaidae9de3hintl/SMMP%20Update_Compiled_7.28.17.pdf?dl=0

District Act 205

<http://www.acfloodcontrol.org/wp-content/uploads/2016/02/act205.pdf>

Exhibit B: Sample Services Agreement

SAMPLE ONLY

SERVICES AGREEMENT

Between

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

And

for the

[Project/Program Name]

(Contract No. _____)

Dated _____

**ZONE 7 WATER AGENCY OF THE
ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT**

**AGREEMENT BETWEEN ZONE 7 WATER AGENCY OF
THE ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT AND**

THIS SERVICES AGREEMENT (“**Agreement**”) is dated this _____ day of _____, 20____, in the City of Livermore, State of California, by and between _____, hereinafter referred to as (“**Consultant**”) and ZONE 7 of ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, commonly known as ZONE 7 WATER AGENCY, hereinafter referred to as (“**District**”).

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

1. Scope of Services. The Consultant shall perform all services described in Appendix A (“**Services**”), for the compensation set forth in Appendix B (“**Compensation**”), which appendices are attached and made a part of this Agreement.

2. Term. The Contract Term shall be _____. All Services whenever performed shall be deemed performed under this Agreement, and all compensation paid to Contractor on account of the Services performed shall be deemed as payments of the Compensation.

3. Maximum Compensation. Notwithstanding anything in this Agreement to the contrary, the maximum amount of money which the District shall be obligated to pay Consultants under this Agreement is _____ \$ _____ (spell out in words).

4. Standard of Performance. Consultant represents that it possesses all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a specialist in performing services of like nature and complexity of the Services.

Should service agreement become work on “Public Work”: A contractor\consultant or subcontractor\sub-consultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirement of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter [1770-1784 Labor Code], unless currently registered and qualified to perform public work pursuant to Section 7029.1 of the Business and Professional Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the

contractor\consultant is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

5. Subconsultants. Consultant shall perform the Services using the personnel and subconsultants listed in Appendix A. Consultant represents that it has and shall hire only qualified persons or firms who are experienced in performing work of like nature and complexity to the Services, and who agree to be bound to the terms of this Agreement to the extent of their scope of services. Consultant may substitute such personnel or subconsultants prior to any such personnel or subconsultants commencing work only upon District written consent, which may be withheld or delayed in District discretion.

6. Representatives for Both Parties. Both parties shall designate a representative, authorized to act on the parties' behalf with respect to this Agreement. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant's services. The parties may delegate all or some of the representatives' role and function to some other representative.

7. Indemnification and Liability. Consultant shall defend (with legal counsel reasonably acceptable to District), indemnify and hold harmless the District and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person or employee), expense and liability of every kind, nature and description that arise from (1) Consultant's negligent performance of the Services under this Agreement, or any part thereof, (2) any negligent act or omission of Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control, or (3) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement, or (4) any breach of this Agreement (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence or willful misconduct of such Indemnitee, but shall apply to all other Liabilities. Consultant shall place in its subconsulting agreements and cause its subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement. If the services under this Agreement are for a construction project as defined in Civil Code Section 2782, then this provision shall apply to the extent permitted by that code section.

8. Notices. District and Consultant shall provide notices to the other in the form of a writing, sent by certified mail return receipt requested, or by overnight courier or delivery service with signature required, as follows:

**Zone 7 Water Agency
Alameda County Flood Control
and Water Conservation District
100 North Canyons Parkway
Livermore, CA 94551
Attn: General Manager**

**[Consultant Name]
[Consultant Address]**

Attn: _____

or to such other place as either party may similarly in writing designate to the other. Notices shall be effective three business days after mailing by certified mail, or upon receipt if delivered by overnight courier or delivery service.

9. Insurance. Consultant shall comply with all requirements of Appendix C, which is attached and made a part of this Agreement.

10. Independent Contractor. Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture or partnership relationship between District and Consultant, and no such relationship shall be implied from performance of this Agreement. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. Consultant shall pay all taxes (including California sales and use taxes) levied upon this Agreement, the transaction, or the Services, including but not limited to any applicable City of Pleasanton business tax, not explicitly assumed in writing by District hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

11. Conflict of Interest.

11.1 Consultant represents that it is familiar with Section 1090 and Section 87100 *et seq.* of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections. Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant agrees to comply with all conflict of interest codes adopted by the Alameda County Flood Control and Water Conservation District and its Zone 7 Water Agency and their reporting requirements.

12. Confidentiality.

12.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District or its tenants. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance

of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to District interests where such confidential information could be used adversely to District interests. Consultant agrees to notify District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

12.2 Any publicity or press releases with respect to the Project or Services shall be under District sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District prior written consent. Consultant shall have the right, however, without District further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

12.3 The provisions of this Section shall remain fully effective indefinitely after termination of Services to District hereunder.

13. Suspension and Termination of Services. (i.) District may direct Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as District may determine in its sole discretion. District may issue such directives without cause. District will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii.) District may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should Consultant commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of District written notice to Consultant demanding such cure. In the event District terminates Consultant's right to proceed under this Agreement for default, Consultant shall be liable to District for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii.) District may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever District determines that such termination is in District best interests. In the event District terminates performance of the Services for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date up to but not exceeding the Agreement value of the services performed, but may recover no other cost, damage or expense. In all cases, Consultant shall terminate those portions of the Services specified and no compensation shall be due for any such Services performed after the date of termination or suspension.

14. Ownership of Work Product. Any interest (including copyright interests) of Consultant or its subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its subconsultants at any time in connection with the Services, shall be, immediately upon its creation, the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works and any former works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to District all copyrights to such works when and as created. With District prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

15. Audit/Inspection of Records.

15.1 Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Consultant shall permit District to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

15.2 The Consultant shall maintain full and adequate records to show the actual costs incurred by the Consultant in the performance of this Agreement. If such books and records are not kept and maintained by Consultant within a radius of fifty (50) miles from the offices of District at 100 North Canyons Parkway, Livermore, California 94551, the Consultant shall, upon request of District, make such books and records available to District for inspection at a location within said fifty (50) mile radius or Consultant shall pay to District the reasonable, and necessary costs incurred by District in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. Consultant shall provide such assistance as may be reasonably required in the course of such inspection. District further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by District, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after District makes the final or last payment or within three (3) years after any pending issues between District and Consultant with respect to this Agreement are closed, whichever is later.

16. Non-discrimination. Consultant shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, City and County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. Consultant shall provide all information reasonably requested by District to verify compliance with such matters. Consultant stipulates, acknowledges and agrees that District has the right to monitor Consultant's compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.

17. Non-Judicial Administrative Claim Settlement Procedure For Consultant Claims. In the event of any dispute between Consultant and District regarding any claim, demand or request by Consultant for time, money, or additional compensation for any reason whatsoever (including, without limitation, any alleged failure of District to make a decision), Consultant shall submit to the District a written and fully documented administrative claim that shall provide a narrative of the pertinent events, Consultant's theory of entitlement, pricing calculations and attaches supporting documentation. District will then review Consultant's fully documented administrative claim; may conduct an administrative hearing, in which case Consultant shall attend, present documentation and information as requested; and District will then make a final administrative decision thereon.

Pursuant to Government Code section 930.2: (i.) Consultant shall initiate this non-judicial settlement procedure by presenting its administrative claim within 60 days of the first event giving rise to the claim or dispute, (ii.) Consultant's timely submittal of the administrative claim and District decision thereon shall be an unwaivable condition precedent to Consultant thereafter filing a Government Code Claim under the California Government Code Section 901 *et seq.*, (iii.) any and all such Government Code Claims in connection with this Agreement shall be presented to the District no later than 120 days following substantial completion or termination of this Agreement (whichever first occurs); and (iv.), except as so modified, the Government Code claims presentation requirements remain unchanged.

18. No Special or Incidental Damages. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

19. California Law. This Agreement shall be deemed to have been executed in the City of Pleasanton or Livermore, Alameda County, California. Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of this Agreement to another venue. The exclusive venue for all litigation arising from or relating to this Agreement shall be in Alameda County, California. In the event of litigation, the terms of this agreement shall be enforced first, and only when an answer to a dispute is not found in the terms of the Agreement, then by reference to California law.

20. No Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

21. Entire Agreement. This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement.

22. No Waiver. The granting of any payments, and any inspections, reviews, approvals or oral statements by any District representative, or certification by any governmental entity, shall in no way limit Consultant's obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of District and Consultant.

23. Statutes of limitation. As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of District issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for damages resulting from latent defects in performance, for which the statute of limitation shall begin running upon discovery of the damages, the defect and its cause.

24. Severability. Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

25. Survival of Provisions. Except as otherwise separately and expressly provided by the District in writing, the provisions of this agreement shall survive any expiration, breach, or termination of this Agreement, and any completion of the Services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first mentioned above.

“District”

ALAMEDA COUNTY FLOOD CONTROL and WATER
CONSERVATION DISTRICT, ZONE 7

By: _____

G. F. Duerig, General Manager

“Consultant”

By: _____

Print Name and Title

(If Corporate Chairman, President or Vice President)

Attest: _____

Print Name and Title

(If Corporate Secretary, Assistant Secretary,

Chief Financial Officer, or Assistant Treasurer)

Tax I.D. Number _____

LIST OF APPENDICES AND SCHEDULES

Appendix A

Scope of Services

Appendix B

Payments to Consultant

Appendix C

Insurance

APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, acting by and through its ZONE 7 WATER AGENCY (“**District**”) and _____ (“**Consultant**”), for the provision of professional services (“**Services**”).

1. Agreement Description.

1.1 General Requirements.

[Here state the requirements for Consultant’s Services and/or reference Exhibit/Attachment. To include:

- **A description of the work expected including, if appropriate, the need for phases.**
- **A statement of purpose, objectives or goals**
- **Specific tasks, responsibilities or services required**
- **Required deliverables (acceptance criteria specified below)**
- **Identification of all other significant material to be developed under the agreement**
- **Required skill levels of assigned personnel**
- **Discuss coordination of schedule with the schedules of other Consultants and others, if applicable. Include reference to District approved budget.)**

1.2 Milestone Schedule.

Consultant’s timetable for the Services shall be as follows [**and/or reference Exhibit/Attachment**]:

1.3 Personnel and Subconsultants.

Consultant shall use only the personnel listed in Schedule 1.3A to the Agreement and the following subconsultants in performing the Services unless approved in writing by District:

<u>Subconsultants</u>	<u>Scope of Services</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

1.4 Required Meetings, Interfaces, Products, Services.

Consultant shall attend all meetings, conduct all interfaces, supply all materials and services necessary to complete the Services. District calls Consultant's attention to the following specific requirements.

1.5 District Training Requirements or Transition Requirements.

Consultant shall provide training and or transition services as follows:

1.6 Special Warranty/Quality Requirements.

The following special warranty or quality requirements apply to the performance, deliverables or materials developed under the Agreement.

1.7. Performance Measurement Criteria.

Consultant's performance shall meet the following standards for **[contents, quality, timeliness, codes or standards, objectives or baselines]**:

1.8 Performance Incentives.

Consultant's performance shall be subject to the following performance incentives:

1.9 Standard Conditions Governing Consultant's Service.

The Agreement shall be performed to meet all applicable and the most current codes, laws, regulations, and professional standards. Time is of the essence in this Agreement.

1.10 **[OPTIONAL:]** Coordination with District.

At the outset of the Services under this Agreement, Consultant shall prepare and submit for District acceptance a task list. The purpose of this task list shall be to act as a District "to-do" list, promoting coordination between District and the Consultant. The task list shall list all points of District and Consultant/third party interface, for example, approvals, reviews, design input and supplying information. The task list shall include a listing of Consultant's anticipated specific requirements for information, decisions or documents from District necessary for Consultant's performance of its Services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.

1.11 Performance.

Consultant shall prepare and maintain a Performance Schedule detailing the Consultant's scheduled performance of the Services consistent with the milestone schedule.

1.12 **[OPTIONAL]** Monthly Progress Report.

Consultant shall provide District with a Monthly Progress Report, in writing, reporting on Consultant's progress and any problems in performing the Services of which Consultant becomes aware. The Monthly Progress Report may be submitted with the monthly payment application and shall include, but not be limited to: (i.) a narrative of the work performed (including a list of any agreement deliverables) and identification of areas of concern, actions and approvals needed, (ii.) a schedule assessment and proposed

ways to work around any problems that arise, (iii.) monthly schedule status reports clearly identifying actual performance with respect to the current approved version of the schedule, (iv.) cost/expenditure summary..

1.13 **[OPTIONAL]** Deliverables Required Under This Agreement.

Required Deliverables are discussed above and listed in [**Appendix D**]. Each deliverable shall be reviewed with representatives of District. Consultant shall promptly correct deficiencies in deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof included in the fee for Basic Services.

1.15 [OPTIONAL] Consultant has prepared and supplied District with a proposed scope of work, which is attached to this Appendix as its Exhibit 1, and represents Consultant's initial proposed scope of services necessary to achieve the results described herein, as well as additional negotiated scope of work items. This Appendix A and its Exhibit 1 are deemed complimentary; what is called for by one is as binding as if called for in both and shall be performed by Consultant. In the case of direct conflict, then the requirement providing District with the broader scope of services shall have precedence.]

1.16 Consultant's scope of work shall include any and all work or services necessary because of Consultant's errors, omissions or conflicts of any type in Consultants' Services, including but not limited to, deliverables supplied hereunder. All such services shall be performed at no cost to District, including, but not limited to, any required corrections or revisions to deliverables that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

END OF APPENDIX A

APPENDIX B – PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of, the Services Agreement dated _____ (“**Agreement**”) between ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, acting by and through its ZONE 7 WATER AGENCY (“**District**”), and (“**Consultant**”), for the provision of professional services (“**Services**”).

1. Basic Services. District will pay Consultant for Basic Services, a maximum compensation of \$_____ (“**Contract Price**”), which sum includes costs for reimbursable expenses as identified below. Such payment shall be full compensation for all Basic Services required, performed or accepted under this Agreement. If District and Consultant previously executed a services agreement for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that services agreement shall be subject to the terms of this Agreement and the previous payments deemed payments against the Contract Price established in this Appendix.

2. Work Breakdown Structure. To assist District in determining progress payments, Consultant shall provide District with an itemization of its Contract Price under this Agreement according to a Work Breakdown Structure (“**WBS**”) that defines all project tasks, along with a project schedule defining the time line for each task, a project budget defining the planned man-hours and costs for each task, and a schedule of deliverables defining each deliverable to be provided to District. The WBS shall further define which tasks are to be performed by each sub-consultant. **[The WBS is attached to this Appendix as its Exhibit 1.]**

3. Payment Schedule. Progress payments for Basic Services for each phase of the work shall be made as follows:

- upon completion of work

- monthly based upon Consultant’s percentage completion of the Services as determined by Dist

- as set forth in the attached schedule

4. Additional Services. District will pay the Consultant for Additional Services as agreed to in a written addendum or amendment (“**Amendment**”) to this Agreement executed by District and the Consultant. Each such amendment shall provide for a fixed price; or, where payment for such Additional Services is to be on an hourly basis, for a maximum amount plus Costs and Reimbursables. Amendments must be negotiated and signed by the Consultant and District prior to commencing work of Additional Services; otherwise, such costs are deemed within Basic Services. District shall pay Consultant for Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore times **[1.10]** for general and administrative expenses.

5. Costs and Reimbursables.

5.1 Additional Services. District will pay Consultant for “Costs and Reimbursable Expenses” in connection with Additional Services as set forth below. All costs not listed will not be allowed in connection with Additional Services.

5.1.1 Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by District to travel to a location more than 50 miles from either the project site, the Consultant’s office(s), or District office, incurred performing Additional Services.

5.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

5.1.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.

5.1.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Agreement Documents, if any, incurred performing Additional Services.

5.2 Basic Services. For Basic Services, District will not pay Consultant additional compensation for Costs and Reimbursable Expenses, as these costs are deemed included in the Contract Price.

6. Invoices. All payments shall require a written invoice from Consultant in a form acceptable to District. District shall make payment on approved amounts within each invoice within 30 days of receipt.

END OF APPENDIX B

APPENDIX C - INSURANCE

This is an appendix attached to, and made a part of, the Services Agreement dated _____ (“**Agreement**”) between ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, acting by and through its ZONE 7 WATER AGENCY (“**District**”) and _____ (“**Consultant**”), for the provision of professional services (“**Services**”).

1. Consultant’s Duty to Show Proof of Insurance. Prior to the execution of this Agreement, Consultant shall furnish to District satisfactory proof that Consultant has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to District and with an insurance carrier satisfactory to District, authorized to do business in California and rated by A. M. Best & Company **A-** or better, financial category size **VII** or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:

- 1.1 Commercial General Liability Insurance Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than **\$2,000,000** general aggregate and **\$1,000, 000** each occurrence.
- 1.2 Business Automobile Liability Insurance Business automobile liability insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles.
- 1.3 Workers’ Compensation Insurance **Workers’ Compensation Employers’ Liability limits not less than \$1,000,000 each accident, \$1,000,000 per disease and \$1,000,000 aggregate. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.**
- 1.4 Professional Liability Insurance Professional Liability Insurance, either (a) specific to this Project only, with limits not less than **\$1,000,000** each claim, or (b) limits of not less than **\$1,000,000** each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and any deductible not to exceed 5,000 for each claim, with no exclusion for claims of one insured against another insured and with tail coverage for a period of five (5) years after the completion of the Services.

2. Insurance policies shall contain an endorsement containing the following terms:

2.1 Additional Insureds. On Consultant’s Commercial General Liability policy and Automobile Liability Policy, Alameda County, Alameda County Flood Control and Water Conservation District, its Zone 7 Water Agency and their affiliates, directors, officers, officials, partners, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.

2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to District thirty (30) days in advance of the effective date thereof. Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Agreement, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above.

2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than that amount Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

2.5 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted Subconsultants may be held responsible for payment of damages resulting from their operations. If Consultant fails to maintain any required insurance, District may take out such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.

END OF APPENDIX C