

REQUEST FOR QUALIFICATIONS

For

Engineering & Other Professional
Services

Zone 7 Water Agency



May 30, 2019

I. INTRODUCTION

Zone 7 is one of ten active zones of the Alameda County Flood Control and Water Conservation District, which is a special district established by State legislature in 1949. Zone 7 of Alameda County Water Conservation and Flood Control District (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.

Today, Zone 7 owns about 40 miles of flood control channels and supplies water to about 245,000 customers within a service area of approximately 425 square miles in eastern Alameda County and a portion of San Ramon in Contra Costa County through a special agreement with Dublin San Ramon Services District..

As the major water supply and flood control agency in eastern Alameda County, Zone 7 has an ongoing commitment to planning for existing and future needs, implementing needed projects, and maintaining a reliable water delivery and flood control system.

Zone 7 Water Agency is seeking consultants to provide engineering consulting/professional services for water system and flood protection system projects, studies, and regulatory compliance matters. This Request for Qualifications is intended to develop a short list of pre-approved consultants for various engineering services. From the short list, at Zone 7's discretion, consultants will be selected for various engineering and other services for smaller projects and studies through on-call contracts or as needed project specific contracts. Selected firms based on qualifications will be placed on an eligibility list for a period of up to five years. The eligible list will be used for on-call contracts up to \$300,000 per year, specific studies, and project specific contracts to perform engineering services for CIP projects with total project costs up to \$10 million.

Interested consultants are invited to respond to this RFQ by submitting a statement of qualifications (SOQ). A consultant is not required to demonstrate qualifications in every engineering or other service (specialty/discipline) listed to make the short list. Consultants shall make clear the services for which they wish to be considered as part of their SOQ as instructed below.

II. INSTRUCTIONS TO PROPOSERS

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 is capable of performing 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 (see Attachment C) or similar. Changes to this Agreement will not be allowed.

B. Addenda/Clarifications

Written questions or comments regarding this RFQ can be submitted by mail and addressed to **Steven Ellis**, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, California 94551; or by email at sellis@zone7water.com no later than **4:00 p.m. on June 15, 2019**. Responses from Zone 7 will be communicated by e-mail and posted to our website by 5:00 p.m. on June 20, 2019.

C. Submission of SOQs

All SOQs are to be submitted to **Steven Ellis**, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, California 94551. SOQs must be delivered no later than **4:00 p.m. on 27th day of June, 2019**. SOQs received after this time will not be accepted and will be returned to the Proposers unopened.

The Proposer shall submit five (5) copies of its SOQ, addressed as noted above, bearing the Proposer's name and address, and clearly marked as **"RFQ for Engineering Consultant Services."**

Submittals shall also include one (1) copy of the firm's rates in a separate, sealed envelope. The rate sheet must identify the proposed job classifications and corresponding hourly rates (2019) for performing the services. Indicate your firm's name on the outside of the sealed envelope. This information will not be used during the qualifications review.

D. SOQ Documents Inclusion

At the sole discretion of Zone 7, the SOQ documents may be deemed a part of the contract resulting from this RFQ, 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 delivering to Zone 7 Water Agency, attention **Steven Ellis**, 100 North Canyons Parkway, Livermore, California 94551, a written request for withdrawal signed by, or on behalf of, the Proposer. The time of delivery shall be the time such request is received in hand by Zone 7. The Proposer assumes the risk of mis-delivery.

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, past experience and other similar items. Under California law, if requested to provide a copy of your proposal to a third party, we will do so in order to comply with the California Public Records Act.

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

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

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

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 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. Accept other than the lowest rates or rating.
11. Waive informalities and irregularities in SOQs.

Some of the categories in Attachment B 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

Selection of a firm or firms may result in an on-call Professional Services Agreement with Rate Schedules to be used with issuance of Task Orders for specific assignments on various

projects. **The time period is five years, beginning on or about August, 2019.** The on-call services agreement/contract could be renewed for four additional one-year periods at Zone 7's discretion and Rate Schedules to be adjusted annually limited to a 3% increase if approved by Zone 7. In addition to the on-call agreements/contracts, specific project contracts may also be awarded to the selected firm(s), as needed, during this time period.

I. Compliance with Laws; Conflict of Interest. Consultant agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, collusion and conflicts of interest.

Should services agreement become work on "Public Works": 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.

III. PROPOSER'S MINIMUM QUALIFICATIONS

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. Proposer will identify on Attachment A the category or categories for which they are submitting qualifications for review.
4. The selected consultant(s) 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 Attachment C, which contains Zone 7's Services Agreement and Insurance Requirements. Proposers agree to execute Zone 7's standard professional services agreements if selected for a project, study or service. It is the responsibility of each Proposer, before submitting the SOQ, to thoroughly examine the Zone 7's standard professional services agreements attached to this RFQ.
5. 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.
6. The Proposer shall comply with applicable federal, state and local regulations concerning equal employment opportunity requirements.

III. SOQ FORMAT AND CONTENT

The total SOQ length (items 2 through 5, below) should not exceed 10 pages for each category, excluding resumes. Responses need only be limited to those categories of work in Attachment A for which you are seeking eligibility listing.

Please submit five (5) copies of your SOQ, which shall be organized as follows:

1. Completed **Attachment A**.
2. **Introduction** – Brief firm profile including history, staff size, office location(s), and areas of expertise. *Approximately 1-2 pages.*
3. **Qualifications & Experience of the Team** – For up to five key team members (including one contract manager)¹, include a summary of their qualifications, education, expertise, certifications, and project experience as it relates to the proposed services. Provide brief summaries of recent relevant project experience as they relate to the proposed team, proposed services, local experience, and water supply/flood control 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.*
4. **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.*
5. **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.*
6. **Agreement/Insurance Issues Statement** - if any.
7. **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.*
8. **Rate Information (Separate Envelope)** – One copy of Rate Schedule shall be submitted in a separate, sealed envelope. 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 (2019) for performing the services discussed in the scope of work. Indicate your firm's name on the outside of the envelope.

¹ **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.

IV. EVALUATION AND SELECTION

A. Evaluation Criteria: The following criteria will be used to evaluate written proposals that are submitted. Quality and experience will be weighted most heavily. All others will be weighted approximately the same.

1. General response to the RFQ.
2. Quality and experience: Technical experience in performing work of closely similar nature; qualifications of key personnel; key personnel's level of involvement in performing related work; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel; experience working with water supply, flood control or other public agencies; record of completing work on schedule; strength and stability of the firm.
3. Assessments by client references.
4. For Materials Testing and Support Services, the firm's location shall be within 40 miles of the Zone 7 North Canyons Office.

B. Evaluation Procedure

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

C. Award

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.

V. ATTACHMENTS

- A. Eligibility Review Checklist
- B. Proposed Scope of Services
- C. Sample Zone 7 Agreements

ATTACHMENT A

ELIGIBILITY LIST - QUALIFICATIONS CATEGORIES

Firm/Team Name:

Selected firms will be placed on a list of firms eligible to support such work, as needed, for a period up to 5 years. Submitted SOQs will be divided by category of work for evaluation and the eligibility list. To this end, SOQs need not show competency in all categories of work – Proposers will identify here the categories of work to which they are submitting qualifications for eligibility review.

Select as many as apply, but we encourage selecting only those categories that are demonstrated by your SOQ as core strengths of the firm.

Category	Scope of Work	Applying for Eligibility Review?
1	Civil/Mechanical/Water Treatment Engineering Services (Water Supply Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
2	Civil Engineering Services (Flood Protection Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
3	Electrical Engineering Services (Water Supply Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
4	SCADA System Configuration & Programming Services (Water Supply Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
5	Materials Testing and Support Services (Water Supply and Flood Protection Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
6	Construction Management Services (Water Supply and Flood Protection Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
7	Geotechnical Engineering Services (Water Supply and Flood Protection Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
8	Water Supply Planning Services	<input type="checkbox"/> Y <input type="checkbox"/> N
9	Coating System Inspection Services (Water Supply Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
10	Industrial Hygiene and Hazardous Materials Management Services (Water Supply and Flood Protection Systems)	<input type="checkbox"/> Y <input type="checkbox"/> N
11	Real Property Services	<input type="checkbox"/> Y <input type="checkbox"/> N

ATTACHMENT B SCOPE OF SERVICES

1. CIVIL/MECHANICAL/WATER TREATMENT PROCESS ENGINEERING SERVICES (WATER SUPPLY SYSTEMS)

Typical assignments would be to assist staff with planning, design, improvement/modification, and repair/replacement of the following:

- Water treatment plant processes.
- Municipal groundwater extraction well facilities.
- Transmission pipelines.
- Pump stations.
- Groundwater treatment by reverse osmosis and associated facilities.
- Chemical storage and feed systems.
- Office buildings.

And to:

- Provide project management and/or general civil, structural, electrical, and mechanical engineering assistance to Zone 7 staff.
- Prepare calculations and assist with selection of equipment.
- Prepare design drawings, specifications and cost estimates.
- Perform site observation visits and construction inspection.
- Provide clarifications and review of change orders.
- Review submittals.
- Prepare record drawings.
- Prepare Vulnerability Assessments for water system facilities.

Anticipated Projects as an example over the next five years include:

1. Acid storage and feed facility for RO Plant Brine pH adjustment.
2. Conversion of sodium hypochlorite facility from on-site generation to bulk facility.
3. Polymer make-up, storage and feed facility.
4. Coagulant storage and feed facility rehabilitation.
5. Parking lot rehabilitation and access road improvements.
6. Water pipeline installation or repair/replacement.
7. Pump station rehabilitation and improvements.
8. New Pump Station Design
9. Plant Sludge handling system improvements (e.g. new sludge beds, dewatering facilities).
10. Water treatment plant process reviews and improvements.
11. Municipal well casing condition and screen assessments and well/well pump performance.
12. Reverse osmosis membrane condition assessments.

13. Office Building HVAC system renewal/replacement.
14. Risk and Resilience assessment (or Update to existing Vulnerability Assessment) of Zone 7 water system to comply with the America's Water Infrastructure Act of 2018
15. Water facility seismic retrofit work.
16. Design of Chromium 6 Treatment for Wells if need due to anticipated Chromium 6 MCL

2. CIVIL ENGINEERING SERVICES (FLOOD PROTECTION SYSTEMS)

Typical assignments would be to assist staff with design, improvement/modification, and repair of the following:

- Flood Control Channels, Structures and Appurtenances.

And to:

- Provide general civil engineering assistance to Zone 7 staff.
- Prepare calculations and assist with selection of equipment.
- Prepare design drawings, specifications and cost estimates.
- Perform site observation visits and construction inspection.
- Provide clarifications and review of change orders.
- Review submittals.
- Prepare record drawings.
- Provide general land and unmanned aircraft system survey assistance.

3. ELECTRICAL ENGINEERING SERVICES

Typical assignments would be to assist staff with design, improvement, and modification of the following:

- Electrical and control system design and construction services as part of a larger in-house project such as chemical system replacement projects. These projects would typically include new small pumps, drives and control panels, connection to existing 480V panels, and new instruments such as flowmeters, level indicators, etc.
- Perform load studies at existing facilities.
- Act as an extension of staff to review electrical and control system designs prepared by consultants during large scale design projects.

And to:

- Provide general electrical engineering assistance to Zone 7 staff.
- Prepare electrical engineering calculations, specifications, and assist with selection of instrumentation.

- Prepare design drawings.
- Perform site observation visits and construction inspection.
- Provide clarifications and review of change orders.
- Review submittals.
- Prepare record drawings.

4. SCADA SYSTEM CONFIGURATION AND PROGRAMMING SERVICES

Typical assignments would be to assist staff with the following:

- SCADA System Configuration, Programming, and Maintenance (Wonderware System Platform, Schneider Magelis LOIs).
- PLC Programming (Modicon, using both Concept and Unity).
- Control System Network Configuration.
- Control Systems Documentation.

The Consultant(s) may perform the following, or similar, services.

- SCADA system development and modifications.
- SCADA server maintenance (including OS updates, SCADA software maintenance, and optimization).
- Local interface configuration and programming.
- Control System network configuration (including router/switch configuration, network monitoring, and redundancy).
- SCADA IT-related tasks (including domain management, software management, and network security).
- PLC Programming (including program modifications, program conversion, and communications).
- Control Systems hardware configuration (including VFDs, power monitoring equipment, and stand-alone controllers).
- Radio system design and configuration.
- Control strategy and procedure development.
- Control system documentation (including P&IDs, network diagrams, programming standard development).

5. MATERIALS TESTING SUPPORT SERVICES

Typical assignments would be to assist staff with the following:

- Pre-Construction Services: attendance at meetings, consultation, etc.
- Construction Inspection and Testing Services.

The Consultant(s) may perform the following, or similar, services.

- Pre-Construction Services
 - Attend meetings (e.g., pre-bid, pre-construction)
 - Provide any consultation requested
- Construction Inspection and Testing Services
 - Provide construction observation.
 - Provide materials testing for construction materials (including, but not limited to, concrete, steel, shotcrete, and coatings)
 - Provide special inspections of contractors work (including, but not limited to, reinforcement steel placement, concrete placement, and welding)
 - Provide non-destructive testing.
 - Provide specialized testing, inspection or analysis (including, but not limited, to forensic, failure or investigation analysis)
 - Assist with enforcement of Zone 7's Quality Control Program
 - Prepare written documentation clearly labeling whether the construction testing or materials testing has passed as related to contract documents (e.g., daily field activity reports, weekly reports reviewed by licensed engineers, and laboratory test results)
- Other Related Services
 - Provide Zone 7 and/or construction management firm of first-hand knowledge of project progress.
 - Establish a working relationship that will open lines of communication keeping all responsible parties aware of current and upcoming progress and requirements.

6. CONSTRUCTION MANAGEMENT SERVICES

Typical assignments would be to assist staff with the following:

- Prepare bid and constructability reviews.
- Construction management services during construction.

The Consultant(s) may perform the following, or similar, services.

- Review of plans and specifications.
- Pre-bid contract document review.
- Review of RFI's.
- Review of submittals.
- Review of project schedules.
- Contract administration.
- Resident engineering.
- Soils and material testing services coordination.
- Construction inspection.
- Assistance to Zone 7 staff with project cost control.
- Review of and processing change orders.
- Management of the project quality assurance program.
- Assist with dispute resolution and overseeing contractor's quality control.
- Coordination with Zone 7 Operations & Maintenance staff for facility shut-downs.
- Provide assistance in SWPPP reviews and monitoring.
- Provide assistance on labor compliance program certified payrolls review.
- Work effectively and in a timely manner with the governing Zone 7 Board of Directors, top management and all staff levels of Zone 7.

7. GEOTECHNICAL ENGINEERING SERVICES

Typical assignments would be to assist staff with the following:

- General on-call geotechnical engineering support services.
- Foundation reviews & design.
- Slope repair review & design.

The Consultant(s) may perform the following, or similar, services.

- Geotechnical engineering services.
- Field technician services.
- Field observation.
- Construction observation.
- Soil borings with laboratory testing.
- Soils analysis and report.
- Inclinator readings and analysis.
- Provide clarifications and review of change orders.
- Review submittals.

8. WATER SUPPLY PLANNING SERVICES

The Consultant(s) may perform the following services:

- Preparation of urban water management plans.
- Demand analysis and forecasting.
- Conservation program evaluation and development.
- Water supply evaluation and optimization, including modeling.
- Groundwater and surface water facility planning
- Capital improvement program planning.
- Water rights and water transfers.
- Groundwater and surface water modeling

9. COATING INSPECTION SERVICES

Typical assignments would be to assist staff with coating inspection of the following:

- Dougherty Reservoir Rehabilitation Project which includes exterior and interior re-coating of a four million gallon steel tank
 - Provide a NACE Level 3 coating inspector and appropriate testing equipment.
 - SSPC QP5 certified inspection firm
 - Assistance with coating specification preparation, pre-bid meeting with potential contractors, and bidding questions.
 - Assistance with construction related items including, but not limited to, attendance at pre-construction meeting(s), coating related submittal reviews, construction change orders, and/or claims.
- Inspection of other coating projects.

10. INDUSTRIAL HYGIENE AND HAZARDOUS MATERIALS MANAGEMENT SERVICES

Typical assignments would be to assist staff in safety and regulatory matters related to the following:

- Assistance in emergency generator compliance.
- Assistance in CalARP compliance.
- Assistance with HMBPs
- Assistance with facility and tank closure plans
- Other miscellaneous environmental testing services

11. REAL PROPERTY SERVICES

Project Acquisitions

In this category, Consultant staff will be available to provide the broad spectrum of full service right of way needs on an on-call basis. Included in the types of services consultant will provide are:

- Right of Way Valuations
- Site Alternatives Analysis
- Appraisals
- Negotiations and Acquisition
- Title Services (in Coordination with Title Companies)
- Consultation and Coordination with Legal Services
- General Right of Way/Real Estate Consultation

Real Property Management

Consultant will provide continuing assistance and support to Zone 7 including grant outs, records management, regular office hours as needed and requested, internal staff meetings, program management assistance, and support to the RPS Manager. Preparing and updating Real Property Guidelines. Grant outs would include easements, licenses, recreational use agreements and other property uses requested by outside interest. Updating and organizing property records and related databases.

ATTACHMENT C
SAMPLE ZONE 7 AGREEMENTS

- 1. Short Form**
- 2. Moderate Form**

1. SHORT FORM SAMPLE AGREEMENT

Simple form professional services –up to -\$50,000 fee
engineering contracts

PROFESSIONAL SERVICES AGREEMENT

Between

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

And

[Consultant Name]

for the

[Project/Program Name]

(Contract No. _____)

Dated _____

AGREEMENT BETWEEN
ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, ZONE 7 AND

THIS PROFESSIONAL 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 the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 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 and Cost of Professional Services. The Consultant shall perform all services described in Appendix A (“**Services**”), for a maximum not-to-exceed amount of \$_____ and pursuant to the payment terms as set forth in Appendix B (“**Payments to Consultants**”), which appendixes are attached and made a part of this Contract.

2. Term. This Contract shall expire _____ unless otherwise earlier terminated pursuant to Section 9 below or upon completion of all Services.

3. 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 professional that specializes in performing professional services of like nature and complexity of the Services.

4. Indemnification and Liability. To the fullest extent permitted by law, 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 (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) 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 negligence or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

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

6. 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 Contract 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 Contract. Terms in this Contract 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

**Simple form professional services –up to -\$50,000 fee
engineering contracts**

taxes) levied upon this Contract, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. The Consultant shall pay all other taxes including but not limited to any applicable City of Livermore 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.

7. Compliance with Laws; Conflict of Interest. Consultant agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, collusion and conflicts of interest.

Should services agreement become work on “Public Works”: A contractor\consultant or subcontractor\subconsultant 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.

Consultant further agrees to comply with all conflict of interest codes adopted by Alameda County, the Alameda County Flood Control and Water Conservation District, Zone 7 and their reporting requirements. Consultant represents that it is familiar with Section 1090 and Section 87100 *et seq.* of the Government Code of the State of California and agrees that Consultant, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in anyway attempt to use the position afforded them by this agreement to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement.

8. Confidentiality. Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for District, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify District in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to District hereunder.

9. 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 Consultant’s right to proceed with the Services under this Contract in whole, or from time to time in part, for default, should Consultant commit a material breach of this Contract, or part thereof, and not cure such breach within ten (10) calendar days of the date of District’s written notice to Consultant demanding such cure. In the event District terminates Consultant’s right to proceed under this Contract 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 Contract in whole, or from time to time in part, for convenience, whenever District determines that such termination is in District’s best interests. In the event District terminates this Contract for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

10. 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

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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 Contract 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's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

11. Audit/Inspection of Records. 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 Contract, and invoices, payrolls, records and all other data related to matters covered by this Contract. 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 Contract shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

12. Non-discrimination. Consultant shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract, on the basis of race, color, religion, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status, and shall comply with all applicable laws regarding non-discrimination and equal employment opportunity.

13. 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 and may, in its discretion, conduct an administrative hearing (in which case Consultant shall attend, present documentation and information as requested.) District will then make a final administrative decision on the claim. 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's 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 (e.g., Govt. Code §945.4.) Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Contract.

14. 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.

15. California Law. This Contract shall be deemed to have been executed in the City of Livermore, Alameda County, California. Enforcement of this Contract 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 Contract to another venue. The exclusive venue for all litigation arising from or relating to this Contract shall be in Alameda County, California. Should any clause, provision or aspect of this Contract be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Contract shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Contract.

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

17. Entire Contract. This Contract and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Contract, 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 Contract or written modification. All prior negotiations are merged into this Contract and shall be inadmissible in any enforcement of this Contract.

18. 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 Contract. 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 Contract, 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 Contract 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.

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19. Severability and Survival. Any provision or portion thereof of this Contract 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 Contract. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law. Except as otherwise separately and expressly provided by the District in writing, the provisions of this Agreement, including but not limited to, its limitations and definitions of liability and claim presentation procedures, shall survive and remain in effect notwithstanding the negligence or breach of this Agreement by either party, or the expiration or termination of this Agreement, or any completion of the Services.

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

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

By _____
Valerie Pryor, General Manager

[Consultant Name],
a _____ corporation,

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)

[Consultant Address]

LIST OF APPENDICES AND SCHEDULES

Appendix A	Scope of Services
Appendix B	Payments to Consultant
Appendix C	Insurance
Appendix D	Deliverables

APPENDIX A – SCOPE OF SERVICES

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

1. Project Description.

1.1 Conceptual Program.

[insert the requirements for Consultant’s Services or reference an attachment. This should be a detailed description of the Project with explanations of what the Consultant will be doing and what the end product that is expected will be. If a consultant generated Scope of Work is used and referenced as an attachment, it must fully set forth and describe the services to be provided, the deliverables and schedule.

The Scope of Work must include a Work Breakdown Structure to assist District in monitoring and determining progress. The Consultant must provide an itemization of its fee under this Agreement 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

1.2 Criteria Governing Consultant’s Service.

1.2.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards.

1.2.2 Unless otherwise permitted in writing by District, Consultant shall not propose or recommend any design that has the effect of shifting design responsibilities from Consultant to a Contractor through performance specifications or any other means. Performance specifications will be allowed only when necessary to preclude single vendor sources or when specifically requested by District.

1.2.3 Unless otherwise permitted in writing by District, Consultant shall not specify unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.

1.3 Deliverables Required Under This Agreement.

Required Deliverables are listed in Appendix D and/or in attached Scope of Work. 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.

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1.4 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 contract 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.

END OF APPENDIX A

APPENDIX B – PAYMENTS TO CONSULTANT

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

1. **Basic Services.** District will pay Consultant for 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 Services required, performed or accepted under this Agreement.

2. **Payment for Services shall be made as follows:**

2.1 Consultant shall be paid for its Services (and for services of its Subconsultants) rendered based upon the hourly “Billing Rates” of each Consultant and Subconsultant employee as set forth in the attached “Billing Rate Sheet”. In no event shall Consultant invoice or receive (including Subconsultants) any payment exceeding the maximum compensation amount set forth in Section 1 herein. The Billing Rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.

2.2 Consultant shall submit monthly invoices with reasonable detail of the daily time incurred by personnel assigned to the Project, along with a schedule of Subconsultant and eligible Reimbursable Expenses incurred, supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings and eligible Reimbursable Expenses to date. Reimbursable Expenses shall be billed at the amount billed to Consultant therefore times [1.1] for general and administrative expenses. Subconsultants shall be billed at the amount billed to Consultant therefore times [1.05] for general and administrative expenses.

3. **Additional Services.** District will pay the Consultant for services requested that are beyond the scope of the Scope of Work (“Additional Services”) as agreed to in a written addendum or amendment (“**amendment**”) to this Agreement executed by District and the Consultant. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment. 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. Each amendment shall also provide for a method of payment (i.e., partial payments or lump sum) and whether it will be based upon percentage of completion or for services billed. Amendments must be negotiated and signed by the Consultant and District prior to commencing work of Additional Services; otherwise, such costs are deemed within the existing Scope of Services.

4. **Costs and Reimbursables.**

4.1 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.

4.1.1 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 the project site, the Consultant’s office(s), or District’s office, incurred performing Additional Services.

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

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- 4.1.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.
 - 4.1.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Contract Documents, if any, incurred performing Additional Services.
5. **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 Professional Services Agreement dated _____ (“**Agreement**”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, commonly known as 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 [_____] or better, financial category size [_____] 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 \$[_____] general aggregate and \$[_____] each occurrence. Deductible limits payable by Consultant, shall be approved by the District

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than \$[_____] each occurrence including coverage for owned, non-owned and hired vehicles. Deductible limits payable by Consultant, shall be approved by the District

1.3 Workers’ Compensation Insurance

Workers’ Compensation Employers’ Liability limits not less than \$[_____] each accident, \$[_____] per disease and \$[_____] 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, with limits not less than \$2,000,000 each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and with a deductible amount satisfactory to District for each claim. The policy shall be maintained 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 Status of Alameda County Flood Control and Water Conservation District as Additional Insured.

On Consultant's Commercial General Liability policy and Automobile Liability Policy ALAMEDA COUNTY, THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, its ZONE 7 WATER AGENCY and its 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.

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 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 in subsection 2.3.

2.6 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.

2.7 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

APPENDIX D – DELIVERABLES LIST

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

1. Project Deliverables

- 1.1 Performance Schedule.
- 1.2 Consultant’s task lists for District’s coordination of its activities.
- 1.3 Monthly Progress Report.

[insert agreed upon deliverables and schedule]

END OF APPENDIX D

APPENDIX E

CONFLICT OF INTEREST

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

[TO BE PROVIDED]

END OF APPENDIX E

APPENDIX F

MILESTONE SCHEDULE

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

Consultant’s timetable for the Services shall be as follows:

<u>Services</u>	<u>Timetable</u>
1. Preliminary Design Phase _____	_____
2. Design Development Phase _____	_____
3. Construction Document Phase _____	_____
4. Bidding and Award Phase _____	_____
5. Construction Phase _____	_____
6. Close-Out Phase _____	_____

END OF APPENDIX F

2. MODERATE FORM SAMPLE AGREEMENT

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

PROFESSIONAL SERVICES AGREEMENT

Between

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

And

for the

Contract No. _____

Dated _____

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

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

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is dated this _____ day of _____, 201_, in the City of Livermore, State of California, by and between The Gualco Group, hereinafter referred to as (“**Consultant**”) and the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 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 and Cost of Professional Services. The Consultant shall perform all services described in Appendix A (“**Services**”), for a maximum not-to-exceed _____ and pursuant to the payment terms as set forth in Appendix B (“**Payments to Consultants**”), which appendixes are attached and made a part of this Agreement.

2. Term. The Term shall expire on _____ unless otherwise earlier terminated pursuant to Section 11 below or upon completion of all Services.

3. 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 professional that specializes in performing professional 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.

4. Subconsultants. Consultant shall perform the Services using the personnel and subconsultants listed in Appendix A. Consultant 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 the Agreement to the extent of their scope of services. Consultant may substitute such personnel or subconsultants prior to any such subconsultants commencing work only upon District’s written consent, which may be withheld or delayed in District’s discretion.

5. 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.

6. Indemnification and Liability.

6.1 To the fullest extent permitted by law, 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 (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) 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 negligence or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

6.2 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.

6.3 *District acknowledges that the discovery, presence, handling or removal of asbestos products polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant’s expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant’s insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District’s expert consultant as required by Appendix A.*

7. 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**

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.

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

9. Independent Contractor. Consultant shall at all times be deemed an independent or 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 and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. The Consultant shall pay all other taxes 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.

10. Conflict of Interest; Confidentiality.

10.1 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.

10.2 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 Alameda County, the Alameda County Flood Control and Water Conservation District, Zone 7 and their reporting requirements.

10.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with District that Consultant has no present, and will have no future, conflict of interest between providing District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District. The provisions of this Section 10 shall remain fully effective indefinitely after termination of Services to District hereunder.

10.4 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. 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's interests where such confidential information could be used adversely to District's 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.

10.5 Any publicity or press releases with respect to the Project or Services shall be under District's 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's prior written consent. Consultant shall have the right, however, without District's 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.

10.6 The provisions of this Section 10 shall remain fully effective indefinitely after termination of Services to District hereunder.

11. 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 Consultant's right to proceed with the Services under this Agreement in whole, or from time to time in part, for default, should Consultant commit a material breach of this , or part thereof, and not cure such breach within ten (10) calendar days of the date of District's 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's best interests. In the event District terminates this Agreement for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

12. 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's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

13. Audit/Inspection of Records.

13.1 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 , and invoices, payrolls, records and all other data related to matters covered by this . 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.

13.2 The Consultant shall maintain full and adequate records in accordance with District requirements 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 94551-9486. 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.

14. Non-discrimination. Consultant shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a sub, on the basis of race, color, religion, 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, 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.

15. 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 and may, in its discretion, conduct an administrative hearing (in which case Consultant shall attend, present documentation and information as requested.) District will then make a final administrative decision on the claim. 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's 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 (e.g., Govt. Code §945.4.) Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.

16. 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 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.

17. California Law. This Agreement shall be deemed to have been executed in the City of 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. Should any clause, provision or aspect of this be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Contract.

18. 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.

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

19. 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.

20. 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.

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

21. Severability and Survival. 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. Except as otherwise separately and expressly provided by the District in writing, the provisions of this Agreement, including but not limited to, its limitations and definitions of liability and claim presentation procedures, shall survive and remain in effect notwithstanding the negligence or breach of this Agreement by either party, or the expiration or termination of this Agreement, or any completion of the Services.

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

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

By _____
Valerie Pryor, General Manager

a _____ corporation,

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 ID Number _____

Company Main Address

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

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**”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, commonly known as ZONE 7 WATER AGENCY (“**District**”) and _____ (“**Consultant**”), for the provision of professional services (“**Services**”).

1. **Project Description.**

1.1 Conceptual Program.

[Here state the requirements for Consultant’s Services or reference attachment. This should be a description of the Project with explanations of what the Consultant has to do with or does not have to do with each part of the Project. Discuss coordination of schedule with the schedules of other Consultants and ors, if applicable. Include reference to District approved budget. Also include construction budget, base bid budget, bidding contingency (or contingency to use for additive alternates.)

1.2 Milestone Schedule.

Consultant’s timetable for the Services shall be as follows [**or reference 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 otherwise in writing:

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

[INCORPORATE LANGUAGE FROM COMPLEX AGREEMENT? “Consultant agrees that all professional personnel assigned to the Project will be listed on Schedule 1.3A, attached hereto and by this reference incorporated herein (including any replaced, substituted or additional personnel, “Listed Personnel**”) and that the Listed Personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the Listed Personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment, replacement or substitution from the Project for any reason whatsoever of any Listed Personnel (any such event, a “**Reassignment**”) during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the District’s prior written approval. Any costs associated with any Reassignment shall be borne exclusively by Consultant. Resumes for all initial Listed Personnel shall be attached to Schedule 1.3A and by this reference incorporated herein.”]**

1.4 Bid Day Budget.

For the Project, District's Bid Day Budget is [\$_____]. (District's "**Bid Day Budget**" means the anticipated value of the construction Agreement for the Project when initially awarded to the low, responsive, responsible bidder for the base contract work, exclusive of alternates.) Consultant's design hereunder must conform to District's Bid Day Budget.

1.5 Criteria Governing Consultant's Service.

1.5.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards.

1.5.2 Unless otherwise permitted in writing by District, Consultant shall not propose or recommend any design that has the effect of shifting design responsibilities from Consultant to a Contractor or through performance specifications or any other means. Performance specifications will be allowed only when necessary to preclude single vendor sources or when specifically requested by District.

1.5.3 Unless otherwise permitted in writing by District, Consultant shall not specify unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.

1.5.4 [Consultant's design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA.]

1.6 Coordination with District.

For each phase of the Services under this Agreement, Consultant shall prepare and submit for District's acceptance a task list. The purpose of this task list shall be promoting coordination between District and the Consultant. The task list for each phase of the Services under this Agreement shall be submitted with the deliverables at the conclusion of the previous phase of the Services under this Agreement. 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.

1.7 Performance.

Consultant shall prepare and maintain a Performance Schedule detailing the Consultant's scheduled performance of the Services. [The schedule shall include appropriate District and third party design review durations (in minimum durations of one week for Preliminary Design Phase, Design Development Phase, and 50% Construction Document phase, and two weeks for 100% Construction Documents phase.)]

1.8 Coordination with Other Consultants/Subconsultants.

Consultant shall fully coordinate all architectural and engineering disciplines and subconsultants involved in completing its Services. Consultant shall participate in design coordination meetings with its subconsultants and, in addition, with any District prime consultants on other projects contiguous or related to the Project, for coordination of design. District shall have the right, but not the obligation, to set the dates of such meetings, to attend and participate in such meetings, and to remain fully advised and informed of the coordination of design work and the performance of each consultant and subconsultant of their design responsibilities. Such meetings shall occur at least monthly, or more frequently as necessary.

1.9 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.

1.10 Scope of Services.

Unless specifically excluded in this Agreement, Consultant shall provide to District all professional **[architectural and engineering]** services necessary to perform the Services and to complete the Project. Services will include, but are not limited to, providing all necessary professional **[architectural and engineering services, including but not limited to, all architectural services and all civil, electrical, fire protection, mechanical, geotechnical and structural engineering, landscape, and cost estimating]** services required to perform the Services.

1.11 Deliverables Required Under This Agreement.

Required Deliverables are 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.

1.12 [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.]

2. **Preliminary Design Phase.** After receipt of an executed Agreement from District, Consultant shall prepare and deliver preliminary design documents to District. **[Determine District preference in terms: "Drawings" or "Plans"]**

2.1 Design Verification Review.

Consultant shall review existing District data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by District concerning existing conditions (including but not limited to existing utilities and structures) and the adequacy of available design information/technical reports. Consultant shall rely on the results of its own independent investigations and not on information provided by District. Consultant shall conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services and shall advise District of any further design or other services necessary to complete the Project.

2.2 Preliminary Design Phase Documents. **[For discussion with Project Engineering staff on materials needed.]**

Preliminary Design Phase Documents shall consist of reports containing conceptual layouts, sketches and preliminary design criteria with appropriate exhibits, sufficient to present the complete concept of the Project, including **[all major elements of the building(s), system(s), machinery, equipment, structure(s), and site design(s), proposed for construction which complies with the current program and cost limitations.]** By way of example, documents in this phase shall include, but are not limited to, the following (where applicable):

- ▶ *Plan list*
- ▶ *Site plan(s) with equipment and systems layout and process flow diagram*
- ▶ *Schedule of building types, equipment, machinery, systems, **[District to complete]***
- ▶ *Wall sections and elevations*
- ▶ *Outline specifications including architectural, structural, mechanical, electrical, and instrumentation systems and materials proposed*
- ▶ *Preliminary construction cost estimates, reflecting the anticipated value of the low, responsive, responsible bid for construction of the Project*
- ▶ *Projects specific analysis of codes, ordinances and regulations*
- ▶ *Three-dimensional line drawings or plans*
- ▶ *Initial construction phasing recommendations*

[Reports, plans and exhibits shall incorporate District's program requirements and shall include structural concepts, process flow and site utilization plans, floor plans, elevations, sections, study perspectives and other plans necessary to describe the Project]. Consultant shall develop Preliminary Design Phase reports, plans and exhibits until District has approved an acceptable design concept and shall revise these documents as necessary and consistent with District's requirements, criteria and current program and cost limitations. Consultant shall participate in progress meetings with District representatives at District's request, up to **[twice]** monthly.

Preliminary Design Phase reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities having jurisdiction or private licensing, patent, easements, or other legal restrictions. Reports and exhibits shall indicate any alternative solutions available to District and set forth Consultant's findings and recommendations.

2.3 Design Basis Report.

Consultant shall provide a narrative report by each design discipline describing its proposed design philosophy with a description of, and the rationale for, **[the proposed structural systems, mechanical systems, electrical, electronics and security systems, types of equipment, materials and finishes, and site development and landscaping]**. The rationale shall include initial costs, lifecycle costs, and life expectancy and maintenance considerations. The design basis report shall also include, for major building systems or components, i.e. those comprising 25% of all building systems or components, a description of the top 2-3 options considered, an evaluation of their pros and cons and why the preferred option is recommended.

3. **Design Development Phase.** After receipt of District's written approval of the Preliminary Design Phase documents, Consultant shall proceed as follows.

3.1 Final Design Criteria.

Consultant shall prepare final design criteria. Consultant shall participate in progress meetings with District representatives and any involved subconsultants, at District's request, up to **[twice]** monthly, to review and secure District's written acceptance of final design criteria.

3.2 Design Development Documents.

Consultant shall prepare and submit to District design development documents sufficient to fix and illustrate project scope and character in all essential design elements. Consultant shall revise these documents consistent with the requirements and criteria established by District. These documents shall include the following:

3.2.1 **[Plans (architectural, civil, electrical, mechanical and structural) sufficient to fix and illustrate project's scope and character in all essential design elements, including but not limited to, site plans, process flow diagrams, architectural, structural, mechanical and electrical floor and equipment connection plans, elevations; cross sections and other mutually agreed upon plans deemed necessary to describe the developed design; updated three dimensional line drawings; single line electrical and mechanical plans, and structural plans with preliminary sizing of major structural elements].**

3.2.2 Revised Plan list.

3.2.3 **[A tabulation of both gross and assignable floor, pavement and/or yard areas in a comparison to the approved conceptual program area requirements and to the initial program area requirements].**

3.2.4 **[As appropriate, Consultant shall provide to District for its approval a color and materials board, samples of textures and finishes of all materials proposed in the Work].**

3.2.5 Updated estimate of the Project's anticipated construction cost (reflecting the anticipated value of the low, responsive, responsible bid of the project), accompanied with analysis and justification for each element of the estimate.

3.2.6 Recommendations for scheduling and phasing of construction.

3.2.7 Outline specifications for each technical specification section, following Construction Specification Institute conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; and types of structural, mechanical and electrical systems. **[For major equipment and system specifications, Consultant shall also submit first cost and lifecycle cost analysis, with comparative analysis for the selected equipment/system item and two other alternative equipment/system items considered by Consultant but not selected].**

3.2.8 Preliminary engineering calculations for all disciplines, including realistic loads, and sufficiently complete for work on Construction Documents to proceed. Prepare for approval by District updated written design criteria for **[mechanical and electrical systems (for example, flows, measurements, performance parameters, temperature, humidity, lighting levels and floor live load design shall be stated for general and special occupancy areas)].**

4. Construction Document Phase. After receipt of District's written approval of Design Development documents, the Consultant shall prepare Construction Documents.

4.1 Final Plans and Specifications.

On the basis of the accepted Design Development documents and the updated cost estimates, schedule for completion and phasing of the Project, Consultant shall prepare for incorporation in the Documents final plans ("Plans") and Specifications to show in detail all of the labor, materials, equipment and/or work to be furnished and performed by or. Consultant shall modify the final plans and specifications in accord with District's final review comments, if any. Plans and Specifications shall set forth in detail the requirement for construction of all work to be performed or furnished by or. Consultant shall deliver to District **[two (2)]** complete sets of final 100% Plans and Specifications.

4.2 Format of Technical Specifications.

Consultant shall prepare final technical specifications in conformance with the sixteen-division format of the Construction Specification Institute. Consultant shall cooperate with District in coordinating the Plans and technical specifications with District's Divisions 0 and 1 standard specifications. Consultant shall provide work descriptions for inclusion into District's standard specifications and shall provide whatever Division 1 construction contract specifications are necessary for the Project and not supplied in District's standard specifications.

4.3 Auto CAD and Other Electronic Data.

Provide AutoCAD 2010 files of all Plans including as-bid, as-built, and all record Plans, on a flash drive or CD (based on District's horizontal and vertical controls) as requested by District. Prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by or to District and then to Consultant. Electronic data shall be generated in AutoCAD 2010 and shall conform to District CAD Standards package supplied as Exhibit A1.

4.4 Compliance with Codes, Regulations and Requirements.

All Plans, Specifications, structural design calculations, site data, and cost estimates required by State or Federal law shall comply with State and federal standards. Consultant shall comply with any other requirements of authorities with jurisdiction over the Project or the Plans and Specifications. Consultant shall comply with the applicable standard of care when preparing Plans and Specifications to comply with

applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, applicable to the Services, including, but not limited to, those listed in this Agreement, all environmental, energy conservation, and disabled access requirements, regulations and standards of the Fire Marshal or other authorities having jurisdiction over the Project.

4.5 Supply of Design Calculations.

Consultant shall provide District with copies of all final **[electrical, mechanical and structural design]** calculations, organized by specification. Consultant shall provide District with a final update on the final design criteria utilized.

4.6 Quality Levels and Quality Control Procedures.

The Plans and Specifications must clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, submittals or other measures that the or must satisfy, meet or perform. Each specification section must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that section. Each work-related specification section must also dedicate a subsection to identify and list required or submittals along with testing and inspection requirements. Provide District with a separate listing of tests, inspections and reports required under the construction plans and specifications prepared by Consultant, and responsibility therefore, to occur in connection with the Project.

4.7 Phasing Recommendations.

[Consultant shall provide, at 50% completion of this phase, a construction-phasing schedule for the construction work, which will minimize disruption to District tenants and adjacent construction projects.]

4.8 60% Construction Documents Review.

Consultant shall submit to District for District's review and comment the Construction Documents (Plans and Specifications) developed in this Phase at 60% completion and again at 100% completion. Consultant shall allow District one week for review of its construction documents deliverables. Consultant shall respond to District comments and incorporate those comments as necessary.

4.9 Estimate of Construction Cost.

Based on the information contained in the Plans and Specifications, Consultant shall submit, at 90% completion of this Phase, a revised opinion and detailed estimate of Project construction costs, with phasing and scheduling recommendations, coordinated with the Schedule. The estimate shall reflect the anticipated value of the low, responsible responsive bid on the construction contract for the project. If the cost estimate based on the final Plans and Specifications exceeds the project budget as herein defined, the Consultant shall recommend revisions to said Plans and Specifications that will reduce costs to the budget amount and upon approval of District, shall make such revisions.

5. **Bidding and Award Phase.**

5.1 After receipt of District's written authorization to proceed with the Bidding phase, Consultant shall assist District in administering the bidding and award of the construction contract. This shall include:

5.1.1 Responding to inquiries pertaining to the Plans and Specifications.

- 5.1.2 Consult with District concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.
- 5.1.3 Prepare written addenda as appropriate to interpret, clarify or expand the bidding documents, including allowable substitutions of materials and equipment, as requested by District or to respond to bidder requests.
- 5.1.4 [Attend the bid opening and assist District in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services, as requested by District.]
- 5.2 Where Bids Exceed Budget: If the lowest responsible, responsive bid received from a Contractor exceeds the latest accepted estimate of construction costs, District may, at its discretion:
- 5.2.1 Award the contract to the lowest responsible, responsive bidder, and give written approval of an increase in District's budget.
- 5.2.2 Reject all bids and rebid the contract.
- 5.2.3 If the bid amount is more than [**6% greater than the Consultant's latest accepted estimate**] of construction cost rendered during the Construction Documents Phase, District may require Consultant to revise the scope of work to be performed by the Contractor or its quality, or both, so as to reduce the Project's estimated construction cost for the work to be performed by the Contractor, while still meeting District's project objectives. Consultant shall at its expense, if so directed by District, modify the Construction Documents in order to reduce the Project's estimated construction costs for the work to be performed by the Contractor within the Project budget for that Contractor's work.
- 5.2.4 Abandon the Project and terminate this Agreement.
- 6. Construction Phase.** After execution of the construction contract between District and Contractor, the Consultant shall endeavor to protect District against defects and deficiencies in the execution and performance of the work.
- 6.1 The Consultant shall attend the pre-construction conference and any dispute resolution conferences and other meetings when requested by District.
- 6.2 The Consultant shall review and approve contractor's shop drawings, test reports, substitution requests and other submittals for conformance to the requirements of the Agreement Documents.
- 6.3 The Consultant shall periodically visit the site to monitor the quality and progress of the work and furnish a written field report [] *weekly*, [] *semi-monthly*, [] *monthly*, or [] _____. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to Consultant's failure to properly perform its duties and responsibilities. District may direct additional work monitoring as additional services. Consultant shall advise District in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work.

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

- 6.4 Consultant shall establish and maintain to the satisfaction of District, a computer database (compatible with the database maintained by District) that shall contain complete and accurate records regarding defective work, work not in conformance with drawings and specifications, and lack of progress of work, and shall cross reference such work to the drawings and specification sections violated. Consultant shall make such database available to District at all reasonable times and turn over the database to District upon completion or termination of this Agreement.
- 6.5 Consultant shall issue necessary interpretations, clarifications and request for information (RFI)-replies regarding the Agreement Documents and in connection therewith assist District's _____ with supplemental instructions and change orders as required, with reasonable promptness so as to cause no delay to Contractor or the Project. In no event shall Consultant respond to RFI's longer than *two* working days after their receipt and other submittals any longer than ten days after their receipt.
- 6.6 Consultant shall maintain to the satisfaction of District a computer based system compatible with District's system to record, control and manage the review of Submittals and RFI's, which shows the interrelationships among and between such documents and requests for changes or claims, and which can be used for coordination of submittal reviews with the Project scheduling requirements, and shall make such system available to District at all reasonable times.
- 6.7 The Consultant shall require any subconsultant to provide the Services listed in this section where and as applicable and to visit the project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Consultant.
- 6.8 The Consultant shall make modifications to the construction Agreement Documents to correct errors, clarify intent or to accommodate change orders necessary to correct design errors or clarify design intent.
- 6.9 The Consultant shall promptly notify District in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- 6.10 **[Based on Consultant's on-site observations as an experienced and qualified design professional, Consultant shall review Contractor's monthly applications for payment and accompanying data and schedules, and shall assist District's _____ in its determination of amounts owing to Contractor and recommend, in writing, payments to or in such amounts. Recommendations of payment by Consultant will constitute a representation to District that: the work has progressed to the point indicated, and that to the best of Consultant's knowledge, information and belief, the quality of the work is in accordance with the Agreement Documents (subject to evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Agreement Documents and to any other qualifications stated in the recommendation).]**
- 6.11 Consultant shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Agreement Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Agreement Documents).
- 6.12 **[Consultant shall assist the District in negotiation of change orders, conducting cost and price analysis.]**

7. Operation/Project Close-Out Phase

7.1 Operation/Close Out.

During the Operation/Project Close-Out Phase, Consultant shall, when requested by District:

- 7.1.1 Provide assistance in connection with the refining, adjusting and correcting of any equipment or systems.
 - 7.1.2 Assist in start-up, testing and placing in operation special equipment and systems. (For all such equipment and systems, Consultant shall have specified start-up and testing procedures in the Agreement Documents.)
 - 7.1.3 Provide assistance in connection with completion of punchlist work, including but not limited to, preparing the initial comprehensive punchlist and conducting no more than two follow up site visits (with follow up punchlisting if necessary) in addition to other responsibilities under this Agreement.
 - 7.1.4 Assist District in coordination of training District's staff to operate and maintain equipment and systems as necessary.
 - 7.1.5 Assist District in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
 - 7.1.6 Together with District, visit the Project to observe any apparent defects in the completed construction, assist District in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.
 - 7.1.7 Together with District, coordinate, prepare and submit all final required deliverables and anything else required by applicable authorities with jurisdiction for final project approval.
 - 7.1.8 The Consultant shall prepare a set of reproducible record prints of Plans, showing "as built" conditions, showing significant changes in the work made during construction, including the locations of utilities, based on marked up prints, plans and other data furnished by the Contractor to District. Prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by Contractor to District and then to Consultant. Electronic data shall be generated and supplied in the same format (e.g., Auto CAD) as original construction documents.
 - 7.1.9 Advise and assist District in construction matters for a period up to 18 months following completion of the project, but such assistance is not to exceed 40 hours of service and involve up to three trips to the Project.
- 8. Additional Services.** All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are ("**Basic Services**"). District may request Consultant to provide services in addition to Basic Services, referred to hereafter as ("**Additional Services**"). Additional Services must be authorized by District in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities.

8.1 Compensation for Additional Services.

Consultant shall be compensated for Additional Services as set forth in Appendix B.

8.2 Services.

The following services shall be considered Additional Services:

8.2.1 Making revisions in reports, drawings, or other documents, if:

8.2.1.1 Such revisions are not necessary because of a deficiency in Consultant's Services; and

8.2.1.2 Such revisions are inconsistent with written approvals or instructions previously given by District, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.

8.2.2 Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.

8.2.3 Required out-of town travel beyond limits specified in Appendix B.

8.2.4 Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.

8.2.5 Property surveys or field surveys for design purposes, engineering surveys, and staking, if and to the extent not required by other provisions of this Agreement.

8.2.6 Preparing to serve or serving on behalf of District as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.

8.2.7 Preparation of applications and supporting documents for governmental grants and permits. (However, participating in consultations and evaluation of the effect of associated requirements on the design requirements of the project is within Consultant's scope of Basic Services.)

8.2.8 Services to verify independently the accuracy of geotechnical information, if and to the extent not required by other provisions of this Agreement.

8.2.9 Assisting in actual claims resolution efforts when such claims arise from matters unrelated to Consultant's performance.

8.2.10 Providing any other services requested by District that are not otherwise included in this Agreement and are not customarily furnished in accordance with generally accepted **[architectural, engineering and other professional practice]**.

8.2.11 Providing construction phase Services beyond the contract period, but only to the extent the additional duration increases Consultant's Scope of Services (for example, Punchlist and Close Out Services, whenever performed shall be Basic Services.)

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

8.2.12 Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions or conflicts of any type in Consultants' Plans and Specifications prepared. All such services shall be performed at no cost to District, including, but not limited to, any required corrections or revisions to reports, drawings or specifications 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

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

SCHEDULE 1.3A

PROFESSIONAL PERSONNEL ASSIGNED TO PROJECT:

[HERE LIST PERSONNEL AND ATTACH RESUMES]

APPENDIX B – PAYMENTS TO CONSULTANT
{FIXED FEE OPTIONAL FORM}

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, commonly known as 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 purchase order for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that purchase order 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 fee 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 District
- 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. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment. 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. Each amendment shall also provide for a method of payment (i.e., partial payments or lump sum) and whether it will be based upon percentage of completion or for services billed. 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.

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’s office, incurred performing Additional Services.

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

- 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 B - PAYMENTS TO CONSULTANT
{HOURLY TO GMP OPTIONAL FORM}

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between THE 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. Amount of Compensation for Services of Consultant

Excluding Additional Services only, the Guaranteed Maximum Payment to Consultant for all Services performed under this Agreement shall not exceed [\$_____], referred to hereafter as the Guaranteed Maximum Price (“**GMP**”), plus Reimbursable Expenses billed at cost up to a Guaranteed Maximum Reimbursable Expenses Cost (“**GMREC**”) of [\$_____]. The GMP includes within its scope the cost of all Subconsultants and, together with the GMREC, shall constitute full compensation for the Services.

- 1.1 Consultant shall be paid for its Services (and for services of its Subconsultants) rendered based upon the hourly “Billing Rates” of each Consultant and Subconsultant employee as described below, but except for Additional Services, in no event shall Consultant invoice or receive (including Subconsultants) any payment exceeding the GMP and GMREC.
- 1.2 The Billing Rates used as a basis for payment apply to all of Consultant’s and Subconsultants’ principals, professional personnel and others engaged directly on the Project. The Billing Rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.
- 1.3 If District and Consultant previously executed a purchase order for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Agreement and the previous payments deemed payments against the GMP and GMREC.
- 1.4 Consultant may not invoice or receive payment for the GMP or GMREC greater than Consultant’s percentage completion of the Services, as determined by District based on Services performed. In no event shall Consultant invoice or receive (including Subconsultants) payment for fees exceeding the GMP.

2. Work Breakdown Structure

To assist District in determining progress payments, Consultant shall provide District with an itemization of its fee 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. In making its determination of Consultant’s percentage completion of the Services, District may refer to Exhibit 1.]**

3. Methods of Payment to Consultant

- 3.1 For Basic Services on the Project. Consultant shall submit monthly invoices with reasonable detail of the daily time incurred by personnel assigned to the Project, along with a schedule of Subconsultant and Reimbursable Expenses incurred, supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings and Reimbursable Expenses

to date. Reimbursable Expenses shall be billed at the amount billed to Consultant therefore times **[1.1]** for general and administrative expenses. Subconsultants shall be billed at the amount billed to Consultant therefore times **[1.05]** for general and administrative expenses.

- 3.2 For Additional Services. District shall pay Consultant for Additional Services, as defined below, as follows:
- 3.2.1 **General.** For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum negotiated between the parties, or, at District’s option, at Consultant’s Billing Rates.
 - 3.2.2 **Subconsultants.** For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore times **[1.05]** for general and administrative expenses.
 - 3.2.3 For Additional Services on an hourly basis, Consultant agrees that all Subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of District.
 - 3.2.4 For Reimbursable Expenses. District shall pay Consultant the actual cost of all Reimbursable Expenses Related to Additional Services times **[1.1]** for general and administrative expenses, up to the GMREC.

4. Definitions

- 4.1 **“Additional Services”** mean services beyond the scope of the Services defined in this Agreement.
- 4.2 **[Alternate 1]:** The **“Billing Rates”** are the hourly rates indicated on Exhibit 2 attached hereto. **[Alternate 2]:** Billing Rates shall be calculated on the basis of Actual Salary (raw salary excluding all other salary related and/or fringe benefit costs of any type, nature or description) indicated on Exhibit 2 attached hereto, times the following applicable multiplier: [_____] (The multiplier includes overhead, general and administrative expenses, employee fringe benefits, profit, interest on invested capital, readiness to serve, and all other contingencies and other considerations for the work of this Agreement.)
- 4.3 **“Reimbursable Expenses”** shall be limited to the specific expenses identified in Exhibit 2 attached hereto. All other expenses are not reimbursable and are deemed included in the Billing Rate.
- 4.4 **“Reimbursable Expenses Related to Additional Services”** shall be limited to the specific expenses identified below. All other expenses are not reimbursable and are deemed included in the Billing Rate.
 - 4.4.1 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’s office, incurred performing Additional Services.
 - 4.4.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.
 - 4.4.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

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

END OF APPENDIX B

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

EXHIBIT 1 “REIMBURSABLE EXPENSES”

TO APPENDIX B {*HOURLY TO OPTIONAL FORM*}

[TO COME]

Draft for review and approval by District Risk Manager

APPENDIX C - INSURANCE

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, commonly known as 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 [_____] or better, financial category size [_____] 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 \$[_____] general aggregate and \$[_____] each occurrence. Deductible limits payable by Consultant, shall be approved by the District.

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than \$[_____] each occurrence including coverage for owned, non-owned and hired vehicles. Deductible limits payable by Consultant, shall be approved by the District.

1.3 Workers’ Compensation Insurance

Workers’ Compensation Employers’ Liability limits not less than \$[_____] each accident, \$[_____] per disease and \$[_____] 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 \$[_____] each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, with a deductible amount satisfactory to District for each claim. The policy shall be maintained for a period of five (5) years after the completion of the Services.

Draft for review and approval by District Risk Manager

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

2.1 Status of Alameda County Flood Control and Water Conservation District as Additional Insured.

On Consultant's Commercial General Liability policy and Automobile Liability Policy ALAMEDA COUNTY, THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, its ZONE 7 WATER AGENCY and its 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.

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 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 in subsection 2.3.

2.6 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.

2.7 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

APPENDIX D – DELIVERABLES LIST

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

1. Project Deliverables
 - 1.1 Performance Schedule.
 - 1.2 Consultant’s task lists for District’s coordination of its activities.
 - 1.3 Monthly Progress Report.
2. Preliminary Design Phase. The deliverables required by the Preliminary Design Phase are defined in Section 2 of Appendix A and include, but are not limited to, the following deliverables:
 - 2.1 Preliminary layouts, sketches and preliminary design criteria, outline specifications, with supporting reports and exhibits.
 - 2.2 Preliminary estimates of construction costs, times of completion, and alternatives.
 - 2.3 Preliminary phasing recommendations, if any
 - 2.4 Design basis report.
3. Design Development Phase. The deliverables required by the Design Development Phase are defined in Section 3 of Appendix A and include, but are not limited to, the following:
 - 3.1 Final Design Criteria
 - 3.2 Design Development Phase plans, specifications, engineering calculations, area calculations.
 - 3.3 Updated estimate of construction costs.
 - 3.4 Preliminary engineering calculations.
4. Construction Document Phase. The deliverables required by the Construction Documents Phase are defined in Section 4 of Appendix A and include, but are not limited to, the following:
 - 4.1 60% construction documents deliverable.
 - 4.2 Final plans and specifications, including AutoCAD files, and any necessary supplementary conditions to the construction agreement.
 - 4.3 Final engineering calculations.
 - 4.4 Revised estimate of construction cost.

**Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]**

5. **Bidding**. The deliverables required by the Bidding Phase are defined in Section 5 of Appendix A and include, but are not limited to, the following:
 - 5.1 Written addenda (where necessary).
 - 5.2 Written determinations regarding Proposed substitutes.

6. **Construction Phase**. The deliverables required by the Construction Phase are defined in Section 6 of Appendix A and include, but are not limited to, the following:
 - 6.1 Necessary notices, communications, interpretations, clarifications, as required by Section 6, and in the format required by Section 6, including without limitation:
 - 6.2 Certificates of Substantial Completion and Final Completion.
 - 6.3 Punchlists.
 - 6.4 Electronic record sets and sets of reproducible record prints of plans showing changes made during construction.
 - 6.5 Electronic record sets and sets of prints of Technical Specifications showing changes made during construction.

END OF APPENDIX D

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

APPENDIX E

CONFLICT OF INTEREST

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

[TO BE PROVIDED]

END OF APPENDIX E

Simple to moderate form professional services –
\$25,000-\$250,000 fee contracts
Discussion items set-off in bold and italics
Engineering/Design [Detailed scope of work]

APPENDIX F

MILESTONE SCHEDULE

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

Consultant’s timetable for the Services shall be as follows:

<u>Services</u>	<u>Timetable</u>
1. Preliminary Design Phase _____	_____
2. Design Development Phase _____	_____
3. Construction Document Phase _____	_____
4. Bidding and Award Phase _____	_____
5. Construction Phase _____	_____
6. Close-Out Phase _____	_____

END OF APPENDIX F