



REQUEST FOR PROPOSAL (RFP)

General Building Maintenance and Services Contractor to Provide Custodial / Building Superintendent Type Services and Maintenance Efforts to the District's Headquarters and Operations Facilities

INTRODUCTION AND BACKGROUND

I. PURPOSE OF THE REQUEST FOR PROPOSAL

The Western Municipal Water District (District) is in the process of transitioning into two new facilities. The District's Operations Facility has a transition date of April 1, 2010 and is located at 16451 El Sobrante Rd. Riverside, CA 92503. The District's Headquarters Facility has a transition date of July 1, 2010 and will be located at 14205 Meridian Parkway, Riverside, CA 92518.

The District serves roughly 24,000 retail and eight wholesale customers, covering a 527 square mile area of Western Riverside County. The District currently has 126 full time employees that represent office staff performing engineering services, clerical, administrative, support, management functions, as well as field operations.

The Western Municipal Water District is interested in contracting with an onsite General Building Maintenance and Services Contractor to provide minor and preventative maintenance in the following areas and:

- Interior & Exterior Lighting: replace burnt out bulbs, ballasts.
- Hardware Service & Repairs: doors, latches, cabinets, gutters, etc.
- Minor Electrical & Plumbing: low voltage, switches, outlets, restroom repairs, etc.
- T-Bar Ceiling and Tile, Flooring, and Roof Repairs
- Wiring and Cable Control
- Touch-Up Painting, Drywall, Stucco and Damage Repair
- Coordinate with other Contractors: HVAC, Landscape, Electrical, Janitorial, Plumbing, Roofing etc. to facilitate building services and repair needs relative to the District's building maintenance requirements beyond the capability of the General Building Maintenance and Services Contractor.

A. INTENT

The District intends to issue a Master Agreement (Contract) for Custodial / Building Superintendent Type Services and Maintenance Efforts described herein needed throughout the District. The District reserves the right to issue separate contract(s) for individual locations, as appropriate, if it is deemed to be in the District's best interests. If additional projects/locations are authorized against the Agreement, the Proposer shall develop the project cost based on the unit/task price/rates outlined in the Agreement.

The period of the Agreement is for one (1) year, with four (4) one-year renewal options. If mutually agreeable to both parties, the Agreement may be extended on a year-to-year basis. However, in no case shall the renewal extend beyond five (5) years from the date of award of the original Agreement. The extension shall be in written form as an amendment to the Agreement.

II. SCOPE OF WORK

General Building Maintenance and Services Contractor is required to be an onsite contractor which will perform basic repair needs and offer preventative maintenance services at District Facilities. Additional buildings may be added to scope of work based on workload experience.

A. PLUMBING AND RESTROOM REPAIRS

Minor repairs of restrooms may include replacement of leaking shower heads and faucets, minor tile repairs such as replacing grout or ceramic tile and repair or replacement water efficient toilets.

B. ELECTRICAL AND LIGHTING

Repair or replace ceiling fans, repair or replace electrical outlets and light switches, install lighting fixtures inside and outside District facilities. The District utilizes low voltage, energy efficient lighting and fixtures. Verify operation of emergency generator and maintain run log. Troubleshoot minor electrical problems to include tripped circuit breakers.

C. DOOR AND WINDOWS

Maintain interior and exterior doors and windows. Increase the District's energy efficiency by replacing or repairing cracked or broken interior and exterior doors and windows, maintain or replace thresholds and weather stripping, window frames, support panes, door jams, window and door latches, locks, handles, and door knobs.

D. DRYWALL, STUCCO, AND PAINTING

Patch holes in drywall, repaint walls and ceilings if damaged.

E. CARPENTRY

Perform general repairs to desks, cabinets, and shelving, filing cabinets, storage cabinets, latches, hinges, and handles. Install shelves, keyboard trays, adjust desk heights and other similar tasks.

F. HVAC

Changing/replace filters, adjust thermostats, and adjust vents.

G. ROOF

Identify source of leaks. Take measures to prevent damage to equipment.

H. FLOORING

Repair or replace ceramic tile that may have been chipped, cracked or otherwise damaged and perform minor repair to carpet.

I. OUTDOOR

Rain gutter repair and maintenance needs to be part seasonal outdoor preventative maintenance needs. Other outdoor repairs may include fence repairs, landscape, or minor masonry repairs.

J. COORDINATE WITH OTHER CONTRACTORS

General Building Maintenance and Services Contractor will coordinate the activity of other contractors (HVAC, Landscape, Electrical, Janitorial, Plumbing, Elevator, etc.) for major building services and repair needs and to facilitate the District's building maintenance requirements beyond the capability of the General Building Maintenance and Services Contractor and not identified in the scope of work listed herein.

NOTE: The main facility buildings will be new and much original work and installations will be under warranty. During the warranty period, the General Building Maintenance and Services Contractor will be required to coordinate warranty maintenance and repairs.

General Building Maintenance and Services Contractor must be a licensed contractor and a knowledgeable electrician and plumber. Provide liability, auto, and workers comp insurance. Contractor must uphold quality and craftsmanship. Also the handyman provider will also be responsible to provide their own tools. The District will provide adequate storage for appropriate tools.

These activities are part of the District's ongoing building maintenance program and are focused on identifying the service levels the District's new facilities will require.

Western Municipal Water District is seeking to identify and select an onsite independent contractor to perform the activities listed above. The remainder of this document provides additional information that will allow a Building Maintenance provider to understand the scope of effort and develop a proposal in the format desired by the District.

III. QUALITY ASSURANCE

It is the responsibility of the contractor to uphold quality assurance meeting the Districts standards of maintenance and repairs. Contractor, at best, needs to minimize mistakes and confirm the end product is suitable for the intended purpose and is appropriate for District inspections and assurance. Contractor needs to ensure that the degree of quality specified is achieved and maintained.

IV. SAFETY

Contractor shall always practice and develop on-going safety training habits. Contractor shall provide personal protective equipment: foot ware, gloves, ear plugs, and goggles, dust masks, etc. Chemical safety shall be implemented: Transporting, storing, mixing, labeling and proper usage. Contractor shall use proper equipment pertaining to the job at hand and use equipment responsibly. Also use proper ladder safety and vehicle safety.

WESTERN MUNICIPAL WATER DISTRICTS FACILITIES

| Facility/Building | Location | City/zip | Days |
|-------------------------------------|------------------------|-----------------|------|
| Headquarters | 14205 Meridian Parkway | Riverside | M-F |
| Operations Offices | 16451 El Sobrante Road | Riverside 92503 | M-F |
| Operations Warehouse | 16451 El Sobrante Road | Riverside 92503 | M-F |
| Operations Maintenance Building | 16451 El Sobrante Road | Riverside 92503 | M-F |
| March Wastewater Recycling Facility | 5903 Avenue A | Riverside 92518 | TBD |
| Arlington Desalter Facility | 11611 Sterling | Riverside 92503 | TBD |
| Murrieta Base | 42290 Ivy Street | Murrieta 92562 | TBD |

Insurance Requirements

1. Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
2. General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
3. Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.
4. Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.
5. Any deductibles, self-insured retentions, or named insured must be declared in writing and approved by District. At the option of the District, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the District guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The District, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.
6. The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance naming the District and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of the Contractor; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the District and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.
7. The Contractor's insurance coverage shall be primary insurance regarding the District and District's officers, officials and employees. Any insurance or self-insurance maintained by the District or District's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.
8. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District or its officers, officials, employees or volunteers.

9. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
10. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice, ten (10) days for cancellation of policy, has been given to District. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the District of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
11. **Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the District;** provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the District; lesser ratings must be approved in writing by the District.
12. Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
13. At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish District with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in District's sole and absolute discretion, approved by District. District reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
All forms and endorsements must be on forms acceptable to the District. Contractor shall be responsible for the cost of having non-standard forms reviewed by a third party.
14. The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.
15. Defense and Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the District and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the District or its agents, officers and employees.

Contractor's obligation to defend, indemnify, and hold the District and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this document.

V. ADMINISTRATIVE CONTACT

Any questions regarding contractual terms and conditions and proposal format or any questions concerning technical specifications or Statement of Work (SOW) requirements must be directed to:

| | |
|----------------|--|
| Name | Tom McMillen – Administrative Services Manager |
| Address | 450 E. Alessandro Blvd. Riverside, CA 92508 |
| Phone | 951-789-5052 |
| FAX | 951-780-6094 |
| Email | tmcmillen@wmwd.com |

VI. DUE DATES

All proposals are due by April 9, 2010 at 5:00 pm. Any proposal received at the designated location after the required time and date specified for receipt shall be considered late and non-responsive. Any late proposals will not be evaluated for award.

VII. SCHEDULE OF EVENTS

| Event | Date |
|--------------------------------|--|
| 1. RFP Distribution to Vendors | March 5, 2010 |
| 2. Walk Through | March 23, 2010 from 11am-4pm meet @ Ops |
| 3. Questions Deadline | March 31, 2010 |
| 4. Response to Questions | April 2, 2010 |
| 5. Proposal Due Date | April 9, 2010 |
| 6. Proposal Evaluation | April 14, 2010 |
| 7. Committee Review | April 28, 2010 |
| 8. Board Award | Est. May 5, 2010 |
| 9. Contract Start | Est. May 7, 2010 |

The District reserves the right to modify the content or schedule of these events at any time, for any reason.

VIII. REQUESTS FOR CLARIFICATION

Interested vendors may provide requests for clarification in email or writing through the contact information above. The District will compile all requests and provide responses in written format to all vendors that request copies of questions/responses. If vendors do not provide such a request, they will not be provided with this information.

IX. GUIDELINES FOR PROPOSAL PREPARATION

A. PROPOSAL SUBMISSION

Award of the contract resulting from this RFP will be based upon the most responsive Vendor/Contractor whose offer will be the most beneficial to the District in terms of cost, functionality, and other factors as specified elsewhere in this RFP.

Western Municipal Water District reserves the right to:

- Reject any or all offers and discontinue this RFP process without obligation or liability to any potential Vendor,
- Accept other than the lowest priced offer,
- Award a contract on the basis of initial offers received, without discussions or requests for best and final offers, and
- Award more than one contract.

Vendor/Contractor's proposal shall be submitted in several parts as set forth below in the **RFP Format**. The Vendor/Contractor will confine its submission to those matters sufficient to define its proposal and to provide an adequate basis for the District's evaluation of the Contractor's proposal.

Vendors are encouraged to use electronic means for delivering proposals. Electronic proposals should be delivered in format fully compatible with one or more of the following software applications:

- Microsoft Office 2003 (Word, Excel, PowerPoint)
- Microsoft Office 2007 (Word, Excel, PowerPoint)
- Adobe Reader 9.

Email: tmcmillen@wmwd.com

OR an original RFP along with two (2) copies must be received in the Purchasing Division at:

Western Municipal Water District
Attn: Tom McMillen Administrative Services Manager
450 E. Alessandro Blvd. Riverside, California 92508

On April 9, 2010 by 5:00pm, any RFP received at the designated location after the required time and date specified for receipt shall be considered late and non-responsive. Any late proposals will not be evaluated for award. Envelopes must be clearly marked Request for Proposal – AS10-02 General Building Maintenance.

B. PROPRIETARY MATERIAL

In order to address the needs of this procurement, the District encourages Vendor/Contractors to work cooperatively in presenting integrated solutions. Any information contained in the Request for Proposal that is proprietary must be clearly designated. Marking the entire statement as proprietary will be neither accepted nor honored. If a request is made to view a vendor/contractor(s) statement, the District will comply according to the Public Records Act, Government Code §§6250-6276.48. If any information is marked as proprietary in the statement, such information will not be made available until the affected vendor has been given an opportunity to seek a court injunction against the requested disclosure.

C. RFP FORMAT

Vendor/Contractor's proposal in response to this RFP will be incorporated into the final agreement between Western Municipal Water District and the selected Vendor/Contractor(s). The submitted proposals are suggested to include each of the following sections:

1. CORPORATE PROFILE
2. BRIEF HISTORY OF THE FIRM
3. PRIMARY CONTACTS
4. APPROACH AND UNDERSTANDING OF REQUIREMENTS
5. IDENTIFY COORDINATION WITH DISTRICT
6. EMPLOYEE BACKGROUND
7. REFERENCES
8. LIST UN-RENEWED CONTRACTS
9. STATEMENT OF INCOME
10. PROOF OF INSURANCE

The detailed requirements for each of the above-mentioned sections are outlined below.

X. DETAILED RESPONSE REQUIREMENTS

Each item listed below must be individually recognized and each Item clearly labeled. (i.e. Item 1, Item 2, etc.), Submittals must include the following which are mandatory for consideration:

1. Submit a brief Corporate profile of your firm outlining its background, philosophy and experience and information about your firm's ability to perform the work.
2. Submit a Brief history of the firm, including ownership structure, key principals and current organization structure. Include the number of years in business as a Building Maintenance and Service provider.
3. Submit the primary contacts (and management hierarchy/organization chart) that will be available for all aspects of the work.
4. Submit approach and understanding of requirements. Attach a detailed transition plan to begin services within 30 days or less of contract award.
5. Submit a list identifying what coordination and meetings the District will be required to provide.
6. Submit Employee background check procedures and security procedures if applicable (if employees work under your business/contractor's license)
7. Submit five (5) references (including their scope of work) of firms of similar operations that have used your Building Maintenance and Services. List names, addresses, telephone number, and contact persons.
8. Submit a list of contracts that have not been renewed or have been terminated in the past five (5) years (if applicable). List names, addresses, telephone number and contact persons.
9. Submit Statement of Income and Retained Earnings, last three (3) Years. Identify what percent of your company's annual revenue this contract shall represent.
10. Submit Proof of insurance satisfactory and acceptable to the District as evidence that insurance meets the requirements set forth on page 4 of the RFP. List of bonding and insurance companies, including addresses, telephone numbers, and contacts.
- ~~1. Submit a brief Corporate profile of your firm (no more than 3 pages) outlining its background, philosophy and experience and information about your firm's ability to perform the work.~~
- ~~2. Submit a Brief history of the firm, including ownership structure, key principals and current organization structure, not to exceed five (5) pages. Include the number of years in business as a Janitorial Service provider.~~
- ~~3. Submit the primary contacts (and management hierarchy/organization chart) that will be available for all aspects of the work. Include contacts for customer service and senior management. Identify the management staff to be assigned to this project and their relevant experience and Proposal to this project. Attach resumes of management staff who will be assigned to this project. Include certifications and licenses of individuals. List the number of full-time employees and the number of part-time employees performing the Janitorial services as of the date of submission of your response to this Request for Proposal.~~
- ~~4. Submit approach and understanding of requirements. Attach a detailed transition plan to begin services within 30 days of contract award.~~
- ~~5. Submit a list identifying what coordination and meetings the District will be required to provide.~~

- ~~6. Submit Employee background check procedures and security procedures.~~
- ~~7. Submit five (5) references (including their scope of work) of firms of similar operations that have used your Janitorial services. List names, addresses, telephone number, and contact persons.~~
- ~~8. Submit a list of contracts that have not been renewed or have been terminated in the past five (5) years. List names, addresses, telephone number and contact persons.~~
- ~~9. Submit Statement of Income and Retained Earnings, last three (3) Years. Identify what percent of your company's annual revenue this contract shall represent.~~
- ~~10. Submit Proof of insurance satisfactory and acceptable to the District as evidence that insurance meets the requirements set forth in Attachment C (page 32-34). List of bonding and insurance companies, including addresses, telephone numbers, and contacts.~~

XI. EVALUATION CRITERIA

Proposals will be evaluated on the following criteria, not necessarily in order of priority:

- Cost. The cost is reasonable for the effort proposed, is of sufficient detail to explain the cost drivers, and sufficient mechanisms are in place to control costs through the project.
- Experience. The vendor shows relevant experience on similar projects, preferably for similar types/sizes of entities (water districts/utilities or city/local government). References will be checked and results will be incorporated here.
- Approach. The vendor understands and will use appropriate tools, methods, and other approaches to ensuring the quality and timeliness of the implementation(s). Use of the latest technologies will be considered as will acceptance of requirements for the project.
- Interviews. Discussion with proposed project manager/staff members that demonstrate an understanding of Western's needs and capabilities to perform will be evaluated.

A. SELECTION PROCESS

Selection shall be made of two or more vendors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the vendors selected. Price shall be considered, but need not be the sole determining factor. Should District determine in its sole discretion that multiple vendors are fully qualified or that one vendor is clearly more highly qualified in a particular area than the others under consideration, a contract may be negotiated and awarded to additional vendors.

B. BASIS FOR AWARD

Information and/or factors gathered during interviews, negotiations and any reference checks, in addition to the evaluation criteria stated in the RFP, and any other information or factors deemed relevant by District, shall be utilized in the final award. The District reserves the right to consider factors other than cost in analyzing and awarding this RFP in order to provide service that will meet District's needs.

C. SAMPLE CONTRACT

Western Municipal Water District's Standard Contract is included bellow. As part of the Proposal process, Western requests that all vendors review this contract and provide any comments as part of the proposal. Western reserves the right to modify, add or delete any provisions of this contract prior to the issuance of a contract. Any Contract developed during this process may be subject to approval by the District's Board of Directors.

SIGNATURE SHEET

My signature certifies that the proposal as submitted complies with all Terms and conditions as set forth in RFP AS10-02.

My signature also certifies that this firm has no business or personal relationships with any other companies or persons that could be considered a conflict of interest or potential conflict of interest to District Municipal Water District, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with District.

I hereby certify that I am authorized to sign as a Representative for the Firm:

Name of Firm: _____

Address: _____

Fed ID No.: _____

Name (type/print): _____

Title: _____

Telephone (____) _____

Fax No. (____) _____

Date: _____

To receive consideration for award, this signature sheet must be returned to the Purchasing Section, as it shall be a part of your response.

SAMPLE CONTRACT
AGREEMENT FOR GENERAL SERVICES

THIS AGREEMENT is made and entered into by and between District Municipal Water District, a Special District of the State of California ("District") and * _____ ("Consultant").

RECITALS:

WHEREAS, the Consultant is specially trained, experienced, and competent to perform the special services which are required by District; and

WHEREAS, special services were requested by District by way of a Request for Proposal (RFP) attached hereto; and

WHEREAS, the Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT:

1. **Scope of Service.** Subject to the terms and conditions set forth in this Agreement, the Consultant shall provide to District the services described in Exhibit 1. The Consultant shall provide the services at the time, place, and in the manner specified in Exhibit 1.
2. **Compensation.** District hereby agrees to pay the Consultant and the Consultant agrees to accept payment, according to the formula or rates set forth in Exhibit 2, for all of the services required by this Agreement provided that total compensation for the Consultant's services shall not exceed the sum of * _____.
3. **Effective Date and Term.** The effective date of this Agreement is * _____, provided that the Consultant shall not commence any work under this Agreement unless and until District provides the Consultant with a written notice to proceed. This Agreement shall terminate on, and all services hereunder shall be rendered by * _____.
4. **Billings.** The Consultant shall submit monthly bills to District describing its services and costs provided during the previous month. The Consultant shall not bill District for duplicate services performed by more than one person. The Consultant's monthly bills shall include the following information: a brief description of services performed; the date the services were performed; the number of hours expended and the name of the person performing the services. The bill shall also contain a brief description of any costs incurred and the Consultant's signature. In no event shall the Consultant submit any billing for an amount in excess of the maximum amount of compensation provided in paragraph 2 above.

5. **Status Reports.** The Consultant shall provide District with monthly written reports of all significant developments arising during performance of its services hereunder.

6. **Designation of Primary Provider of Services.** This Agreement contemplates the services of the Consultant. The primary provider of the services called for by this Agreement shall be * _____, who shall not be replaced without the written consent of District IT Manager. The Consultant shall assign only competent personnel to perform services pursuant to this Agreement. If District asks the Consultant to remove a person assigned to the work called for under this Agreement, the Consultant agrees to do so immediately regardless of the reason, or the lack of a reason, for District's request.

7. **Assignment and Subcontracting.** It is recognized by the parties hereto that a substantial inducement to District for entering into this Agreement was, and is, the professional reputation and competence of the Consultant. Neither this Agreement nor any interest therein may be assigned by the Consultant without the prior written approval of District. Except for the subcontract with * _____, as specified in Section * of Exhibit 1 of this Agreement, the Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of District's Information Technology Manager and Risk Manager_____.

8. **Insurance.** On or before beginning any of the services or work called for by any term of this Agreement, the Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to District, the insurance specified in subsections a. through c. below with insurers and under forms of insurance satisfactory in all respects to District. The Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

a. **Workers' Compensation.** Satisfactory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by the Consultant shall be provided with limits not less than one million dollars (\$1,000,000.00). In the alternative, the Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against District for loss arising from work performed under this Agreement.

b. **Commercial General and Automobile Liability.** The Consultant, at the Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars per occurrence (\$1,000,000.00), combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(1) District, its officers, employees, agents, and volunteers are to be covered and insured's as respects each of the following: Liability arising out of activities performed by or on behalf of the Consultant, including the insured's general supervision of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded District, its officers, employees, agents, or volunteers.

(2) The policy must contain a cross liability or severability of interest clause.

(3) The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

(4) An endorsement must state that coverage is primary insurance and that no other insurance affected by District will be called upon to contribute to a loss under the coverage.

(5) Any failure of the Consultant to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.

(6) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A:VII.

(7) Written notice of cancellation or non-renewal must be received by District at least thirty (30) days prior to such change.

c. **Professional Liability.** The Consultant, at the Consultant's own cost and expense, shall maintain for the period covered by this Agreement, professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000.00) covering the licensed professionals' errors and omissions, as follows:

(1) Any deductible or self-insured retention shall not exceed \$10,000.00 per claim.

(2) Written notice that cancellation, materials change, or non-renewal must be received by District at least thirty (30) days prior to such change shall be included in the coverage or added as an endorsement to the policy.

(3) The following provisions shall apply if the professional liability coverages are written on a claims made form:

(a) The retroactive date of the policy must be shown and must be before the date of the Agreement.

(b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

(c) If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, the Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the work. District shall have the right to exercise at the Consultant's cost, any extended reporting provisions of the policy should the Consultant cancel or not renew the coverage.

(d) A copy of the claim reporting requirements must be submitted to District prior to the commencement of any work under this Agreement.

d. Deductibles and Self-Insured Retentions. The Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of District's Risk Manager, the Consultant may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. District's Risk Manager may condition approval of an increase in deductible or self-insured retention levels upon a requirement that the Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

e. Notice of Reduction in Coverage. In the event that any coverage required under subsections a., b., or c. of this section of the Agreement is reduced, limited, or materially affected in any other manner, the Consultant shall provide written notice to District at the Consultant's earliest possible opportunity and in no case later than five (5) days after the Consultant is notified of the change in coverage.

f. District Remedies. In addition to any other remedies District may have if the Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option:

(1) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

(2) Order the Consultant to stop work under this Agreement or withhold any payment which becomes due to the Consultant hereunder, or both stop work and withhold any payment, until the Consultant demonstrates compliance with the requirements hereof;

(3) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies District may have and is not the exclusive remedy for the Consultant's failure to maintain insurance or secure appropriate endorsements.

9. Consultant's Responsibility. It is understood that the Consultant has the skills, experience and knowledge necessary to perform the work agreed to be performed under this Agreement, and that District relies upon the Consultant's representations about its skills, experience and knowledge to perform the Consultant's work in a competent manner. Acceptance by District of the work performed under this Agreement does not operate as a release of said Consultant from responsibility for the work performed. It is further understood and agreed that the Consultant is apprised of the scope of the work to be performed under this Agreement and the Consultant agrees that said work can and shall be performed in a fully competent manner.

10. Indemnification. The Consultant shall indemnify, defend, and hold District, its officers, employees, agents and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state or municipal law or ordinance, or other cause in connection with the acts or omissions of the Consultant, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the sole negligence or willful misconduct of District, its officers, employees, agents, or volunteers. It is understood that the duty of the Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Within fifteen (15) days of District's notice that it has been made a party to an action arising out of the Consultant's acts or omissions under this Agreement, the Consultant shall provide a defense to District in that action. In the event the Consultant fails to provide such a defense to District, the Consultant shall be liable to District for its attorney's fees and litigation costs incurred to defend itself beginning on the sixteenth (16th) day from the date of District's notice and request for a defense. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve the Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

11. Licenses. If a license of any kind having terms intended to include evidence of registration is required of the Consultant, its employees, agents, or subcontractors by federal or state law, the Consultant warrants that such license has been obtained, is valid and in good standing, and the Consultant shall keep it in effect at all times during the terms of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

12. Termination. This Agreement may be terminated by District immediately for violation of any provision of this Agreement or upon fifteen (15) days written notice by District to the Consultant. In the event of termination, the Consultant shall be entitled to compensation for services performed to the effective date of termination; provided, however, that District may condition payment of such compensation upon the Consultant's delivery to District of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to the Consultant or prepared by or for the Consultant or District in connection with this Agreement and upon satisfactory completion of the services which the Consultant has performed.

13. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by the

Consultant pursuant to this Agreement shall be the property of District at the moment of their preparation. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of District. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to District at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

14. Conflict of Interest. The Consultant warrants and covenants that the Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, the Consultant shall promptly notify District's Risk Manager of the existence of such conflict of interest so that District may determine whether to terminate this Agreement. The Consultant further warrants its compliance with the Political Reform Act (Gov. Code Section 81000 et seq.) respecting this Agreement. In addition, the Consultant possesses no authority with respect to any District's decision beyond the rendition of information, advice, recommendation or counsel.

15. Copyright. Upon District's request, the Consultant shall execute appropriate documents to assign to District the copyright to work created pursuant to this Agreement. The issuance of patent or copyright to the Consultant or any other person shall not affect District's rights to the materials and records prepared or obtained in the performance of this Agreement. District reserves a license to use such materials and records without restrictions or limitations consistent with the intent of the original design, and District shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by District shall continue for a period of fifty (50) years from the date of execution of this Agreement unless extended by operation of law or otherwise.

16. Time is of the Essence. The Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

17. Compliance with Laws. In the performance of this Agreement, the Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances of District. The Consultant warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations.

18. Independent Contractor Status. It is expressly understood and agreed by both parties that the Consultant, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of District. The Consultant expressly warrants not to represent, at any time or in any manner, that the Consultant is an employee of District.

19. Abandonment by the Consultant. In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, the Consultant shall, without delay, deliver to District all materials and records prepared or obtained in the performance of this Agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or

abandonment, less a deduction for any damages or additional expenses which District incurs as a result of such cessation or abandonment.

20. Liquidated Damages. The parties to this Agreement agree that, in the event that the services described in this Agreement are not completed on time, District will sustain damage and that it will be impracticable and extremely difficult to ascertain the actual damage, which District will sustain. In the event that the Consultant fails to complete all of the services described in this Agreement on or before any completion date provided herein, or within the period of any authorized extension, the Consultant shall pay as and for liquidated damages, the sum of * for each calendar day that completion is delayed and said sum may be deducted from any payment due the Consultant under this Agreement.

21. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

22. Attorney's Fees. The parties each agree that, in the event of any breach of this Agreement, the party aggrieved shall be entitled to recover from the party who breaches, in addition to any other relief provided by law, such costs and expenses as may be incurred by said party, including court costs, attorney's fees, and other costs and expenses, taxable or otherwise, reasonably necessary in preparing the defense of, defending against, or seeking or obtaining an abatement of, or an injunction against, such action or proceeding, or in enforcing this Agreement, or in establishing or maintaining the applicability of, or the validity of, this Release, or any provision thereof, and in the prosecuting of any counterclaim or cross-complaint based thereon.

23. Notices. All notices under this Agreement shall be in writing and shall be delivered by personal service or by certified or registered mail, postage prepaid, return receipt requested, of the parties. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service if served personally or if served by facsimile transmission (with confirmation of receipt), or seventy-two (72) hours after the mailing. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices of the parties shall be addressed as follows:

To Consultant: *

To District: * _____
Western Municipal Water District
Purchasing Division
450 E. Alessandro Blvd
Riverside, CA 92508
(951) 789-5052

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

24. No Third-Party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

25. Whole Agreement. This Agreement has * _____ pages, excluding the exhibits described on its signature page. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

26. Amendments. This Agreement may be modified or amended only by a written document executed by both the Consultant and District Manager and approved as to form by District Attorney; otherwise by District Council. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

27. Interpretation. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement. The masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tense, respectively, where the context so requires.

28. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

29. Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

30. Counterparts. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument but the parties agree that the agreement on file in the Office of District's District Clerk is the version of the agreement that shall take precedent should any differences exist among counterparts of the document.