

Request for Proposals (RFP)

Bay Area Regional Desalination Project (BARDP) Greenhouse Gas Analysis

December 21, 2011

1 INTRODUCTION

1.1 Zone 7 Water Agency

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 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 provides water to approximately 200,000 residents within a service area of approximately 425 square miles in eastern Alameda County.

As the major water supply and flood control agency in eastern Alameda County, Zone 7 has an ongoing commitment to plan for existing and future needs, implement needed projects, maintain a high quality and reliable water delivery and flood control system, and provide a quality product and service to the community.

1.2 Bay Area Regional Desalination Project

As part of its commitment to provide a high-quality and reliable drinking water supply to residents in Livermore, Pleasanton, Dublin, and a portion of San Ramon, Zone 7 is currently evaluating the development of a regional desalination project ("Bay Area Regional Desalination Project" or "BARDP") with four other water agencies in the Bay Area: Contra Costa Water District (CCWD), East Bay Municipal Utility District (EBMUD), San Francisco Public Utilities Commission (SFPUC), and Santa Clara Valley Water District (SCVWD). Collectively, the five agencies are referred to here as "partners". Having completed a Pre-Feasibility Study (2004), a Feasibility Study (2007), Pilot-Test (2010), and Institutional Feasibility Analysis (2010), the BARDP partners are now undertaking a Site-Specific Analysis.

The site under consideration would divert water from the Sacramento-San Joaquin Delta at CCWD's Mallard Slough Pump Station, located in eastern Contra Costa County, to produce 20 MGD of desalinated water for delivery to the partners. Water produced by the BARDP could be blended with supplies from CCWD, EBMUD (via the Mokelumne Aqueduct), or both. Zone 7 and the SFPUC would receive water wheeled through EBMUD through interties (one future and one existing, respectively), and SCVWD could receive water either as a Delta transfer/exchange with CCWD or wheeled through SFPUC and delivered through an intertie at Milpitas. The water from the BARDP could be treated by one-pass or two-pass reverse osmosis [RO] and may require further treatment (stabilization, pH adjustment) depending on the delivery point into either the CCWD or EBMUD system.

The proposed BARDP would operate continuously in all year-types, with the possibility of storing water (including by exchange or transfer) in CCWD's Los Vaqueros Reservoir when demand from the partners is less than plant capacity. Storage in Los Vaqueros Reservoir could provide flexibility to optimize the BARDP yield. The intake of the desalination plant would rely on a combination of new or modified water rights (i.e., water rights from CCWD and/or other nearby municipalities), based on availability. One of the options for disposal of the desalination plant brine include blending with discharges from wastewater treatment plants located in the vicinity of the desalination plant, including the Central Contra Costa Sanitary District and the Delta Diablo Sanitation District.

Power to the desalination plant could be provided by Pacific Gas and Electric, the current power supplier at Mallard Slough Pump Station, or nearby power plants, and/or sources of renewable energy. The partners are committed to reducing the carbon footprint of the BARDP. One of the key tasks of the Site-Specific Analysis is therefore a greenhouse gas analysis, which is the subject of this Request for Proposals (RFP). More details on the greenhouse gas analysis are provided in the following section.

At the November 15, 2010 Managers' Meeting of the BARDP, one of the next steps identified was the evaluation of potential alternatives to minimize the BARDP's carbon footprint (greenhouse gas [GHG] emissions), including the use of state-of-the-art energy-efficient desalination technologies. This effort is in line with the BARDP partners' environmental stewardship principles, and can provide information that will ultimately be useful for the preliminary design process and the preparation of environmental impact assessment reports. Furthermore, minimizing the BARDP's carbon footprint may potentially lead to lower energy consumption and lower overall costs.

2 PRELIMINARY SCOPE OF WORK

2.1 Tasks

Water supply is a major consumer of energy in California; according to the Association of California Water Agencies, 19% of all electricity consumed in California is related to water use (8% for water/wastewater and 11% by end users). Desalination, in particular, is an energy-intensive process. It is therefore critical to address the potential greenhouse gas impacts of the BARDP.

The Climate Registry (TCR) suggests four strategies for reduction of GHG emissions: measure, reduce, renew (invest in renewable energy), and offset (purchase carbon credits). Measuring GHG emissions requires: 1) determining the boundaries to include (geographic and control); 2) identifying emission sources and collecting the data; and 3) calculating the associated emissions using methodologies recommended by TCR and other such agencies.

Under this scope of work, the GHG analysis will be based primarily on the alternative scenarios presented in the report "*Pilot Testing at Mallard Slough: Pilot Plant Engineering Report*" (Pilot Plant Report) prepared by MWH in June 2010. For this preliminary greenhouse gas analysis (a more detailed analysis is expected as the BARDP moves into the environmental analysis phase), the project shall primarily focus on the desalination plant and the equipment included in the energy consumption calculation in the Pilot Plant Report; energy required for delivering water to the partners may be incorporated as the data becomes available¹.

¹ Wheeling information will be developed as part of the hydraulic modeling task being completed by EBMUD separately for the BARDP Site-Specific Analysis.

TCR suggests measuring three “scopes” of emissions: 1) direct – fuel combustion and company owned vehicles (on-site and commuting to site), for construction as well as ongoing operations & maintenance; 2) indirect – purchased electricity for use; and 3) indirect (optional) – production of purchased materials, product use, outsourced activities, contractor owned vehicles, waste disposal and employee business travel. Indirect emissions from operations are expected to be the main source of emissions, and will be the primary basis for the analysis. Identification and analysis of reduction strategies, including investment in renewable energy sources and carbon credits, are also part of the scope of work.

The preliminary scope of work comprises the tasks listed in the table and descriptions below. The Proposer is encouraged to propose a modified scope of work based on their professional experience and judgment.

Task No.	Description
1	Estimate the BARDP’s potential gross GHG emissions
2	Identify and evaluate potential GHG emission reduction strategies and actions
3	Identify and estimate sources of avoided emissions.
4	Overview of current desalination research.
5	Prepare a technical memorandum.

Task 1 - Estimate the BARDP’s potential gross GHG emissions

The first task is to estimate the BARDP’s potential gross GHG emissions. The baseline scenario will be based on the results of the Pilot Plant Report as described above. For the BARDP, indirect emissions from the off-site electricity provider are expected to be the only major source of GHG. Based on the location, the two likely candidates for supplying power to the East Contra Costa site are Pacific Gas and Electric (PG&E) and nearby GenOn. The Pilot Plant Report contains electrical consumption estimates for two alternative processes; this GHG analysis will focus on the recommended alternative: a two-stage brackish and seawater desalination system.

Task 2 - Identify and evaluate potential GHG emission reduction strategies and actions

Under this task, potential GHG emission reduction strategies and specific actions are identified and evaluated. Strategies to be evaluated will include, at a minimum, implementation of energy-efficient equipment and facilities, use of alternative energy sources not derived from fossil fuels, GHG capture, and carbon offsets². Examples of specific actions to consider include:

- optimization of system design and performance, evaluating flux rates, membrane fouling, and other system features to increase overall recovery rate,
- installation of state-of-the-art desalination energy recovery technologies (note that the conceptual plant design in the Pilot Plant Report includes energy recovery components—these should be compared against any recent technological advances),
- use of high-efficiency/premium-efficiency motors and variable frequency drives (VFDs),

² Only offsets that meet stringent criteria (e.g. ICLEI - Local Governments for Sustainability standards) will be considered as part of this GHG Analysis.

- green building design based on principles of the Leadership in Energy and Environmental Design (LEED) program,
- installation of wind turbines and/or solar panels for on-site power generation to displace a portion of the BARDP's energy demands from the off-site power supplier,
- purchase of carbon dioxide from carbon dioxide recovery plants,
- restoration and enhancement of wetlands to act as a carbon sink, and
- purchase of carbon credits.

The potential reductions in GHG emissions that can be accomplished through each action should be estimated, along with the implementation costs.

Task 3 - Identify and estimate sources of avoided emissions.

The BARDP may result in avoided emissions from actions that are no longer necessary due to the BARDP's implementation. For example, if the water produced by the BARDP is used to displace water that would otherwise be imported and pumped over 100 miles, the associated GHG emissions for this import would be avoided. Under this task, sources of avoided emissions will be identified and estimated to the extent possible based on information provided by the BARDP partners. It is recognized that this analysis may be limited by the availability of the required data for the alternative water sources and the budget; if a quantitative analysis is not possible, then such sources of avoided emissions will be qualitatively described.

Task 4 - Overview of current desalination research.

Task 2 focuses on strategies and actions that can be implemented in the near future because there is strong evidence to support their value and technical feasibility. This task focuses on current research efforts that point to promising processes or technologies for improving the overall resource efficiency of desalination systems. A brief overview of desalination research will be developed under this task, highlighting potential areas of opportunity for the BARDP.

Task 5 - Prepare a technical memorandum.

The findings from Tasks 1 to 4 will be summarized and presented in a technical memorandum (TM). The draft TM will be finalized based on inputs from the BARDP partners. The TM will also include recommendations for greenhouse gas reduction strategies and actions to consider in more detail and next steps.

2.2 Budget

As noted previously, the Proposer is encouraged to present a modified scope of work based on their professional experience and judgment; however, the associated project budget should stay within the not-to-exceed amount of \$60,000.

2.3 Schedule

The work is expected to be completed over approximately six (6) to eight (8) months with a final TM due by the end of November 2012 at the latest. A contract with the selected consultant is anticipated to be presented to the Zone 7 Board for approval at the March 21, 2012 Board Meeting.

3 INSTRUCTIONS TO PROPOSERS

3.1 Examination of Proposal Documents

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

3.2 Addenda/Clarifications

Questions or comments regarding this RFP shall be addressed in writing to Amparo Flores, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, California 94551, or e-mailed to aflores@zone7water.com. Responses from Zone 7 will be communicated in writing or by e-mail to all recipients of this RFP.

3.3 Submission of Proposals

All Proposals shall be submitted to Amparo Flores, Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, California 94551. Proposals must be delivered no later than **2:00 p.m. on January 27, 2012**. Proposals 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 Proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address, and clearly marked as "RFP for BARDP Greenhouse Gas Analysis."

3.4 Proposal Documents Inclusion

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

3.5 Withdrawal of Proposals

A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by delivering to Zone 7 Water Agency, Attn: Amparo Flores, 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 any failed delivery.

3.6 Rights of Zone 7

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

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

Zone 7 reserves the right to:

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

4 PROPOSER'S MINIMUM QUALIFICATIONS

- a. The Proposer shall have experience in performing a greenhouse gas analysis (e.g., preparation of a Climate Action Plan, Greenhouse Gas Reduction Strategy).
- b. If selected, the Proposer agrees to submit the required Certificate of Insurance.
- c. The Proposer is required to list the key personnel who will be assigned to the project, their roles, availability, and billing rates. Proposer agrees that assigned personnel will not be changed unless agreed upon by Zone 7 and its partners.
- d. Proposer shall comply with applicable federal, state and local regulations concerning equal employment opportunity requirements.

5 PROPOSAL FORMAT AND CONTENT

5.1 *Format*

Please submit five (5) copies of your Proposal, which shall be organized and prepared according to the **Content** section that follows. The Proposal shall not exceed ten (10) pages, not including resumes. All responses must be submitted on 8-1/2"x11" paper, printed double-sided, using a minimum font size of 11.

5.2 *Content*

The proposal should include the following items in the order shown.

1. **Overview** - Use this section to provide an overview of your firm (and subcontractors, if any) including type of company, office locations (also indicating which primary office will serve this project), and number of employees. Summarize your general approach to the project, the strengths of your project team, and reasons why your firm should be selected.
2. **Project Team** - Identify the key project personnel and their roles in an organizational chart. Describe the team and individual personnel experiences as they relate to the proposed scope of work, local experience, and water supply issues. List other major projects the team or the personnel are involved with currently including project title and project responsibility. Please include a table summarizing

the hourly labor rates for team members.

3. **Proposed Scope of Work** - Clearly indicate comments or suggested changes to the Preliminary Scope of Work. Describe how the project team will fulfill the proposed scope of work. To illustrate your strategy, describe tools and techniques you will use, and challenges you anticipate, in addressing specific issues identified in the proposed scope of work. Unless stated otherwise, the proposed scope of work is expected to be within the \$60,000 budget.
4. **References** - From recent applicable experience of the Project Manager and key personnel, list three (3) relevant projects, and include the agency, staff contact name, address, and telephone number for each.
5. **Resumes** - Provide a resume for each named key personnel that includes but is not limited to the following information:
 - years of experience
 - education – degrees/certifications, schools, and years obtained
 - professional registration(s)
 - experience related to the proposed assignment
 - description of projects of a similar nature worked on in the past 5 years

6 EVALUATION, SELECTION, AWARD AND CONTRACT TYPE

6.1 Evaluation Criteria

The following criteria will be used to evaluate written proposals that are submitted. The criteria weights are indicated in parentheses.

1. **Quality and Experience (50%)**: Technical experience of firm and proposed subcontractors in performing work of similar nature; qualifications of key personnel; key personnel's level of involvement in performing related work; adequacy of labor commitment; concurrence with the restrictions on changes in key personnel; experience working with public water supply agencies; record of completing work on schedule and on budget; strength and stability of the firm and proposed subcontractors.
2. **Project Approach (25%)**: Understanding of the project requirements, potential problem areas, and project approach, as demonstrated by comments/suggestions on the preliminary scope of work.
3. **Assessments by Client References (25%)**: Feedback from Proposer's former or existing clients on the Proposer's performance on other similar projects.

6.2 Evaluation Procedure

A Review Panel, made up of staff from BARDP partner agencies, will review the proposals submitted, establish a short-list of finalists based on the evaluation criteria, interview the finalists if necessary, and select the successful Proposer based on demonstrated competence and necessary qualifications. The Review Panel may also assist in the negotiation of the contract, including the

final scope of work and budget.

Note that the Review Panel may choose to proceed with consultant selection without interviews. If interviews are deemed necessary, they will be scheduled for approximately one hour each, with the date to be determined with the finalists. The proposed Project Manager must lead the presentation before the Review Panel.

6.3 Award

When the Review Panel has completed its review, Proposers will be advised of the selected consultant. A contract will then be negotiated with the selected consultant. The recommendations for approval of a Consultant Services Agreement and funding authorization of the contract are expected to be made to the Zone 7 Board of Directors at its March 21, 2012 Board Meeting.

6.4 Contract Type

It is anticipated that this contract will be a Professional Services Agreement with Fixed Rate Schedules and a not-to-exceed amount as described in **Section 2.2**. By submitting a Proposal to Zone 7 in response to this RFP, Proposer agrees that if selected by Zone 7 as the successful consultant, it will enter into the contract with Zone 7 containing the terms and conditions as set forth in the attached sample (**Attachment A**).

Attachment A

SAMPLE Professional Services Agreement

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 _____

**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 _____, 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 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.

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 Contract 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-x
Attn: Project Manager [name]**

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

Attn: _____

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

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 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 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 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 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.

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 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.

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 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.

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 5997 Parkside Drive, Pleasanton, California 94588-5127. 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 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. 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 Contract.

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 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.

17. 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.

18. 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.

19. 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.

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 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.

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

22. 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 _____
[]
[_____]

[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]

Approved as to form this _____ day of _____, 200[].

[General Counsel]

Zone 7 Resolution No. _____
**THIS AGREEMENT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL
SIGNED BY THE GENERAL COUNSEL.**

LIST OF APPENDICES AND SCHEDULES

Appendix A	Scope of Services
Appendix B	Payments to Consultant
Appendix C	Insurance
Appendix D	Deliverables
Schedule 1.3A	Professional Personnel (including resumes)

APPENDIX A – SCOPE OF SERVICES

[TO BE DEVELOPED FOR THE PROJECT]

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

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.

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.

APPENDIX D – DELIVERABLES LIST

[TO BE DEVELOPED FOR THE PROJECT]

APPENDIX E

CONFLICT OF INTEREST

[TO BE DEVELOPED FOR THE PROJECT]

APPENDIX F

MILESTONE SCHEDULE

[TO BE DEVELOPED FOR THE PROJECT]