

MAINTENANCE / SMALL CONSTRUCTION CONTRACT

between

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

and

Contractor

for

Project/Program Name

Contract No. _____

Dated _____

This Maintenance Services Agreement ("**Agreement**") is entered into as of _____, by and between the Alameda County Flood Control and Water Conservation District, Zone 7 commonly known as ZONE 7 WATER AGENCY, (the "**Agency**"), a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California and _____, a ("**Contractor**") (collectively with Agency, the "**Parties**"), at Livermore, California.

RECITALS

WHEREAS, the Agency is engaging in _____ ("**Project**"); and

WHEREAS, the Agency requires a highly qualified contractor with the requisite knowledge, skill, ability and expertise to provide the necessary services for the Project ("**Services**"); and

WHEREAS, Contractor represents to the Agency that it is fully qualified and available to perform the Services for and as requested by the Agency.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and terms and conditions herein, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1. **The Services.** Contractor shall provide all Services set out in Appendix A, Scope of Work, attached hereto and incorporated herein by reference, to the satisfaction of the Agency.
- 1.2. **Independent Contractor.** Contractor is acting hereunder as an independent contractor and not as an agent, employee, or partner of the Agency. Neither Contractor nor any of Contractor's employees or agents are eligible to receive workers' compensation, medical, indemnity or retirement benefits from the Agency, including but not limited to enrollment in the Alameda County Employees' Retirement Association (ACERA). Except as expressly provided herein, Contractor is not eligible to receive overtime, vacation or sick pay. Contractor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent, employee, or partner of the Agency.
- 1.3. **Extra Services.** Before performing any services outside the Scope of Work ("**Extra Services**"), Contractor shall submit a written request for approval of such Extra Services. Contractor shall not perform any such Extra Services, unless and until the Agency provides prior written approval for the same. The

Agency shall have no responsibility to compensate Contractor for any Extra Services performed by Contractor without such prior written approval.

- 1.4. **Methods.** Contractor shall have the sole and absolute discretion in determining the methods, details and means of performing the Services required by the Agency. The Agency shall not have any right to direct the methods, details and means of the Services; however, Contractor must receive prior written approval from the Agency before assigning or changing any assignment of Contractor's project manager or key personnel and before using any subcontractors ("**Subcontractors**") or entering into any Subcontractor agreements for services or materials under this Agreement or any work authorizations.
- 1.5. **Review.** Contractor shall furnish the Agency with reasonable opportunities from time to time to ascertain whether the Services of Contractor are being performed in accordance with this Agreement. All work done and materials furnished by Contractor shall be subject to final review and approval by the Agency. The Agency's review and approval of the Services shall not, however, relieve Contractor of any of its obligations under this Agreement.

2. COMPENSATION

- 2.1. **Amount.** As consideration for the Services described above, the Agency will pay Contractor an amount not to exceed \$ ("**Maximum Amount**").

Payments will be made at the rates set forth in the Fee Schedule which is attached hereto as **Appendix B** and incorporated herein by Reference. Contractor shall submit an invoice within ten (10) days after the end of each month during the term of this Agreement describing the Services performed for which payment is requested.

- 2.2. **Invoicing.** Any and all invoices from Contractor for the Services shall identify and describe the activities performed by Contractor and state: the total cost of the Services for the period of the invoice; the hours worked; the name and title of the person(s) performing the work; the hourly rate for the person(s) performing the work; the accrued reimbursable expenses; and the budget amount and percentage remaining (after invoice payment), without reduction for retentions. The invoice shall also identify expenses for which reimbursement is requested and attach supporting documentation, including original receipts and/or bills. Any expenses exceeding five hundred dollars (\$500) shall require written approval from the Agency. Reimbursable costs shall not include any administrative or overhead expenses and shall be reimbursable as described in the Fee Schedule.

Costs or expenses not designated or identified in the Fee Schedule shall not be reimbursable unless otherwise provided in this Agreement. Only actual time in providing the Services will be charged. The Agency will not make any payments for Contractor's travel time incurred in providing the Services, and Contractor agrees not to invoice the Agency for any travel time incurred in providing the Services.

The Agency shall review and approve all invoices prior to payment. Contractor agrees to submit additional supporting documentation to support its invoice(s) if requested by the Agency. If the Agency does not approve an invoice, the Agency shall send a notice to the Contractor setting forth the reason(s) the invoice was not approved. Contractor may re-invoice the Agency to cure the defects identified in the Agency notice. The revised invoice will be treated as a new submittal. If the Agency contests all or any portion of an invoice, the Agency and the Contractor shall use their best efforts to resolve the contested portion of the invoice.

The Agency shall pay approved invoice amounts within thirty (30) days of receipt. The Agency's determinations regarding verification of Contractor's performance, accrued reimbursable expenses, and percentage of completion shall be binding and conclusive. Contractor's time records, invoices, receipts and other documentation supporting the invoices shall be available for review by the Agency upon reasonable notice and shall be retained by Contractor for three (3) years after completion of the Project.

All invoices submitted for payment must indicate the Agreement number must either be emailed to accountspayable@zone7water.com or a hard copy mailed to Zone 7 Water Agency, 100 North Canyons Parkway, Livermore, CA 94551, Attention: Accounts Payable.

- 2.3. **Withholding Payment.** In the event the Agency has reasonable grounds for believing Contractor will be unable to materially perform the Services under this Agreement or unable to complete the Services within the Maximum Amount described in this Agreement, or if the Agency becomes aware of a potential claim against Contractor or the Agency arising out of Contractor's negligence, intentional act or breach of any provision of this Agreement, including a potential claim against Contractor by the Agency, then the Agency may withhold payment of any amount payable to Contractor that the Agency determines is related to such inability to complete the Services, negligence, intentional act, or breach.

3. TAXES; INSURANCE; PERMITS; LICENSES

- 3.1. **Taxes.** Contractor shall be solely responsible for the payment of any and all federal, state and local income tax, social security tax, workers' compensation

insurance, state disability insurance, and any other taxes or insurance Contractor, as an independent contractor, is responsible for paying under federal, state or local law. Contractor is aware of the provisions of Section 3700 et seq. of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Contractor shall comply with such provisions before commencing the performance of the Services under the Agreement. Contractor and its Sub-Contractors shall maintain applicable workers' compensation insurance for their employees in effect during all work covered by the Agreement.

- 3.2. **Permits and Licenses.** Contractor shall procure and maintain all permits, licenses and other government-required certification necessary for the performance of the Services, all at the sole cost of Contractor. None of the items referenced in this section shall be reimbursable to Contractor under the Agreement. Contractor shall comply with any and all applicable local, state, and federal regulations and statutes including Cal/OSHA requirements.

4. RISK TRANSFER PROVISIONS

- 4.1. **Workers' Compensation Insurance.** By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 et seq. of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of any work under this Agreement.
- 4.2. **Indemnification.** To the fullest extent permitted by law, Contractor assumes liability for and agrees to immediately defend, indemnify and hold harmless the Agency, its directors, officers, employees, agents or authorized volunteers, and each of them (collectively "**Agency Indemnified Parties**") from and against:
- 4.2.1. Any and all claims, actions, damages, demands, liabilities, judgments, expenses, penalties and losses arising out of the performance (or the actual or alleged non-performance) of the Services by Contractor, including its agents, employees, and Subcontractors, under this Agreement, for damages to persons or property arising from, pertaining to, or relating to Contractor's or Contractor's agents, employees, or Subcontractors' negligent acts or omissions or willful misconduct or the failure of Contractor or Contractor's agents, employees, or Subcontractors to comply with any professional standard of care applicable to Contractor's services.

4.2.2. Any and all claims, actions, damages, demands, liabilities, judgments, expenses, penalties and losses arising out of or related to the presence, generation, deposit, emission, discharge, spill or release of any Hazardous Materials by Contractor or any of Contractor's agents, employees, or Subcontractors while performing any of the Services or otherwise related to or arising out of the scope of this Agreement.

4.2.2.1. As used herein, "Hazardous Materials" means any substance, material or waste which is or becomes subject to regulations by any agency or political subdivision of the state, any municipality, or the United States, including but not limited to the following:

- a. Any material or substance defined as a "hazardous substance" pursuant to any federal, state, or local law or regulations, including but not limited to Section 25316 of the California Health and Safety Code;
- b. A "Hazardous material," as defined in Section 25501(n) of the California Health and Safety Code;
- c. A "Regulated substance," as defined in Section 25532(j) of the California Health and Safety Code;
- d. "Hazardous waste," as defined in Section 25117 of the California Health and Safety Code;
- e. "Extremely hazardous waste," as defined in Section 25115 of the California Health and Safety Code;
- f. Petroleum and petroleum-based derivatives;
- g. Asbestos;
- h. Polychlorinated biphenyls (PCBs);
- i. Any substance designated as a "hazardous substance" for purposes of Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as now or hereafter amended;
- j. A "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6903, 6921, as now or hereafter amended;
- k. A "hazardous substance," as defined by Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, as now or hereafter amended;

- l. A "regulated substance," as defined by Section 9001 of the Solid Waste Disposal Act, 42 U.S.C. § 6991, as now or hereafter amended;
 - m. A "toxic pollutant" under Section 307 of the Federal Water Pollution Control Act, 33 U.S.C. § 1317, as now or hereafter amended;
 - n. A "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended;
 - o. A "hazardous material" under the Hazardous Material Transportation Act, 49 U.S.C. § 1802(2), as now or hereafter amended;
 - p. And any other material or substance which presents a risk to human health or the environment or is regulated under any other applicable federal, state or local laws, ordinances, or regulations now in force or as may be passed or promulgated in the future.
- 4.2.3. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the intentional or negligent violation of any governmental law or regulation, compliance with which is the responsibility of Contractor.
- 4.2.4. Any and all losses, expenses, damages (including damages to the work itself), costs of defense, including attorneys' fees and other costs of legal counsel acceptable to the Agency, which any of the Agency Indemnified Parties may incur with respect to the failure, neglect, or refusal of Contractor to perform the Services or its obligations under the Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the Agency in any lawsuit to which it is a party.
- 4.2.5. Upon the Agency's tender of defense pursuant to Contractor's indemnity and defense obligations under this Section 4.2, Contractor shall immediately defend, at its own cost, expense and risk, any and all such suits, actions or other legal proceedings, with counsel acceptable to the Agency. Contractor shall further defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of performance or non-performance of the Services, and shall not tender such claims to the Agency or any of the Agency Indemnified Parties.

- 4.2.6. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Agency or any of the Agency Indemnified Parties, in any and all such aforesaid suits, actions, or other legal proceedings arising as provided in this Section 4.2.
- 4.2.7. Contractor shall reimburse the Agency and any of the Agency Indemnified Parties for any and all legal expenses and costs incurred by each of them in connection therewith.
- 4.2.8. Contractor's obligations to indemnify the Agency and the Agency Indemnified Parties pursuant to this Section 4.2 shall survive the expiration or earlier termination of this Agreement, shall remain in full force and effect as long as permitted by law, and shall not be restricted or limited to insurance proceeds, if any, received by the Agency or any Agency Indemnified Parties.
- 4.2.9. Notwithstanding the foregoing, Contractor shall not be responsible for any claims, liabilities or demands to the extent that such claims arise from the sole active negligence or willful misconduct of the Agency, provided, however, that the Agency's comparative negligence will not relieve Contractor of its obligation to defend unless the claims, liabilities or demands at issue are the result of the sole active negligence or willful misconduct of Agency.

5. GENERAL CONDITIONS

- 5.1. **Laws, Regulations and Permits.** Contractor shall give all notices required by law and comply with all laws, ordinances, rules, and regulations pertaining to the conduct of the work performed under this Agreement. Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, Contractor shall bear all costs arising therefrom. If Contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, it shall promptly notify the Agency engineer in writing and any necessary changes shall be made by written instruction or change order.
- 5.2. **Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its work, Contractor shall at all times exercise all necessary precautions for the safety of its employees or agents appropriate to the nature of the work and the conditions under which the work is to be performed, and shall be in compliance with all applicable federal, state and local statutory and regulatory requirements including State of California, Department of Industrial Relations, Division of Occupational Safety and Health ("**Cal/OSHA**") regulations, and the U.S.

Department of Transportation Omnibus Transportation Employee Testing Act. Safety precautions, as applicable, shall include but shall not be limited to: adequate life protection and life-saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures.

- 5.2.1. The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify the Agency and the utility owner if it disturbs, disconnects, or damages any utility.
 - 5.2.2. In accordance with Section 6705 of the California Labor Code, the Contractor shall submit to the Agency specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the Agency in writing prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of Cal/OSHA the plan shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, the Contractor shall submit its permit with the excavation/trench work safety plan to the Agency before work begins.
 - 5.2.3. The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.
- 5.3. **Labor Compliance Requirements.** Contractor must comply with all labor compliance requirements, including but not limited to prevailing wage

requirements, SB 854, Labor Code sections 1771.1(a) & 1725.5, Public Works Contractor Registration Program, and Electronic Certified Payroll Records to Labor Commissioner. Additional information about these requirements and the new public works program regarding compliance monitoring, administration and enforcement are available at the Department of Industrial Relations. **[For Public Works Contracts]** Copies of the rate of per diem prevailing wage shall be on file at the principal office of the Agency and shall be made available to any interested party upon request.

6. REQUIRED INSURANCE

- 6.1. **Minimum Limits of Insurance.** Contractor shall procure and maintain for the full term of this Agreement, and for five (5) years thereafter, insurance against claims for injuries or death to persons or damage to property which may arise from or in connection with the performance of the Services hereunder by the Contractor, its agents, representatives, employees, or Subcontractors.
- 6.2. **Liability Insurance.** Contractor shall provide and maintain at all times during the performance of the work under this Agreement, the following commercial general liability, professional liability, automobile liability insurance, Contractor's Environmental Pollution Liability and Builders Risk (if applicable), and Workers' Compensation and Employer's Liability Insurance. All of the insurance shall be provided on policy forms and through companies satisfactory to the Agency.
- 6.3. **Coverage.** Contractor's insurance coverage shall be at least as broad as the following or as provided in Appendix C:
 - 6.3.1. Coverage for Professional Liability appropriate to the Contractor's profession covering Contractor's wrongful acts, negligent actions, errors and omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
 - 6.3.2. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 - 6.3.3. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (non-owned and hired automobiles).
 - 6.3.4. Coverage for Contractor's Pollution Liability appropriate for the hazardous material/waste activity contemplated in the Agreement. The retroactive date is to be no later than the effective date of this Agreement.

- 6.4. **Limits.** At all times during the term of this Agreement, the Contractor shall maintain insurance with limits no less than the following. If Contractor maintains broader coverage and/or higher limits than the minimums limits set forth below, the Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum of insurance and coverage shall be available to the Agency.
- 6.4.1. **General Liability.** – Five million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury and property damage and products & completed operations liability. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the Agency) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- 6.4.2. **Automobile Liability.** One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- 6.4.3. **Excess Liability.** The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Agency (if agreed to in a written contract or agreement) before the Agency's own primary or self-insurance shall be called upon to protect it as a named insured.
- 6.4.4. **Contractor's Pollution Liability.** – (If the Project involves environmental hazards) with limits no less than five million dollars (\$5,000,000) per occurrence or claim and ten million dollars (\$10,000,000) policy aggregate.
- 6.4.5. **Builder's Risk (Course of Construction).** (If necessary) insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the Project and no coinsurance penalty provision.
- 6.5. **Required Provisions.** The general liability, automobile liability, and contractor's pollution policies are to contain, or be endorsed to contain, the following provisions:
- 6.5.1. The Agency, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 11

85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01) with respect to liability arising out of Services performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance.

- 6.5.2. All Subcontractors hired by Contractor must also have the same forms or coverage at least as broad, and naming the Agency Indemnified Parties as additional insureds (via as broad as ISO CG 20 38 04 13), with respect to: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, its directors, officers, employees, or authorized volunteers.
- 6.5.3. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the Agency, its directors, officers, employees, or authorized volunteers using the ISO CG 20 01 04 13 or coverage at least as broad. Any insurance, self-insurance, or other coverage maintained by the Agency, its directors, officers, employees, or authorized volunteers shall not contribute to any such claims.
- 6.5.4. Any failure by Contractor of Subcontractors to comply with the reporting or other provisions of Contractor's insurance policies, including breaches and warranties, shall not affect coverage provided to the Agency, its directors, officers, employees, or authorized volunteers.
- 6.5.5. 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.
- 6.5.6. Such liability insurance shall indemnify the Contractor and its Subcontractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or its Subcontractors for damages on account of bodily injury (including death), property damage, personal injury, completed operations, and products liability.
- 6.5.7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, and completed operations liability.

- 6.5.8. The automobile liability policy shall cover all owned, non-owned, and hired automobiles. The automobile liability policy is to contain or be endorsed to contain the following provisions:
- a. Pollution Liability – Broadened Coverage for Covered Autos using ISO Form CA 9948 or insurer’s equivalent.
 - b. Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980 – Form MCS 90.
- 6.5.9. Each insurance policy required by this Agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after thirty (30) days’ (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the Agency.
- 6.5.10. All of the insurance shall be provided on policy forms and through companies satisfactory to the Agency.
- 6.6. **Workers’ Compensation and Employer’s Liability Insurance.** The Contractor and all Subcontractors shall cover or insure, under the applicable laws relating to workers’ compensation insurance, all of their employees employed directly by them or through Subcontractors in carrying out the work contemplated under this Agreement, all in accordance with the “Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any Acts amendatory thereof, or any other applicable workers’ compensation laws, rules, or regulations under state or federal law. Contractor shall provide employer’s liability insurance with limits of no less than one million dollars (\$1,000,000) per accident, one million dollars (\$1,000,000) disease policy limit, and one million dollars (\$1,000,000) disease each employee.
- 6.7. **Waiver of Subrogation.** - Contractor’s insurers for all policies identified above agree to waive all rights of subrogation against the Agency, its elected or appointed officers, officials, agents, authorized volunteers, and employees for losses paid under the terms of such policies which arise out of or relate to work performed pursuant to this Agreement. This provision shall apply regardless of whether or not the Agency has received a waiver of subrogation from the insurer.
- 6.8. **Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention (“**SIR**”) must be declared to and approved in writing by the Agency. At the option of the Agency, the insurer shall either reduce or eliminate such

deductibles or SIRs. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured.

- 6.9. **Acceptability of Insurers.** Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or equivalent or as otherwise approved by the Agency.
- 6.10. **Evidence of Insurance.** Prior to execution of the Agreement, the Contractor shall file with the Agency certificates of insurance (Acord Form 25 or equivalent) signed by the insurers' representatives evidencing the coverage required by this Agreement. Such evidence shall include (1) attached additional insured endorsements with primary & non-contributory wording, (2) Workers' Compensation waiver of subrogation, and (3) a copy of the CGL declarations or endorsement page listing all policy endorsements, and confirmation that coverage includes or has been modified to include the Required Provisions set forth in Section 6.4 above. The Agency reserves the right to obtain complete, certified copies of all required insurance policies, at any time. Contractor shall maintain the Insurance required by this Agreement for a period of not less than 10 years following the termination of completion of this agreement. Contractor further waives all rights of subrogation under this agreement. Contractor's failure to continually satisfy the insurance requirements set forth in this Agreement shall constitute a material breach of this Agreement. Contractor shall, upon demand of the Agency, deliver to the Agency such policy or policies of insurance and the receipts for payment of premiums thereon.
- 6.11. **Continuation of Coverage.** If any of the required coverages expire during the term of this Agreement, Contractor shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the Agency at least ten (10) days prior to the expiration date. Failure to comply with this requirement shall constitute a material breach of this Agreement. The insurance requirements in this Agreement do not in any way represent or imply that such coverage is sufficient to adequately cover the Contractor's obligations under this Agreement. All insurance or self-insurance coverage and limits applicable to a given loss or available to the named insured shall be available and applicable to the additional insured. The insurance obligations under this Agreement are independent of and in addition to the defense and indemnity obligations contained elsewhere in this Agreement and shall not in any way act to limit or restrict the defense or indemnity or additional insured obligations of the Contractor or the Contractor's insurance carrier, and shall be for the greater of (1) the full extent of the insurance or self-insurance coverages and limits carried by or available to the Contractor or (2) the

minimum insurance coverage and amounts shown in this Agreement. Agency reserves the right in its sole discretion to add such other parties as may be required in the future to the indemnity and additional insured requirements of this Agreement.

- 6.12. **Subcontractors.** In the event that Contractor employs any Subcontractors as part of the Services covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each Subcontractor meets the minimum insurance requirements specified above. Contractor shall, upon demand of Agency, deliver to Agency copies of such Subcontractor policy or policies of insurance and the receipts for payment of premiums thereon.
- 6.13. **Responsibility for Work.** Until the completion and final acceptance by the Agency of all the work under and implied by this Agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever. Contractor shall provide and maintain builder's risk insurance (or an installation floater) covering all risks of direct physical loss, damage, or destruction to the work, to insure against such losses until final acceptance of the work by the Agency. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The Agency, its directors, officers, employees, and authorized volunteers shall be named insureds on any such policy. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the Agency or be construed as relieving the Contractor or its subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the Agency. Contractor shall waive all rights of subrogation against the Agency, its directors, officers, employees, or authorized volunteers.

7. LABOR AND MATERIALS

Contractor shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the Services to be performed under this Agreement. Contractor shall give its full attention and supervision to the fulfillment of the provisions of this Agreement by its employees and Subcontractors and shall be responsible for the timely performance of the Services required by this Agreement. Contractor's standard schedule of fees and charges is included in the Fee Schedule attached hereto as Appendix B and incorporated herein by reference. All compensation for Contractor's Services under this Agreement shall be pursuant to the Fee Schedule.

8. TERM OF THE AGREEMENT

- 8.1. **Term.** This Agreement between the Agency and Contractor is for a term of **NUMBER OF MONTHS**, beginning **DATE** and ending **DATE**, subject to the termination provisions herein.
- 8.2. **Termination.** The Agency may terminate this Agreement for any reason by giving Contractor at least thirty (30) days' **or earlier (depending on nature of services)** prior written notice of such termination. Such termination shall not relieve the Agency from responsibility for payment for Services rendered by Contractor prior to the date of termination but shall relieve the Agency of its obligations for the full payment of compensation due under the Agreement for the Services of Contractor after the notice of termination.
- 8.3. **Termination for Cause.** The Agency may terminate the Agreement for cause, effective immediately upon written notice of such termination to Contractor, based upon the occurrence of any of the following events:
- 8.3.1. Material breach of the Agreement by Contractor;
 - 8.3.2. Cessation of Contractor to be licensed, as required by law;
 - 8.3.3. Failure of Contractor to substantially comply with any applicable federal, state or local laws or regulations;
 - 8.3.4. The voluntary or involuntary filing of any petition under any law for the relief of debtors with respect to Contractor;
 - 8.3.5. Conviction of Contractor of any crime other than minor traffic offenses.
- 8.4. **Compensation Upon Termination.** If the Services of Contractor are terminated, in whole or in part, Contractor shall be compensated as provided herein for all Services and approved Extra Services performed prior to the date of such termination.

9. CALIFORNIA LABOR CODE REQUIREMENTS

- 9.1. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws, if applicable. Contractor shall defend, indemnify and hold the Agency and the Agency Indemnified Parties free and harmless from any and all claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws in connection with the Services

contemplated in this Agreement. It shall be mandatory upon the Contractor and all sub-Contractors to comply with all California Labor Code provisions, which include but are not limited to those regarding prevailing wages, employment of apprentices, hours of labor, and debarment of Contractors and subcontractors.

- 9.2. If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to California Labor Code Sections 1725.5 and 1771.1, the Contractor and all sub-Contractors must be registered with the Department of Industrial Relations ("DIR"). Contractor shall maintain registration for the entire term of this Agreement and shall require the same of any Subcontractors. The Services may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

10. INTERESTS OF CONTRACTOR

- 10.1. Contractor represents and warrants that it presently has no interests, and covenants that it will not acquire any interests, direct or indirect, financial or otherwise, that would conflict with the performance of the Services to be provided by Contractor under this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any Subcontractor or employee with any such interest. Contractor certifies that no one who has or will have any financial interest under this Agreement or within Contractor is a director, officer or employee of the Agency.
- 10.2. Although Contractor is retained as an independent contractor, Contractor's employees or agents may still be required under the California Political Reform Act and the Agency Conflict of Interest Code to file annual financial disclosure statements. Contractor agrees that its employees and/or agents will file with the Agency in a timely manner those financial disclosure statements that the Agency determines Contractor is required to file pursuant to the Political Reform Act. Failure to file such financial disclosure statements by Contractor and any of its employees or agents is grounds for termination of this Agreement.

11. COMPLETED WORK AND WORK PRODUCT

In the event of termination or completion of the Services under the Agreement, Contractor shall, at the Agency's request, promptly surrender to the Agency all completed work and work in progress and all materials, records and notes developed, procured, or produced pursuant to the Agreement. Contractor may retain copies of such work product as a part of its record of professional activity.

12. CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE

- 12.1. **Confidential Nature of Materials.** Contractor understands that all documents, records, reports, data, or other materials provided by the Agency to the Contractor pursuant to the Agreement (collectively "**Materials**") , including but not limited to draft reports, final report(s) and all data, information, documents, graphic displays and other items that are not proprietary to the Contractor and that are utilized or produced by the Contractor pursuant to the Agreement are to be considered confidential for all purposes.
- 12.2. **No Disclosure of Confidential Materials.** The Contractor shall be responsible for protecting the confidentiality and maintaining the security of the Agency documents and records in its possession. All Materials shall be deemed confidential and shall remain the property of the Agency. The Contractor understands the sensitive nature of the above and agrees that neither Contractor nor its officers, partners, employees, agents or Subcontractors will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, or other materials except as provided herein or as authorized in writing by the Agency. The Contractor agrees not to make use of such Materials for any purpose not related to the performance of the Services under the Agreement. The Contractor shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of the Agency. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as may be required by law, or by a court of competent jurisdiction.
- 12.3. **Protections to Ensure Control over Materials.** All Materials saved or stored by the Contractor in an electronic form shall be protected by adequate security measures to ensure that such Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.
- 12.4. **Survival of Confidentiality Provisions.** The provisions of this Section 12 shall survive the termination or completion of the Agreement.

13. OWNERSHIP OF DOCUMENTS AND DISPLAYS

All original written or recorded data, documents, graphic displays, reports or other materials which contain information relating to the Contractor's performance hereunder and which are originated and prepared for the Agency pursuant to the

Agreement shall be "work for hire" and shall be the property of the Agency. The Contractor hereby assigns all of its right, title and interest therein to the Agency, including but not limited to any copyright interest. In addition, the Agency reserves the right to use, duplicate and disclose in whole, or in part, in any manner and for any purpose whatsoever all such data, documents, graphic displays, reports or other materials delivered to the Agency pursuant to this Agreement and to authorize others to do so.

To the extent that the Contractor utilizes any of its property (including, without limitation, any hardware or software of Contractor or any proprietary or confidential information of Contractor or any trade secrets of Contractor) in performing services hereunder, such property shall remain the property of Contractor, and the Agency shall acquire no right or interest in such property.

14. ASSIGNMENT PROHIBITED

The Contractor shall not assign, transfer, convey, or otherwise dispose of its rights, obligations, title or interest in or to this Agreement or any part thereof without the prior written consent of the Agency, which consent may be withheld at the Agency's sole discretion.

15. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES

15.1. **Designated Representatives.** The Agency representative designated below shall be the principal representative of the Agency for purposes of the Services that are the subject of this Agreement. Contractor shall designate, in writing, Contractor's project engineer and/or project manager for the performance of the Services under this Agreement, which designation shall be subject to the Agency's reasonable approval.

The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

ZONE 7 WATER AGENCY Representative:

Name:

Title:

Address: Zone 7 Water Agency
100 N. Canyons Parkway
Livermore, CA 94551

Contractor:

Name:

Title:
Firm Name:
Address:
Firm Tax ID:

- 15.2. **Notices.** Formal notices, demands and communications to be given hereunder by either Party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested to the address set forth above and shall be deemed communicated as of the date of mailing. If the name or address of the person to whom such notices, demands or communications shall be given changes, written notice of such change shall be given, in accordance with this section within five (5) business days.

16. MISCELLANEOUS PROVISIONS

- 16.1. **Integration.** This Agreement represents the complete Agreement of the parties with regard to the subject thereof and supersedes and cancels any and all prior negotiations, agreements, arrangements, or understandings between the parties, whether written or oral.
- 16.2. **No Waiver.** No provision of this Agreement shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained.
- 16.3. **Modification.** This Agreement may only be amended or modified by a writing signed by all parties hereto.
- 16.4. **Attorneys' Fees.** In any proceeding arising out of this Agreement, the prevailing party in such proceeding shall be entitled to its reasonable attorneys' fees and costs in any amount determined by the court.
- 16.5. **Choice of Laws; Venue.** This Agreement shall in all respects be governed by and construed pursuant to the laws of the State of California. Any action arising out of or relating to this Agreement or the Services shall be brought in the Superior Court for the State of California, County of Alameda.
- 16.6. **Counterparts.** This Agreement may be executed in separate counterparts that, together, shall constitute and be one and the same instrument.
- 16.7. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their permitted assigns (if any), and nothing herein expressed or implied shall give or be construed to give to any person, other

than the parties hereto and such permitted assigns, any legal or equitable rights hereunder.

- 16.8. **No Presumption Regarding Drafter.** The parties to this Agreement acknowledge that its terms and provisions have been negotiated and discussed among them and that the Agreement reflects their mutual agreement regarding its subject matter. Therefore, neither party shall be deemed to be the drafter of this Agreement nor shall there be any presumption for or against the drafter in the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement at the place and as of the date first written above.

ALAMEDA COUNTY FLOOD CONTROL and WATER
CONSERVATION DISTRICT, Zone 7, commonly
known as ZONE 7 WATER AGENCY ("Agency")

Contractor

Valerie L. Pryor
General Manager

Date

Signature

Date

Print Name & Title

Address

Telephone

TIN or SS Number