



AGENDA

Engineering and Operations Committee Meeting

Board Room
3707 Old Highway 395
Fallbrook, CA 92028

Tuesday, February 4, 2025
1:00 PM

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL** Flint Nelson (Chair), Steve McKesson (Vice Chair), Members Robert Marnett, Greg Irvine (or Alternate Director Townsend-Smith), Julie Johnson, Mig Gasca (Pursuant to Government Code Section 54953, Engineering and Operations Committee Member Gasca may be participating remotely from 541 Moran Street, Reno, NV 89502 which will be accessible to the public. All votes will be taken by verbal roll call.)
4. **SEATING OF ALTERNATES**
5. **ADDITIONS/DELETIONS/AMENDMENTS TO THE AGENDA**
6. **APPROVAL OF THE AGENDA**
7. **PUBLIC COMMENT**

Any person may address the Committee at this time upon any subject not identified on this Agenda, but within the jurisdiction of Rainbow Municipal Water District; however, any matter that requires action will be referred to staff for a report and action at a subsequent meeting. As to matters on the Agenda, an opportunity will be given to address the Committee when the matter is considered.

Members of the public may make comments in person by submitting a Speaker Slip to the Board Secretary, virtually through virtual or teleconference options, or by submitting an email to tquintanar@rainbowmwd.ca.gov no less than one hour prior to the posted start time of the meeting. Comments shall be made in an orderly manner, and profanity, slander, or abusive language which is disruptive to the meeting will not be tolerated. Individuals have a limit of three (3) minutes to make comments and will have the opportunity when called upon by the presiding officer.
8. **APPROVAL OF MINUTES**
 - A. January 7, 2025
9. **COMMENTS & REQUESTS**
 - A. General Manager's Comments
 - B. Engineering & CIP Program Manager's Comments
 - C. Operations Manager's Comments
 - D. Committee Member's Comments
10. **BOARD ACTION UPDATES**
11. **ANNUAL APPOINTMENT OF COMMITTEE CHAIRPERSON AND VICE CHAIRPERSON**

12. **CONSIDER AN AGREEMENT WITH THE PERRAULT CORPORATION FOR SERVICES AT DISTRICT HEADQUARTERS (DIVISION 4)**
13. **CONSIDER AN AGREEMENT WITH DEXTER WILSON ENGINEERING, INC. FOR THE DESIGN OF THE GOPHER PUMP STATION PROJECT (DIVISION 1)**
14. **CONSIDER AN AGREEMENT WITH SPECIALITY MOWING SERVICES, INC. FOR WEED ABATEMENT AND BRUSH CLEARING SERVICES AT DISTRICT FACILITIES (DISTRICTWIDE)**
15. **CAPITAL IMPROVEMENT PROJECT (CIP) MID-YEAR BUDGET REVIEW**
16. **AS-NEEDED SERVICES EXPENDITURES SUMMARY**
17. **SUGGESTED AGENDA ITEMS FOR THE NEXT MEETING**
18. **ADJOURNMENT - To Tuesday, March 4, 2025, at 1:00 p.m.**

ATTEST TO POSTING:

/s/Terese Quintanar
 Terese Quintanar
 Secretary of the Board

1/31/2025 10:43 AM
 Date and Time of Posting
 Outside Display Cases

Rainbow Municipal Water District (RMWD) provides remote attendance options solely as a matter of convenience to the public. RMWD will not stop or suspend its in-person public meeting should a technological interruption occur with respect to the zoom or call-in line listed on the agenda. We encourage members of the public to attend meetings in-person at 3707 Old Highway 395, Fallbrook, CA 92028, or remotely utilizing the options below:

For Online Participation:

Go to: <https://rainbowmwd.zoom.us/j/84694737361>

If members of the public attending virtually would like to ask a question or make a comment on any item listed on this agenda, please utilize the "Raise Hand" button, located at the bottom of the screen. We will be alerted that they would like to speak. When called upon, please unmute the microphone and ask the question or make comments in no more than three minutes.

For Call-in Only:

Call: (669) 900-6833, or (669) 444-9171, or
 (309) 205-3325, or (312) 626-6799, or
 (564) 217-2000, or (689) 278-1000
 Meeting ID: 846 9473 7361

*Those who have joined by dialing a number on their telephone, can dial *9 to alert us of a request to speak, and *6 to unmute, once called upon by the presiding officer.*

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted at the District's Administrative offices not less than 72 hours prior to the meeting date and time above. All public records relating to each agenda item, including any public records distributed less than 72 hours prior to the meeting to all, or a majority of all, of the members of District's Board, are available for public inspection in the office of the District Secretary, 3707 Old Highway 395, Fallbrook, CA 92028

If you have special needs because of a disability which makes it difficult for you to participate in the meeting or you require assistance or auxiliary aids to participate in the meeting, please contact the District Secretary, (760) 728-1178, by at least noon on the Friday preceding the meeting. The District will attempt to make arrangements to accommodate your disability.

**MINUTES OF THE ENGINEERING AND OPERATIONS COMMITTEE MEETING
OF THE RAINBOW MUNICIPAL WATER DISTRICT
JANUARY 7, 2025**

1. **CALL TO ORDER** – The Engineering and Operations Committee Meeting of the Rainbow Municipal Water District on January 7, 2025, was called to order by Chairman Nelson at 1:00 p.m. in the Board Room of the District, 3707 Old Highway 395, Fallbrook, CA 92028. Chairman Nelson presiding.

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL:**

Present: Members Nelson, Marnett, McKesson, and Gasca

Also Present: General Manager Wiley, Operations Manager Gutierrez, District Secretary Quintanar, Information Technology Manager Khattab, Engineering and CIP Program Manager Williams, Board Member Townsend-Smith

Also Present In-Person, Via Teleconference or Video Conference:

Safety & Risk Management Officer Johnson Senior Project Manager Tamimi, Administrative Assistant Montano, and Administrative Services Manager Harp

Julie Johnson was present.

4. **SEATING OF ALTERNATES**

No alternates were seated.

5. **ADDITIONS/DELETIONS/AMENDMENTS TO THE AGENDA**

There were no changes.

6. **APPROVAL OF THE AGENDA**

Motion:

To approve the Agenda as presented.

Action: Approve, Moved by Member Nelson, Seconded by Member Gasca

Vote: Motion carried unanimously (summary: Ayes = 4)

Ayes: Members Nelson, Marnett, McKesson, and Gasca

7. **PUBLIC COMMENT**

No members of the public were in attendance.

8. **APPROVAL OF MINUTES**

A. December 3, 2024

Motion:

To approve the December 3, 2024 Minutes as presented.

Action: Approve, Moved by Member Marnett, Seconded by Member McKesson

Vote: Motion carried unanimously (summary: Ayes = 4)

Ayes: Members Nelson, Marnett, McKesson, and Gasca

9. COMMENTS & REQUESTS

- A. General Manager’s Comments
- B. Engineering & CIP Program Manager’s Comments
- C. Operations Manager’s Comments
- D. Committee Member’s Comments

Mr. Wiley reported on a significant wind event taking place, and the expectation for power outages for which staff is preparing. Also, we have received the funding for the SDCWA Exit Fee and will be putting \$3.1M back into reserves and wiring the \$12.6M balance of the Exit Fee to the SDCWA by the end of the month. The District received its first bill from EMWD for deliveries in November for 974-acre feet (AF), which is the average for November, and we expect similar sales for December. Southern California has experienced a dry year so far, but there has been a good amount of rainfall in the Northern portion of the State. \$140M in funding was approved by MWD for the Delta Conveyance Project to finish the planning activities, geotechnical exploration, permitting, and related supportive physical work. Despite controversy, the Governor is pushing to move the project forward, with the goal to be fully entitled by the end of 2026.

Water fluoridation is a topic of a recent ruling and is under review by the Environmental Protection Agency (EPA). A brief discussion followed, and Mr. Wiley concluded his report by relaying that staff is finalizing the mid-year budget, which will be presented for review by the Budget and Finance Committee.

Mr. Williams reported on the Atlas Geotech Report on the Morro Tank Subsidence, and staff will report back to the Committee shortly. The three new pump stations are operating well, Rainbow WWD is officially detached from the SDCWA, and staff is working to finalize pump station punch list items. The Rancho Amigos site’s generator’s load bank has an additional load that was not included in the original design, which may result in a change order.

Mr. Williams continued that an all-encompassing RFP has been issued for district-wide weed abatement. Two non-mandatory site walks are scheduled for December, and staff plans to present this matter for the Board's consideration in the next month or two. CalOES awarded grant funds of approximately \$160,000 and staff budgeted an additional \$250,000 for this contract. The submittal date has been extended to January 16, 2025, and staff is hoping to present this item for Board approval in February. Mr. Williams will confirm for the Committee the estimated costs for this year and subsequent years.

He also reported that the Manual Transfer Switches Project is moving forward and two of the five sites have been completed, both under \$35,000. For the remainder, drawings are being updated, and the engineer’s estimate will need to be updated. Should the costs increase, there is the option to defer some of the work.

Mr. Gutierrez mentioned the Cyber Security Grant of approximately \$179,000, obtained by Mr. Khattab. Mr. Wiley added that it was a very good and successful grant proposal, with great initiatives. Mr. Gutierrez reported on several main breaks within the District’s Division 3. They were unrelated and in an area fed by Morro Reservoir, and the repairs were made in-house. He

continued that the District was notified by SDG&E on Saturday of a planned Public Safety Power Shutoff (PSPS). SDG&E predicted the need to de-energize several areas, affecting our facilities near Gird Road. In response, staff has filled water storage tanks that supply the affected area. The prediction is that the Santa Ana winds will be severe, similar to what was experienced in 2017, and could extend through Monday. Discussion followed regarding operational protocol and preparedness. Member Gasca expressed an offer to help disseminate the information via Nextdoor.

Member Marnett mentioned cell equipment work at Morro Tank, and their representative indicated that it would be representative of Boost Mobile, not Dish Network, and the crew would be back out to test the radiation levels from the new equipment. Upon Member Marnett's cursory assessment, the level was about four times higher than previous readings.

10. DISCUSSION AND POSSIBLE ACTION REGARDING COMMITTEE MEMBERSHIP

Julie Johnson said it would be an honor to serve on the Committee once again. Chairman Nelson expressed his support and hopes for strong members to also join the Budget and Finance Committee.

Motion:

To approve the Board's appointment of Julie Johnson as a member of the Engineering and Operations Committee.

Action: Approve, Moved by Member Nelson, Seconded by Member McKesson

Vote: Motion carried unanimously (summary: Ayes = 4)

Ayes: Members Nelson, Marnett, McKesson, and Gasca

11. COMPLETION OF THE GOPHER CANYON EMERGENCY PIPELINE REPLACEMENT AND PAVING RESTORATION PROJECT (DIVISION 1)

Mr. Guiterrez provided background and reported that the work was completed under budget. He provided photos and details of the work entailed. Three new employees received on-site training during the repairs. Total project costs were approximately \$275,000 and all but the traffic control work was done in-house.

12. REVIEW OF INACTIVE GROUNDWATER SUPPLY INFRASTRUCTURE

Mr. Wiley provided a summary of three District wells that run next to San Luis Rey River. The latest known correspondence, a 2003 letter from the State Water Resources Control Board (SWRCB) regarding native water rights, was presented for reference. In the past, the District submitted multiple applications for direct diversion from the Bonsall Basin of 7.2 cfs, with a max of 3,000 AF annually. The letter concluded that Rainbow's application of the late 1970's/early 1980's was defective. Approval would have entailed extensive study concluding that water was available, full mitigation of environmental impacts, and all resolution of all challenges from both upstream and downstream water rights holders.

In 2016, with the help of West Yost, the District completed a comprehensive study on the capture of return flows, which is water imported to the area by Rainbow MWD with some returning to the groundwater basin. Correspondence was exchanged with the upstream tribal users, who acknowledged the existence of flow rights and requested monitoring wells to determine impacts.

A 2023 Study provided a detailed analysis of the return flow analysis and estimated lower return flows, with a 2.5mgd capacity. Alternatives were again reviewed by the Board, along with brine line options, estimated capital costs, and partnering opportunities. Capital costs associated with

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the options were approximately \$78-\$86M for a cost of \$2,100-\$3,000 per acre-foot. At the September 2023 Board Meeting, the Board provided direction to staff to not advance major activities at that time.

The Feasibility Study was completed and the draft is currently under preliminary review by the United States Bureau of Reclamation (USBR). Once finalized, the Study can be submitted to the USBR to improve the District's position for Federal Funding.

Member Gasca thanked Mr. Wiley for the consolidated summary and follow-up and commented on the importance of reviewing this topic periodically.

13. BOARD ACTION UPDATES

Mr. Gutierrez reported that he had just received a notification of a possible power interruption at the Magee Tank and Magee Pump Station. Mr. Wiley summarized the Board actions of December 10, 2024.

14. AS-NEEDED SERVICES EXPENDITURES SUMMARY

There were no questions.

15. SUGGESTED AGENDA ITEMS FOR THE NEXT MEETING

Director Townsend-Smith relayed a conversation with Horse Creek HOA Manager Jeff Baker, who mentioned that D.R. Horton had installed piping for recycled water. Mr. Wiley and Mr. Williams answered that they had been communicating and that the developer installed the purple pipe as a proactive measure, should recycled water become available in the future.

The mid-year budget for CIP will be presented next month.

16. ADJOURNMENT - To Tuesday, February 4, 2025, at 1:00 p.m.

The meeting was adjourned by Chairman Nelson at 2:33 p.m.

Flint Nelson, Committee Chairperson

Terese Quintanar, District Secretary

BOARD ACTION

BOARD OF DIRECTORS

February 25, 2025

SUBJECT

CONSIDER APPROVAL OF AN AGREEMENT TO THE PERRAULT CORPORATION FOR SERVICES AT DISTRICT HEADQUARTERS (DIVISION 4)

BACKGROUND

In 2012, the Rainbow Municipal Water District (District) entered into a lease agreement (Contract No. 2012-02) with West-Tech Contracting inc. (West-Tech) for the lower yard of District headquarters. West-Tech used the lower yard to process concrete, asphalt, and other non-hazardous aggregate to produce recycled Class II Road Base. This lease was negotiated in conjunction with the Pala Mesa Tank construction with a lease payment of \$1.00 per year and took into consideration other work that was to be performed by West-Tech as part of the Pala Mesa Tank project. The lease with West-Tech expired in February 2015.

Following the expiration of West-Tech's lease agreement, staff began coordinating with three (3) companies to continue to process excess materials from District job sites. The Perrault Corporation (Perrault) was selected to provide the needed services. Perrault operate the site for five-years until February 2020, when the lease was not renewed in preparation for future development of the parcel

DESCRIPTION

While operating and maintaining the wastewater and water systems, the majority of excavated material cannot be placed back into the trench zone. The surplus and often unusable material are then stored in the District's lower yard and ultimately the District pays for the materials to be hauled away for off-site recycling. As a result of several on-going projects, the spoils in the lower yard have grown exponentially.

Perrault, who is currently a supplier of rock, sand, and gravel to the District, was contacted to gauge interest in processing the unusable material for the District. The proposed plan is for Perrault to process the surplus material(s) from excavations throughout the District, and in exchange will provide rock, sand, and gravel at no-cost to the District. All excess material(s) not needed by the District will be sold by Perrault.

The District's standard Professional Services Agreement (PSA) has been modified to address specific services and exclusions to which this third party shall adhere. The District's General Counsel has approved all modifications to the District's PSA template. Some of the key provisions include: working hours, no public access, no business transactions of any kind on District premises, monthly vehicle washing services, no activities that could in any way disturb the environmentally sensitive areas surrounding the District property, etc. Upon execution of the PSA, the service provider shall abide by all stipulations and a District representative will monitor the activities to ensure compliance.

POLICY/STRATEGIC PLAN KEY FOCUS AREA

Strategic Focus Area Four: Fiscal Responsibility

ENVIRONMENTAL

In accordance with California Environmental Quality Act (CEQA) guidelines Section 15378, the action before the Board does not constitute a “project” as defined by CEQA and further environmental review is not required at this time.

BOARD OPTIONS/FISCAL IMPACTS

Based on average annual purchases of materials by the District, this agreement will result in savings of approximately \$80,000 per year. Staff estimates that over the agreement’s proposed five-year period will result in a total cost savings of \$400,000.

Option 1:

- Approve the Professional Services Agreement with Perrault for services at District headquarters.
- Authorize the General Manager to execute the agreement on behalf of the District.
- Make a determination that the action defined herein does not constitute a “project” as defined by CEQA.

Option 2:

- Do not recommend entering into the Professional Services Agreement.

STAFF RECOMMENDATION

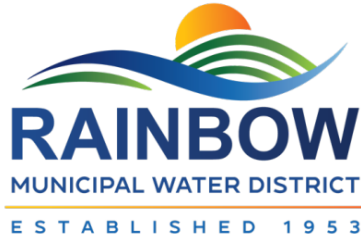
Staff recommends Option 1.

Robert Gutierrez
Chief Operating Officer

02/25/2025

Attachment(s):

1. Draft Professional Services Agreement
2. Exhibit A



**RAINBOW MUNICIPAL WATER DISTRICT
3707 OLD HIGHWAY 395
FALLBROOK, CA 92028
(760) 728-1178**

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Processing and Provision of Excavated Materials and Related Services
Contract No. 25-XX**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of **February, 2025** by and between the **RAINBOW MUNICIPAL WATER DISTRICT**, a municipal water district, hereinafter designated as "**DISTRICT**", and **PERRAULT CORPORATION**, a **California corporation**, hereinafter designated as "**SERVICE PROVIDER**"

RECITALS

- A.** DISTRICT desires to obtain Professional Consulting Services from an independent contractor for the above-named Project.
- B.** DISTRICT desires to contract with SERVICE PROVIDER as an independent contractor and SERVICE PROVIDER desires to provide services to DISTRICT as an independent contractor.
- C.** SERVICE PROVIDER has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PROFESSIONAL SERVICES PROVIDED BY SERVICE PROVIDER.

- 1.1** The professional services to be performed by SERVICE PROVIDER shall consist of the following: **Processing and Provision of Excavated Materials and Related Services.** The scope of services is more particularly defined to include all of the following:
 - a) **Services/Materials Provided.** SERVICE PROVIDER shall provide the following materials listed to the DISTRICT up to amounts representing the DISTRICT'S normal operational needs to the DISTRICT at the DISTRICT'S facility located at 3707 Old Highway 395, Fallbrook, CA 92028

("Facility"): (i) ¾ inch crushed rock, (ii) class II road base, and (iii) SE 30 sand. SERVICE PROVIDER will use its own equipment to physically fill the DISTRICT'S storage bins for materials located at the Facility. Bins are not to be less than ¼ full at any time. SERVICE PROVIDER shall provide DISTRICT with MONTHLY (Friday) vehicle washing services for the following vehicles located at the Facility: (i) employee vehicles located in the DISTRICT'S public parking area and (ii) fleet vehicles located in the DISTRICT'S gated yard. No tractor-trailers, utility trailers, or portable restrooms. Employees wishing to have their personal vehicles washed must sign a waiver from Perrault.

- b) **Excavated Materials Processing.** SERVICE PROVIDER is responsible for processing all of the following excavated materials recovered from the DISTRICT'S own operations, not from contractors working for the District. Any outside companies must pay for disposing of materials. and process it into the materials to be provided, as well as discard the waste and excess materials from the Facility: (i) asphalt, (ii) concrete, (iii) native soil(s) from throughout the DISTRICT'S service area, and (iv) rock (rock can range in size from 5/8-inch to 6-inch). The DISTRICT is entitled to receive its own processed materials first. SERVICE PROVIDER may sell any excess materials not used by the DISTRICT to any of SERVICE PROVIDER'S other customers. No sales will be made to the general public at any District location All excess material not needed by the DISTRICT to be sold to SERVICE PROVIDER'S other customers shall be transported off-site by SERVICE PROVIDER. No other transactions of any kind by SERVICE PROVIDER are permitted at the Facility nor at any other DISTRICT property. Excavated materials will remain unprocessed as long as the stockpiles are within the permitted working area and do not exceed 15-feet in height.
- c) **Delivery of Materials.** SERVICE PROVIDER will deliver any materials provided under this Agreement to any site within the DISTRICT up to ten (10) truck loads within each calendar year.
- d) **Land Use.** SERVICE PROVIDER will be allowed to use a portion of the Facility outlined in Exhibit "A" to process excavated materials to fulfill the DISTRICT'S materials needs. Within thirty (30) days of the effective date of this agreement, SERVICE PROVIDER shall submit an Operations Plan including but not limited to information on the hours, equipment used on property, safety plan, hazardous materials handling procedures, and key personnel contract information for the DISTRICT'S review and approval. The hours of operations by SERVICE PROVIDER shall be limited to 6 am to 5 pm, Monday through Friday or as authorized by the General Manager or Authorized Representative. SERVICE PROVIDER may not operate on the DISTRICT'S property without an approved Operations Plan. The Operations Plan may be updated from time to time with written approval by the DISTRICT. Within thirty days after termination of this Agreement, SERVICE PROVIDER must restore the land being used to the condition existing as of the effective date of this Agreement, unless otherwise agreed to in writing by the DISTRICT. **Prohibited Activities.** SERVICE

PROVIDER can engage in minor vehicle or equipment maintenance or repairs at the Facility. Only SERVICE PROVIDER'S officers, employees, agents and subcontractors, and their agents may be allowed access to the Facility. No general public access is allowed to the Facility (i.e. homeowners) trucking companies will be allowed. SERVICE PROVIDER shall not conduct any activity, or otherwise enter or disturb the environmentally sensitive areas shown in Exhibit "A" as such.

- 1.2 In performing the services provided under this Agreement, SERVICE PROVIDER shall work closely with DISTRICT'S General Manager or Authorized Representative and staff in performing services in accordance with this Agreement in order to receive clarification as to the result that DISTRICT expects to be accomplished by SERVICE PROVIDER. The General Manager or Authorized Representative shall be DISTRICT'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement.
- 1.3 SERVICE PROVIDER represents that its employees have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of DISTRICT. This means SERVICE PROVIDER is able to fulfill the requirements of this Agreement. Failure to perform any service required under this Agreement constitutes a material breach of the Agreement.

2. TERM AND TIMING REQUIREMENTS.

- 2.1 This Agreement will become effective on the date stated above, and will continue in effect until the earlier of an initial term of five (5) years from the effective date or the termination of the Agreement as provided under Section 14 of this Agreement.
- 2.2 SERVICE PROVIDER shall submit all requests for extensions of time for performance in writing to the General Manager or Authorized Representative no later than two (2) business days after the commencement of the cause of any unforeseeable delay beyond SERVICE PROVIDER'S control and in all cases prior the date on which performance is due if possible. The General Manager or Authorized Representative shall review all such requests and may grant reasonable time extensions in the DISTRICT'S sole discretion for unforeseeable delays which are beyond SERVICE PROVIDER'S control.

3. SERVICE STANDARDS.

- 3.1 All services shall be performed in accordance with applicable DISTRICT, county, state and federal Codes and criteria. In the performance of its professional services, SERVICE PROVIDER shall use the degree of care and skill ordinarily exercised by SERVICE PROVIDERS performing the same or similar work under similar conditions.

4. INDEPENDENT CONTRACTOR.

- 4.1 SERVICE PROVIDER'S relationship to DISTRICT shall be that of an independent contractor in performing all services hereunder. DISTRICT will not exercise any control or direction over the methods by which SERVICE PROVIDER shall perform its services and functions. DISTRICT'S sole interest and responsibility is to ensure that the services covered in this Agreement are performed in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of SERVICE PROVIDER

or its employee(s) pursuant to this Agreement shall be construed to make SERVICE PROVIDER or its employee(s) the agent, employee or servant of DISTRICT. SERVICE PROVIDER and its employee(s) are not entitled to receive from DISTRICT vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

- 4.2 SERVICE PROVIDER shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment requirements with respect to SERVICE PROVIDER or its employee(s).
- 4.3 SERVICE PROVIDER shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. SERVICE PROVIDER represents and warrants that SERVICE PROVIDER customarily engages in the independently established trade and business of the same nature as the work to be performed under this Agreement.
- 4.4 SERVICE PROVIDER shall have no authority, express or implied, to act on behalf of as an agent, or to bind DISTRICT to any obligation whatsoever, unless specifically authorized in writing by the General Manager or Authorized Representative. If SERVICE PROVIDER'S services relate to an existing or future DISTRICT construction contract, SERVICE PROVIDER shall not communicate directly with, nor in any way direct the actions of, any bidder for that construction contract without the prior written authorization by the General Manager or Authorized Representative.

5. **WORKERS' COMPENSATION INSURANCE.**

- 5.1 By SERVICE PROVIDER'S signature hereunder, SERVICE PROVIDER certifies that SERVICE PROVIDER is aware of the provisions of Section 3700 of the California Labor Code requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and SERVICE PROVIDER will comply with such provisions before commencing the performance of the services of this Agreement.

6. **INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.**

- 6.1 All officers, agents, employees and subcontractors, and their agents, who are employed by SERVICE PROVIDER to perform services under this Agreement, shall be deemed officers, agents and employees of SERVICE PROVIDER. To the extent and in any manner permitted by law, SERVICE PROVIDER shall defend, indemnify, and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from any claims, demands, liability from loss, damage, or injury to property or persons, including wrongful death, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of SERVICE PROVIDER, including SERVICE PROVIDER'S officers, employees and agents, in connection with the services required by this Agreement, including without limitation, the payment of reasonable attorneys' fees and costs. The foregoing indemnity, hold harmless and defense obligation of SERVICE PROVIDER shall apply except to the extent the loss, damage or injury is caused by the active negligence or willful misconduct of an indemnified party.

- 6.2 To the extent permitted by law, SERVICE PROVIDER shall defend, indemnify and hold harmless DISTRICT, its directors, officers, employees, and authorized volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and costs to defend arising out of the performance of the work described herein, and caused in whole or in part by any negligent act or omission of the SERVICE PROVIDER, any subcontractor, anyone directly or indirectly employed by any of them, or anyone under SERVICE PROVIDER's control whose actions may create liability in connection with the services required by this Agreement, including any claim related to or incident to a breach of any governmental law or regulation by SERVICE PROVIDER, except where caused by the active negligence or willful misconduct of DISTRICT, its directors, officers, employees, and authorized volunteers.
- 6.3 SERVICE PROVIDER shall defend, at SERVICE PROVIDER'S own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT or DISTRICT'S directors, officers, employees, authorized volunteers and agents, and each of them. DISTRICT shall be consulted regarding and approve of the selection of defense counsel.
- 6.4 SERVICE PROVIDER shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, authorized volunteers and agents, and each of them, in any and all such aforesaid claims, suits, action or other legal proceeding. SERVICE PROVIDER shall not agree without DISTRICT'S prior written consent, to any settlement which would require DISTRICT to pay any money or perform some affirmative act, including in the case of intellectual property infringement any payment of money or performance of some affirmative act to continue using SERVICE PROVIDER Products.
- 6.5 SERVICE PROVIDER'S indemnification, hold harmless and defense obligation shall survive the termination or expiration of this Agreement.

7. **LAWS, REGULATIONS AND PERMITS.**

- 7.1 SERVICE PROVIDER shall give all notices required by law and comply with all Federal, State, and local laws, ordinances, rules and regulations pertaining to the conduct of the services required by this Agreement. SERVICE PROVIDER will obtain and maintain all necessary permits to perform the work under this Agreement, including any activities related to its operations on the Facility. SERVICE PROVIDER shall be liable for, and bear all costs resulting from, any violations of the law in connection with services furnished by SERVICE PROVIDER, except any violation of the law due to the DISTRICT'S negligence or willful misconduct.

8. **SAFETY.**

In carrying out SERVICE PROVIDER'S services, SERVICE PROVIDER shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the services and the conditions under which the services are to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include instructions in accident

prevention for all employees such as safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching & shoring, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries. Notwithstanding the right to terminate the Agreement immediately for material threat to safety as outlined in Section 14.1, the District also retains the right to have the SERVICE PROVIDER immediately cease and desist from any and all operations on the DISTRICT'S property without the termination of the Agreement if the DISTRICT determines in its sole discretion there is a material and imminent risk of harm to anyone on the DISTRICT'S property from the SERVICE PROVIDER'S operations. Such notice may be given verbally to the SERVICE PROVIDER'S supervisory staff on-site with a written notice to be followed-up within 24 hours. Operations may continue once the safety issue is resolved to the DISTRICT'S satisfaction and written notice is provided by the DISTRICT.

9. INSURANCE.

9.1 INSURANCE COVERAGE AND LIMITS.

SERVICE PROVIDER shall provide and maintain at all times during the performance of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by SERVICE PROVIDER, its agents, representatives, employees or subcontractors. Claims made policies shall not satisfy these insurance requirements unless SERVICE PROVIDER notifies DISTRICT and obtains DISTRICT'S prior written consent to the use of such claims made policies.

Coverage – SERVICE PROVIDER shall maintain coverage at least as broad as the following:

- a) Coverage for Professional Liability appropriate to SERVICE PROVIDER'S profession covering SERVICE PROVIDER'S wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
- b) Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- c) Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).
- d) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

Limits - SERVICE PROVIDER shall maintain limits no less than the following:

- a) Professional Errors and Omissions Liability - One million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate.

Professional Errors and Omissions Liability is required if SERVICE PROVIDER provides or engages in any type of professional services

including, but not limited to engineers, architects and construction management.

- b) General Liability - Five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. 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 DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- d) Workers' Compensation insurance with statutory limits as required by California law and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

9.2 REQUIRED PROVISIONS. The insurance policies are to contain, or be endorsed to contain the following provisions:

- a) DISTRICT, its directors, officers, or employees are to be covered as insureds on the CGL and auto policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by on or behalf of SERVICE PROVIDER; and with respect to liability arising out of services or operations performed by or on behalf of SERVICE PROVIDER including materials, parts, or equipment furnished in connection with such services or operations. General liability coverage can be provided in the form of an endorsement to SERVICE PROVIDER'S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. The Project Name shall also be included.
- b) For any claims related to the services provided hereunder, SERVICE PROVIDER'S insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, and authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, or employees shall not contribute to it.
- c) Each insurance policy specified above are to state or be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice (ten (10) days for non-payment of premium) by U.S. mail has been provided to DISTRICT.
- d) In the event any change is made in the insurance carrier, scope of coverage or retroactive date of professional liability coverage required

under this Agreement (if applicable), SERVICE PROVIDER shall notify DISTRICT prior to any changes.

9.3 PROFESSIONAL WARRANTY. SERVICE PROVIDER represents and warrants that: (a) the Professional Services will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements, and (b) the Deliverables will substantially conform to the description and specifications set forth this Agreement for the specified period after delivery or if none stated, a period of 60 days after the date of delivery ("Warranty Period"). To the extent any Professional Services or Deliverables do not substantially conform to the foregoing warranties, SERVICE PROVIDER shall promptly re-perform the Professional Services and/or resubmit the Deliverables. If after receiving notice of non-conformity SERVICE PROVIDER determines that the Professional Services cannot be performed or the Deliverables cannot reasonably be delivered pursuant to the specifications, within the Warranty Period, DISTRICT may elect to remedy or receive such Professional Services or Deliverable through another contractor and SERVICE PROVIDER shall reimburse DISTRICT within 30 days of request by DISTRICT. This warranty will apply only if: (a) no modification, alteration or addition has been made to the Deliverable(s) other than with SERVICE PROVIDER'S written consent; and (b) receives written notification of the breach during the applicable Warranty Period.

SERVICE PROVIDER warrants that any drawings and specifications, reports or other documents submitted by Contractor to Agency shall be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws.

9.4 WAIVER OF SUBROGATION. SERVICE PROVIDER hereby agrees to waive rights of subrogation which any insurer of SERVICE PROVIDER may acquire from SERVICE PROVIDER by virtue of the payment of any loss. SERVICE PROVIDER agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of DISTRICT for all services performed by SERVICE PROVIDER, its employees, agents and subcontractors.

9.5 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductible or self-insured retention must be declared to the DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retention.

9.6 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 acceptable to DISTRICT.

9.7 EVIDENCES OF INSURANCE. Prior to execution of this Agreement, SERVICE PROVIDER shall furnish DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by DISTRICT before services commence. However, failure to obtain the required documents prior the services beginning shall not waive SERVICE PROVIDER'S obligation to provide them.

SERVICE PROVIDER shall, upon demand of DISTRICT at any time, deliver to DISTRICT complete, certified copies or all required insurance policies, including endorsements, required by this Agreement.

- 9.8 SUBCONTRACTORS.** In the event that SERVICE PROVIDER employs subcontractors as part of the services covered by this Agreement, it shall be the SERVICE PROVIDER'S responsibility to require and verify that each subcontractor meets the minimum insurance requirements specified in this Agreement.

10. NO CONFLICT OF INTEREST.

If SERVICE PROVIDER is providing services related to a DISTRICT project, SERVICE PROVIDER shall not be financially interested in any other contract necessary for the undertaking of the project. For the limited purposes of interpreting this section, SERVICE PROVIDER shall be deemed a "district officer or employee", and this section shall be interpreted in accordance with California Government Code Section 1090. In the event that SERVICE PROVIDER becomes financially interested in any other contract necessary for the undertaking of the project, this Agreement shall be null and void and DISTRICT shall be relieved of any responsibility whatsoever to provide compensation under the terms and conditions of any such contract for those services performed by SERVICE PROVIDER.

11. OWNERSHIP OF DOCUMENTS.

All documents, drawings, reports, and specifications, including details, computations, code, scripts, workflows, and other documents, prepared or provided by SERVICE PROVIDER under this Agreement shall be the property of DISTRICT. DISTRICT agrees to hold SERVICE PROVIDER free and harmless from any claim arising from any use, other than the purpose intended, of the documents and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computations, and other documents, prepared or provided by SERVICE PROVIDER. SERVICE PROVIDER may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this Project.

12. CONFIDENTIAL INFORMATION.

Any written, printed, graphic, or electronically or magnetically recorded information furnished by DISTRICT for SERVICE PROVIDER'S use are the sole property of DISTRICT. SERVICE PROVIDER and its employee(s) shall keep this information in the strictest confidence and will not disclose it by any means to any person except with DISTRICT'S prior written approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to SERVICE PROVIDER'S employees, agents, and subcontractors. On termination or expiration of this Agreement, SERVICE PROVIDER shall promptly return any such confidential information in its possession to DISTRICT.

13. COMPENSATION.

- 13.1** For services performed by SERVICE PROVIDER in accordance with this Agreement, SERVICE PROVIDER is entitled to have access to the Facility to provide such services and may retain all of the revenues associated with the sale of any excess materials not used by the DISTRICT to any of SERVICE PROVIDER'S other customers. SERVICE PROVIDER is not entitled to any separate compensation from the DISTRICT under this

Agreement beyond having access to the Facility and retaining such revenues. SERVICE PROVIDER shall obtain approval from the General Manager or Authorized Representative prior to performing any services that result in incidental expenses to the DISTRICT.

13.2 DISTRICT reserves the right to prohibit SERVICE PROVIDER from selling any excess materials not used by the DISTRICT to any of SERVICE PROVIDER'S other customers in the event of nonconforming services. Additionally, the DISTRICT may elect not to make a particular payment if any of the following exists:

- a) SERVICE PROVIDER with or without knowledge, made any negligent or intentional misrepresentation of substantial and material nature with respect to any information furnished to DISTRICT.
- b) SERVICE PROVIDER took an action without receiving DISTRICT'S prior approval as required under this Agreement.
- c) SERVICE PROVIDER is in default of a term or condition of this Agreement and has failed to cure the breach within 10 (ten) days of knowledge of the default.

14. TERMINATION OF AGREEMENT.

14.1 TERMINATION FOR CAUSE. If DISTRICT ("demanding party") has a good faith belief that SERVICE PROVIDER is not complying with the terms of this Agreement or is deemed non-responsive or non-responsible, DISTRICT will give written notice of the default (with reasonable specificity) to SERVICE PROVIDER and demand the default to be cured within ten (10) calendar days of the notice. Responsive is defined as conforming with material requirements and responsible is defined as possessing the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract.

If SERVICE PROVIDER fails to cure the default within ten (10) calendar days of the notice, or if more than ten (10) calendar days are reasonably required to cure the default, and SERVICE PROVIDER fails to give adequate assurance and due performance within ten (10) calendar days of the notice, DISTRICT may terminate this Agreement upon written notice to SERVICE PROVIDER. In the event of a material breach of any representation or term of this Agreement by SERVICE PROVIDER that is not curable or results in a threat to health or safety, DISTRICT may immediately terminate this Agreement by providing written notice and without a cure period.

Upon termination, SERVICE PROVIDER will only be entitled to any revenues associated with the sale of any excess materials not used by the DISTRICT to any of SERVICE PROVIDER'S other customers up to and including the date of termination of this Agreement, in accordance with the compensation Section 13. DISTRICT shall not pay for lost profit or overhead/extended overhead fees by SERVICE PROVIDER.

14.2 TERMINATION FOR CONVENIENCE. DISTRICT will have the express right to terminate this Agreement at any time without cause by giving sixty (60) consecutive days advanced written notice to SERVICE PROVIDER. This Agreement shall be automatically terminated without further action of any party upon expiration of the sixty (60) day period.

Promptly upon receipt of any termination notice from the DISTRICT, SERVICE PROVIDER shall cease all further work and services, except as otherwise expressly

directed by the DISTRICT in the written termination notice. In the event the DISTRICT exercises its termination right, SERVICE PROVIDER will only be entitled to any revenues associated with the sale of any excess materials not used by the DISTRICT to any of SERVICE PROVIDER'S other customers to the date this Agreement terminates.

15. ASSIGNMENT AND DELEGATION.

15.1 This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of SERVICE PROVIDER'S duties be delegated or subcontracted, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment shall not be deemed to be consent to any subsequent assignment.

15.2 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. AUDIT DISCLOSURE.

Pursuant to Government Code section 8546.7, if the Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment under the Agreement. SERVICE PROVIDER shall cooperate with any such examination or audit at no cost to DISTRICT.

17. ENTIRE AGREEMENT.

This Agreement comprises the entire integrated understanding between DISTRICT and SERVICE PROVIDER concerning the services to be performed pursuant to this Agreement and supersedes all prior negotiations, representations, or agreements whether express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms herein. In the event of any conflict between the provisions of the Agreement and the Exhibit(s), the terms of the Agreement shall prevail.

18. INTERPRETATION OF THE AGREEMENT.

18.1 The interpretation, validity, and enforcement (including, without limitation, provisions concerning limitations of actions) of the Agreement shall be governed by and construed under the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule requiring construction against the draftsman. The Agreement does not limit any other rights or remedies available to DISTRICT.

18.2 SERVICE PROVIDER shall be responsible for complying with all applicable local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

18.3 Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

18.4 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake of otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith by physically amended to make such insertion.

19. AGREEMENT MODIFICATION.

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

20. DISPUTE RESOLUTION.

Upon the written demand of either party, any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, shall be first submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 *et seq.* if applicable, and prior to the commencement of any legal action or other proceeding. Any mediation shall take place in the State of California, County of San Diego, and shall be concluded within sixty (60) days of the written demand, unless such time is extended by mutual written consent of the parties. Nothing herein waives or excuses compliance with the California Government Claims Act.

In the event mediation has not been successfully concluded within the time allowed, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). The use of arbitration shall allow full discovery by all parties associated with the dispute or claim. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court.

21. JURISDICTION, FORUM AND VENUE.

Except as otherwise required by Section 20 of this Agreement concerning dispute resolution, the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, northern district of the County of San Diego. DISTRICT and SERVICE PROVIDER agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. DISTRICT and SERVICE PROVIDER hereby submit to personal jurisdiction in the State of California for the

enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this Agreement whether on grounds of inconvenient forum or otherwise.

22. MAILING ADDRESSES.

Notices given pursuant to this Agreement shall be deemed communicated as of the earlier of the day of receipt or the fifth (5th) calendar day after deposit in the United States mail, postage prepaid, and addressed to the following:

**DISTRICT: Rainbow Municipal Water District
3707 Old Hwy 395
Fallbrook, CA 92028
Phone: (760) 728-1178**

**SERVICE PROVIDER: Perrault Corporation
P.O. Box 578
Bonsall, CA 92003
Phone: (760) 466-1024**

Notices delivered personally will be deemed communicated as of actual receipt.

23. SIGNATURES.

Each party represents that the individual executing this Agreement on its behalf has the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of such party.

24. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

25. ATTORNEY'S FEES.

In the event of a dispute arising under terms of this Agreement, it is agreed that the prevailing party may be awarded reasonable attorneys' fees and actual costs.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed.

PERRAULT CORPORATION

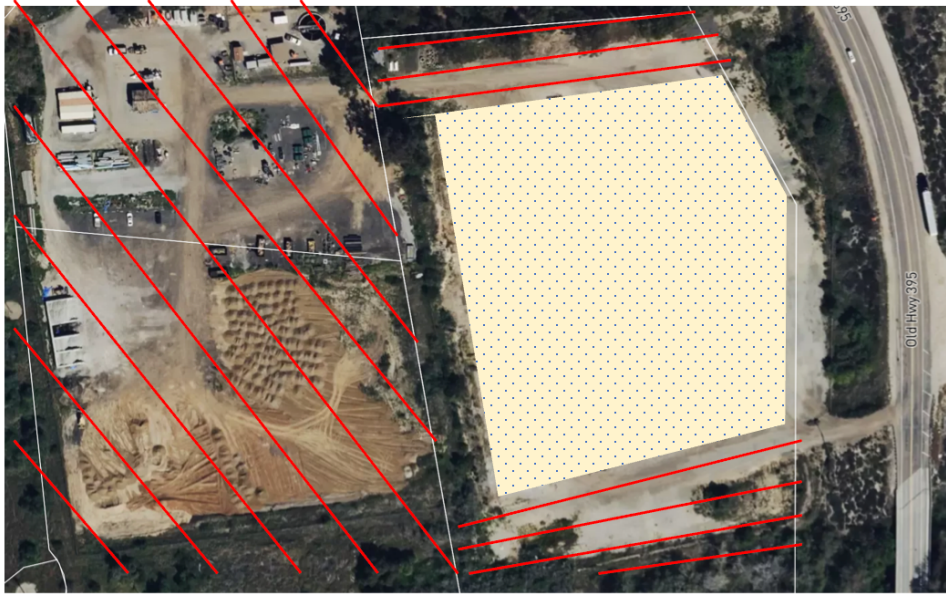
RAINBOW MUNICIPAL WATER DISTRICT

By: _____
Charles Perrault, President

By: _____
Jake Wiley, General Manager

DRAFT



EXHIBIT A



1" = 103 ft	LOWER YARD	01/31/2025	
<small>This map may represents a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy please contact the responsible staff for most up-to-date information.</small>			

Legend



- Restricted Area 
- Usable Area 

BOARD ACTION

BOARD OF DIRECTORS

February 25, 2025

SUBJECT

CONSIDER APPROVAL OF AN AGREEMENT WITH DEXTER WILSON ENGINEERING, INC. FOR THE DESIGN OF THE GOPHER CANYON PUMP STATION PROJECT (DIVISION 1)

BACKGROUND

Rainbow Municipal Water District's (District) temporary Gopher Pump Station is located off Wild Acres Road. It has been in operation for one-year and takes water from Turner Tank and pumps to the District's Gopher Tank. The temporary pump station was installed to address an operational need identified during the construction of the West Lilac, Rancho Amigos, and Dentro De Lomas pump stations. The District intends to replace the temporary system with a permanent pump station. The proposed pump station will incorporate new piping and valving configurations to the existing system so that water can not only be pumped directly to the Gopher Tank but also have capability to draw from or discharge to any of the three (3) southern tank zones (Hutton, Turner, and Gopher) as shown in Figure 1. The proposed pump station will become a main terminus location to pump to any of the three (3) southern tank zones, thus providing maximum operation flexibility during high water demands, Public Safety Power Shutoffs (PSPS) events, system shutdowns, or other planned or unplanned pump station outages in these zones.

DESCRIPTION

In November 2024, the District solicited project design services from its pre-qualified on-call civil engineering firms. The District received responses from all four (4) firms:

Name	Cost Proposal	Proposed Schedule
Ardurra	\$375,014	15 months
Dexter Wilson Engineering, Inc.	\$220,000	11.5 months
Harris & Associates	\$343,877	9 months
WaterWorks Engineers, LLC.	\$249,979	11 months

Staff reviewed and evaluated the proposals based on the approach to the requested work, team qualifications, relevant project experience, cost, and proposed schedule. The staff evaluation found that Dexter Wilson Engineering, Inc. (Dexter Wilson) was the most qualified to perform the Gopher Pump Station design services in the amount of \$220,000.

POLICY/STRATEGIC PLAN KEY FOCUS AREA

Strategic Focus Area Two: Asset Management

ENVIRONMENTAL

In accordance with California Environmental Quality Act (CEQA) guidelines Section 15378, the action before the Board does not constitute a “project” as defined by CEQA and further environmental review will be conducted concurrent with the project design.

BOARD OPTIONS/FISCAL IMPACTS

Adequate funding for the Professional Services Agreement was approved as part of the District’s Capital Improvement Plan (CIP) for Fiscal Year 24/25. Initially, the project was conceived as a rudimentary replacement to the temporary pump skid that exists now. The functionality of that skid is to move water from Turner Tank to Gopher Tank only. As planning for the project has progressed, it has become apparent that the proposed pump station will serve a much broader continuity of service need to the entire southern service area. This has consequently expanded the scope and anticipated construction cost of the project to a point where staff believes additional funding will be needed beyond the original \$710,000 to fully fund construction. A preliminary estimate is provided in the attached Project Cost Summary (Figure 2), however, as the project design progresses, staff will provide updated estimates and adjust the 5-year CIP accordingly.

Option 1:

- Approve the Professional Services Agreement with Dexter Wilson Engineering, Inc. for Design services for the Gopher Pump Station.
- Authorize the General Manager to execute the agreement on behalf of the District.
- Make a determination that the action before the Board as defined herein does not constitute a “project” as defined by CEQA.

Option 2:

- Provide other direction to staff.

STAFF RECOMMENDATION

Staff recommends Option 1.

Chad Williams
Eng. & CIP Program Manager

02/25/2025

Attachment(s):

1. Figure 1 – Pump Station Diagram
2. Figure 2 - Project Cost Summary
3. Figure 3 – Project Site Map
4. Draft Professional Services Agreement

FIGURE 1
Gopher Pump Station

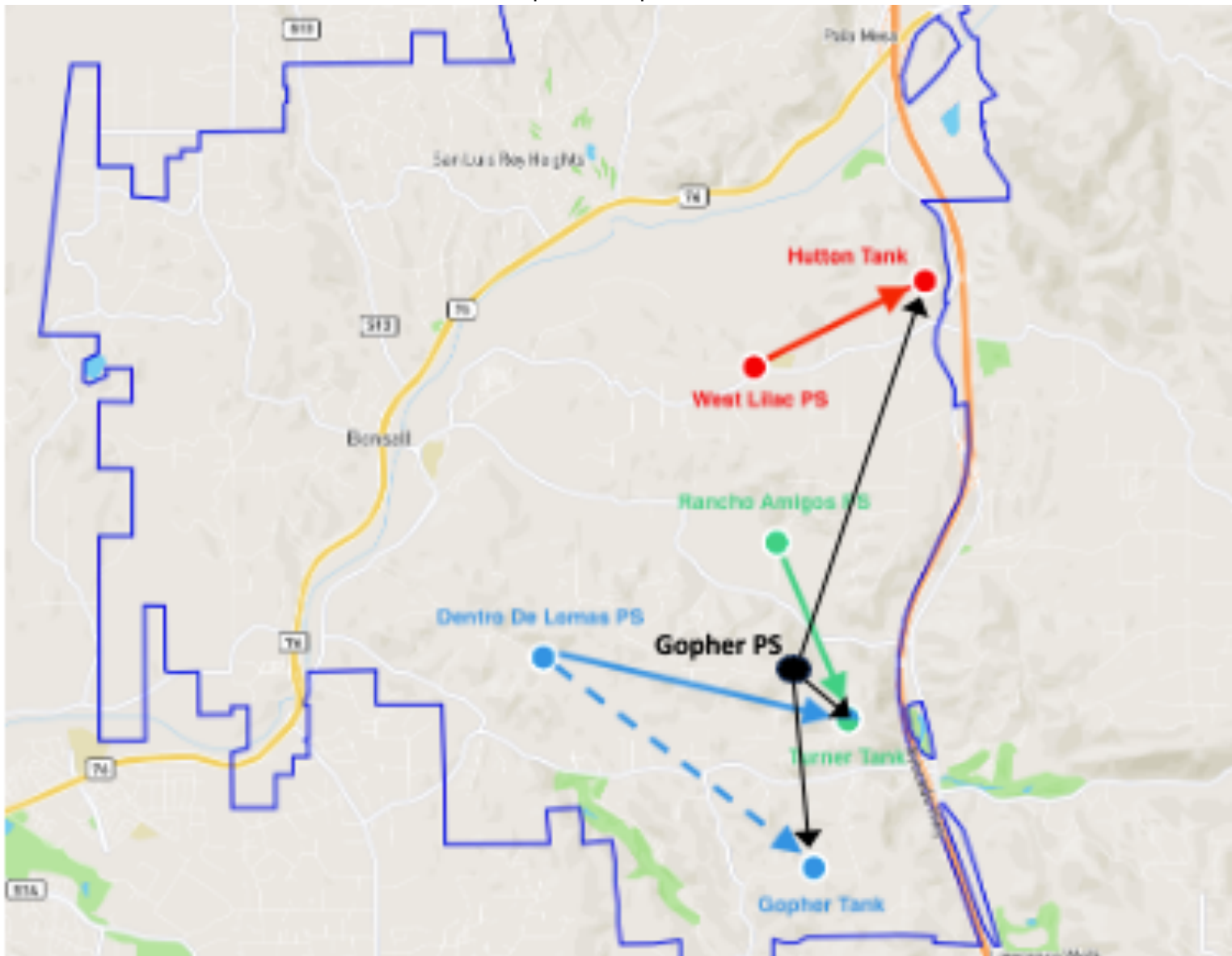


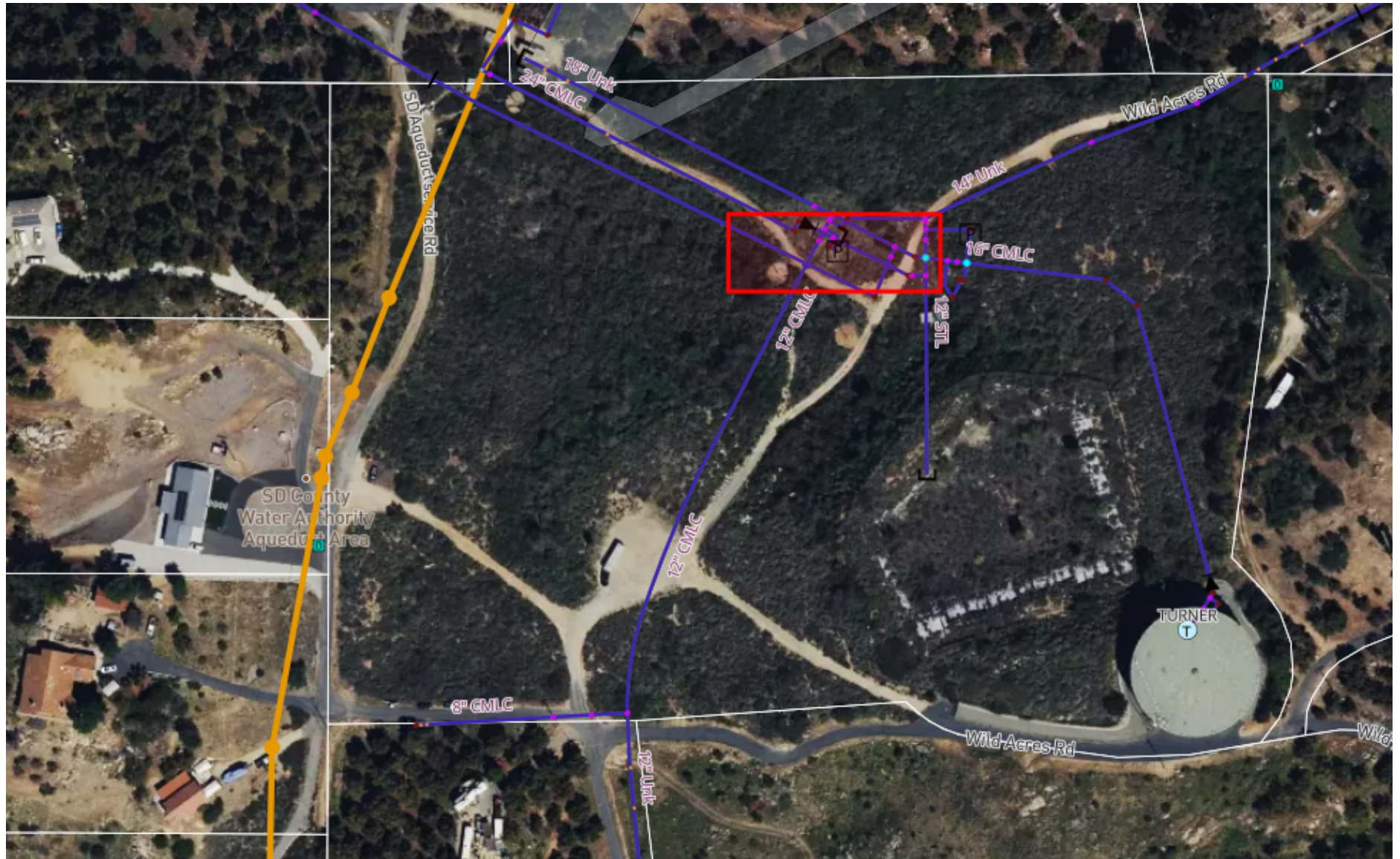
Figure 2- Project Cost Summary

Gopher Pump Station

Planning/Design	Estimated Cost
Staff Labor	\$ 20,000.00
Design Contract	\$ 220,000.00
Environmental/Permitting	\$ 35,000.00
Subtotal Planning/Design	\$ 275,000.00
Construction	
Staff Labor	\$ 50,000.00
Construction Contract	\$ 900,000.00
Mob & Demob @ 5%	\$ 45,000.00
OH & Profit @ 15%	\$ 135,000.00
Escalation to mid-point	\$ 90,000.00
CM & Inspection @ 15%	\$ 175,000.00
Subtotal Construction	\$ 1,220,000.00
Project Contingency @ 20%	\$ 299,000.00
Estimated Total Project Costs	\$ 1,794,000.00

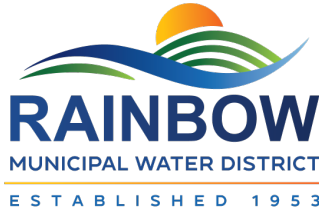
Approved Budget (FY 24/25)	\$ 710,000.00
Estimated Future Funding Request	\$ 1,084,000.00

FIGURE 3
Gopher Pump Station



1" = 129 ft	Sub Title	01/28/2025	
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This map may represents a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.



**RAINBOW MUNICIPAL WATER DISTRICT
3707 OLD HIGHWAY 395
FALLBROOK CA, 92028
(760) 728-1178**

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: GOPHER PUMP STATION PROJECT
Project No. 600094, Contract No. 25-0X**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of **Month, 2025** by and between the **RAINBOW MUNICIPAL WATER DISTRICT**, a municipal water district, hereinafter designated as "**DISTRICT**", and _____, a **California corporation**, hereinafter designated as "**CONSULTANT**"

RECITALS

- A.** DISTRICT desires to obtain Professional Consulting Services from an independent contractor for the above-named Project.
- B.** CONSULTANT has submitted a proposal to provide professional services for DISTRICT in accordance with the terms set forth in this Agreement.
- C.** DISTRICT desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to DISTRICT as an independent contractor.
- D.** CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.

- 1.1** The professional services to be performed by CONSULTANT shall consist of the following: **design services for the Gopher Pump Station project.** The scope of services is more particularly defined in Exhibit "A", attached and made a part hereof. Any additional engineering services will be requested in writing as set forth in Section 19.

ATTACHMENT 4

1.2 In performing the services set forth in Exhibit “A”, CONSULTANT shall work closely with DISTRICT’S General Manager or Authorized Representative and staff in performing services in accordance with this Agreement in order to receive clarification as to the result that DISTRICT expects to be accomplished by CONSULTANT. The General Manager or Authorized Representative, shall be DISTRICT’S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement.

1.3 CONSULTANT represents that its employees have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of DISTRICT. This means CONSULTANT is able to fulfill the requirements of this Agreement. Failure to perform all services required under this Agreement constitutes a material breach of the Agreement.

2. **TERM AND TIMING REQUIREMENTS.**

2.1 This Agreement will become effective on the date stated above, and will continue in effect until the earlier of the completion of services provided for in this Agreement or until terminated as provided under Section 14 of this Agreement.

2.2 CONSULTANT’S performance of services under this Agreement shall be in accordance with the schedule outlined below unless otherwise modified in writing as set forth in Section 19. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by DISTRICT.

Task	Due Date
Notice to Proceed	Two (2) weeks from Board Award
Progress Report	Monthly following commencement of Design
Final Submittal	January 31, 2026

2.3 CONSULTANT shall submit all requests for extensions of time for performance in writing to the General Manager or Authorized Representative no later than two (2) business days after the commencement of the cause of any unforeseeable delay beyond CONSULTANT’S control and in all cases prior the date on which performance is due if possible. The General Manager or Authorized Representative shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT’S control.

2.4 For all time periods not specifically set forth herein, CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, e-mail or mail.

3. STUDY CRITERIA AND STANDARDS.

- 3.1 All services shall be performed in accordance with applicable DISTRICT, county, state and federal Codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANTS performing the same or similar work under similar conditions.

4. INDEPENDENT CONTRACTOR.

- 4.1 CONSULTANT'S relationship to DISTRICT shall be that of an independent contractor in performing all services hereunder. DISTRICT will not exercise any control or direction over the methods by which CONSULTANT shall perform its services and functions. DISTRICT'S sole interest and responsibility is to ensure that the services covered in this Agreement are performed in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of CONSULTANT or its employee(s) pursuant to this Agreement shall be construed to make CONSULTANT or its employee(s) the agent, employee or servant of DISTRICT. CONSULTANT and its employee(s) are not entitled to receive from DISTRICT vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

- 4.2 CONSULTANT shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment requirements with respect to CONSULTANT or its employee(s). CONSULTANT agrees to indemnify, defend and hold DISTRICT harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) DISTRICT suffers as a result of CONSULTANT'S failure comply with the foregoing.

- 4.3 CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT represents and warrants that CONSULTANT customarily engages in the independently established trade and business of the same nature as the work to be performed under this Agreement.

- 4.4 CONSULTANT shall have no authority, express or implied, to act on behalf of as an agent, or to bind DISTRICT to any obligation whatsoever, unless specifically authorized in writing by the General Manager or Authorized Representative. If CONSULTANT'S services relate to an existing or future DISTRICT construction contract, CONSULTANT shall not communicate directly with, nor in any way direct the actions of, any bidder for that construction contract without the prior written authorization by the General Manager or Authorized Representative.

5. WORKERS' COMPENSATION INSURANCE.

- 5.1 By CONSULTANT'S signature hereunder, CONSULTANT certifies that CONSULTANT is aware of the provisions of Section 3700 of the California Labor Code requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and CONSULTANT will comply with such provisions before commencing the performance of the services of this Agreement.

6. INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.

- 6.1** All officers, agents, employees and subcontractors, and their agents, who are employed by CONSULTANT to perform services under this Agreement, shall be deemed officers, agents and employees of CONSULTANT. To the extent and in any manner permitted by law, CONSULTANT shall defend, indemnify, and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from any claims, demands, liability from loss, damage, or injury to property or persons, including wrongful death, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, including CONSULTANT'S officers, employees and agents, in connection with the services required by this Agreement, including without limitation, the payment of reasonable attorneys' fees and costs. In no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT'S proportionate percentage of fault, as determined by a court of law. The foregoing indemnity, hold harmless and defense obligation of CONSULTANT shall apply except to the extent the loss, damage or injury is caused by the sole negligence or willful misconduct of an indemnified party.
- 6.2** To the extent and in any matter permitted by law, CONSULTANT shall defend, indemnify and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from and against any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, related to or incident to a breach of any governmental law or regulations, compliance with which is the responsibility of CONSULTANT, except any violation of law due to the DISTRICT'S negligence or willful misconduct.
- 6.3** CONSULTANT shall defend, at CONSULTANT'S own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT or DISTRICT'S directors, officers, employees, authorized volunteers and agents, and each of them. DISTRICT shall be consulted regarding and approve of the selection of defense counsel.
- 6.4** CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, authorized volunteers and agents, and each of them, in any and all such aforesaid claims, suits, action or other legal proceeding. CONSULTANT shall not agree without DISTRICT'S prior written consent, to any settlement which would require DISTRICT to pay any money or perform some affirmative act, including in the case of intellectual property infringement any payment of money or performance of some affirmative act to continue using CONSULTANT Products.
- 6.5** CONSULTANT'S indemnification, hold harmless and defense obligation shall survive the termination or expiration of this Agreement.

7. LAWS, REGULATIONS AND PERMITS.

- 7.1** CONSULTANT shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the services required by this Agreement. CONSULTANT shall be liable for, and bear all costs resulting from, any violations of the law in connection with services furnished by CONSULTANT, except any violation of the law due to the DISTRICT'S negligence or willful misconduct.

ATTACHMENT 4

- 7.2** CONSULTANT shall comply with all of the following requirements with respect to any services as a Building/Construction Inspector, Field Soils and Material Tester, or Land Surveyor, as those trades are defined by the California Department of Industrial Relations (“DIR”).
- a) CONSULTANT agrees to comply with and require its subcontractors to comply with the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.*, and California Code of Regulations, title 8, section 16000 *et seq.* (collectively, “Prevailing Wage Laws”) and any additional applicable California Labor Code provisions related to such work including, without limitation, payroll recordkeeping requirements. CONSULTANT and its subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the DIR for all services described in this Section 7.2 of the Agreement and as required by law. The general prevailing wage determinations can be found on the DIR website at: [www://dir.ca.gov/dslr](http://www.dir.ca.gov/dslr). Copies of the prevailing rate of per diem wages may be accessed at the DISTRICT’S administrative office and shall be made available upon request. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services described in this Section 7.2 of the Agreement available to interested parties upon request, and shall post and maintain copies at CONSULTANT’S principal place of business and at all sites where services are performed. Penalties for violation of Prevailing Wage Laws may be assessed in accordance with such laws. For example, CONSULTANT shall forfeit, as a penalty to the DISTRICT, Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each workman paid less than stipulated prevailing rates for services performed under this Agreement by CONSULTANT, or any subcontractor under CONSULTANT, in violation of Prevailing Wage Laws.
 - b) CONSULTANT and each of its subcontractors shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONSULTANT or subcontractor in connection with the services performed pursuant to this Agreement. Each payroll shall be certified, available for inspection, and copies thereof furnished as prescribed in California Labor Code sections 1771.4(a)(3)(A) and 1776, including any required redactions. CONSULTANT shall keep the DISTRICT informed as to the location of the records and shall be responsible for the compliance with these requirements by all subcontractors. CONSULTANT shall inform the DISTRICT of the location of the payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address. Penalties for noncompliance include a forfeiture of One Hundred Dollars (\$100) per calendar day, or portion thereof, for each worker until strict compliance is effectuated, which may be deducted from any moneys due to CONSULTANT.
 - c) Eight (8) hours of work shall constitute a legal day’s work. CONSULTANT and any subcontractors shall forfeit, as a penalty to the DISTRICT, Twenty-Five Dollars (\$25) for each worker employed in the execution of services pursuant to this Agreement by CONSULTANT or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8)

ATTACHMENT 4

hours in any one (1) calendar day and forty (40) hours in any calendar week in violation of the provisions of the California Labor Code, in particular, sections 1810 to 1815, thereof, inclusive, except services performed by employees of CONSULTANT and its subcontractors in excess of eight (8) hours per day at not less than the rates published by the California Department of Industrial Relations.

- d) CONSULTANT'S attention is directed to the provisions of California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning employment of apprentices by CONSULTANT or any of its subcontractors. If applicable to the services performed under the Agreement, CONSULTANT shall comply with such apprenticeship requirements and submit apprentice information to the DISTRICT. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the DIR or the Division of Apprenticeship Standards. Knowing violations of section 1777.5 will result in forfeiture not to exceed One Hundred Dollars (\$100) or Three Hundred Dollars (\$300), depending on the circumstances, for each calendar day of non-compliance pursuant to section 1777.7.
- e) CONSULTANT shall require any subcontractors performing services described in this Section 7.2 of the Agreement to comply with all the above.
- f) CONSULTANT must be, and must require, all subcontractors performing services described in this Section 7.2 to be, registered with and have paid the annual fee to the DIR prior to execution of this Agreement pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. The performance of services described in this Section 7.2 is subject to compliance monitoring and enforcement by the DIR

8. SAFETY.

In carrying out CONSULTANT'S services, CONSULTANT shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the services and the conditions under which the services are to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include instructions in accident prevention for all employees such as safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching & shoring, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries.

9. INSURANCE.

9.1 INSURANCE COVERAGE AND LIMITS.

CONSULTANT shall provide and maintain at all times during the performance of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by

ATTACHMENT 4

CONSULTANT, its agents, representatives, employees or subcontractors. Claims made policies shall not satisfy these insurance requirements unless CONSULTANT notifies DISTRICT and obtains DISTRICT'S prior written consent to the use of such claims made policies.

Coverage – CONSULTANT shall maintain coverage at least as broad as the following:

- a) Coverage for Professional Liability appropriate to CONSULTANT'S profession covering CONSULTANT'S wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
- b) Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- c) Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).
- d) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

Limits - CONSULTANT shall maintain limits no less than the following:

- a) Professional Errors and Omissions Liability - One million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate.
Professional Errors and Omissions Liability is required if CONSULTANT provides or engages in any type of professional services including, but not limited to engineers, architects and construction management.
- b) General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. 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 DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- d) Workers' Compensation insurance with statutory limits as required by California law and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

9.2 REQUIRED PROVISIONS. The insurance policies are to contain, or be endorsed to contain the following provisions:

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- a) DISTRICT, its directors, officers, or employees are to be covered as insureds on the CGL and auto policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by on or behalf of CONSULTANT; and with respect to liability arising out of services or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such services or operations. General liability coverage can be provided in the form of an endorsement to CONSULTANT'S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. The Project Name shall also be included.
- b) For any claims related to the services provided hereunder, CONSULTANT'S insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, and authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, or employees shall not contribute to it.
- c) Each insurance policy specified above are to state or be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice (ten (10) days for non-payment of premium) by U.S. mail has been provided to DISTRICT.
- d) In the event any change is made in the insurance carrier, scope of coverage or retroactive date of professional liability coverage required under this Agreement (if applicable), CONSULTANT shall notify DISTRICT prior to any changes.

9.3 PROFESSIONAL WARRANTY. CONSULTANT represents and warrants that: (a) the Professional Services will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements, and (b) the Deliverables will substantially conform to the description and specifications set forth in Exhibit "A" for the specified period after delivery or if none stated, a period of XX days after the date of delivery ("Warranty Period"). To the extent any Professional Services or Deliverables do not substantially conform to the foregoing warranties, CONSULTANT shall promptly re-perform the Professional Services and/or resubmit the Deliverables. If after receiving notice of non-conformity CONSULTANT determines that the Professional Services cannot be performed or the Deliverables cannot reasonably be delivered pursuant to the specifications, within the Warranty Period, DISTRICT may elect to remedy or receive such Professional Services or Deliverable through another contractor and CONSULTANT shall reimburse DISTRICT within 30 days of request by DISTRICT. This warranty will apply only if: (a) no modification, alteration or addition has been made to the Deliverable(s) other than with CONSULTANT'S written consent; and (b) receives written notification of the breach during the applicable Warranty Period.

CONSULTANT warrants that any drawings and specifications, reports or other documents submitted by Contractor to Agency shall be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws.

9.4 WAIVER OF SUBROGATION. CONSULTANT hereby agrees to waive rights of subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of DISTRICT for all services performed by CONSULTANT, its employees, agents and subcontractors.

9.5 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductible or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retention.

9.6 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 acceptable to DISTRICT.

9.7 EVIDENCES OF INSURANCE. Prior to execution of this Agreement, CONSULTANT shall furnish DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by DISTRICT before services commence. However, failure to obtain the required documents prior the services beginning shall not waive CONSULTANT'S obligation to provide them.

CONSULTANT shall, upon demand of DISTRICT at any time, deliver to DISTRICT complete, certified copies or all required insurance policies, including endorsements, required by this Agreement.

9.8 SUBCONTRACTORS. In the event that CONSULTANT employs subcontractors as part of the services covered by this Agreement, it shall be the CONSULTANT'S responsibility to require and verify that each subcontractor meets the minimum insurance requirements specified in this Agreement.

10. NO CONFLICT OF INTEREST.

If CONSULTANT is providing services related to a DISTRICT project, CONSULTANT shall not be financially interested in any other contract necessary for the undertaking of the project. For the limited purposes of interpreting this section, CONSULTANT shall be deemed a "district officer or employee", and this section shall be interpreted in accordance with California Government Code Section 1090. In the event that CONSULTANT becomes financially interested in any other contract necessary for the undertaking of the project, this Agreement shall be null and void and DISTRICT shall be relieved of any responsibility whatsoever to provide compensation under the terms and conditions of any such contract for those services performed by CONSULTANT.

11. OWNERSHIP OF DOCUMENTS.

All documents, drawings, reports, and specifications, including details, computations, code, scripts, workflows, and other documents, prepared or provided by CONSULTANT under this

Agreement shall be the property of DISTRICT. DISTRICT agrees to hold CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the documents and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computations, and other documents, prepared or provided by CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this Project.

12. CONFIDENTIAL INFORMATION.

Any written, printed, graphic, or electronically or magnetically recorded information furnished by DISTRICT for CONSULTANT'S use are the sole property of DISTRICT. CONSULTANT and its employee(s) shall keep this information in the strictest confidence and will not disclose it by any means to any person except with DISTRICT'S prior written approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONSULTANT'S employees, agents, and subcontractors. On termination or expiration of this Agreement, CONSULTANT shall promptly return any such confidential information in its possession to DISTRICT.

13. COMPENSATION.

13.1 For services performed by CONSULTANT in accordance with this Agreement, DISTRICT shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. This is a Time-and-Materials contract. Overtime work must be authorized by the DISTRICT. The CONSULTANT may request in writing an annual rate increase of up to three percent (3%). Written request must be received a minimum of one month prior to the start of the DISTRICT's fiscal year (July 1). Upon approval, the revised rate shall take effect on the following billing statement. Rate increases to existing Agreements shall only be considered for Agreements longer than a one-year term. Maximum allowable markups will be five percent (5%) on subconsultants and other direct costs (ODC's). **CONSULTANT'S compensation for all services performed in accordance with this Agreement shall not exceed the total contract price of \$ [REDACTED]**. No services shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the General Manager or Authorized Representative. CONSULTANT shall obtain approval from the General Manager or Authorized Representative prior to performing any services that result in incidental expenses to the DISTRICT.

13.2 CONSULTANT shall maintain accounting records including the following information:

- a) Names and titles of employees or agents, types of services performed, and times and dates of all services performed in connection with Agreement that is billed on an hourly basis.
- b) All incidental expenses including reproductions, computer printing, postage, mileage billed at current Internal Revenue Service ("IRS") Rate, and subsistence.

13.3 CONSULTANT'S accounting records shall be made available to DISTRICT Accounting Manager, for verification of billings, within a reasonable time of the Accounting Manager's request for inspection.

- 13.4 CONSULTANT shall submit monthly invoices to DISTRICT. DISTRICT will make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the General Manager or Authorized Representative. ***Each application for partial payment shall be accompanied with a Progress Report summarizing the status of the services performed during the period.***
- 13.5 DISTRICT reserves the right to withhold payments for services to cover potential or nonconforming services. Additionally, the DISTRICT may elect not to make a particular payment if any of the following exists:
- a) CONSULTANT with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to DISTRICT.
 - b) CONSULTANT took an action without receiving DISTRICT'S prior approval as required under this Agreement.
 - c) CONSULTANT is in default of a term or condition of this Agreement.
- 13.6 CONSULTANT shall ensure that any report generated under this Agreement shall comply with Government Code Section 7550.

14. **TERMINATION OF AGREEMENT.**

- 14.1 **TERMINATION FOR CAUSE.** If DISTRICT ("demanding party") has a good faith belief that CONSULTANT is not complying with the terms of this Agreement or is deemed non-responsive or non-responsible, DISTRICT will give written notice of the default (with reasonable specificity) to CONSULTANT and demand the default to be cured within ten (10) calendar days of the notice. Responsive is defined as conforming with material requirements and responsible is defined as possessing the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract.

If CONSULTANT fails to cure the default within ten (10) calendar days of the notice, or if more than ten (10) calendar days are reasonably required to cure the default, and CONSULTANT fails to give adequate assurance and due performance within ten (10) calendar days of the notice, DISTRICT may terminate this Agreement upon written notice to CONSULTANT. In the event of a material breach of any representation or term of this Agreement by CONSULTANT that is not curable or results in a threat to health or safety, DISTRICT may immediately terminate this Agreement by providing written notice and without a cure period.

Upon termination, DISTRICT will pay CONSULTANT for any services completed up to and including the date of termination of this Agreement, in accordance with the compensation Section 13. DISTRICT will be required to compensate CONSULTANT only for services performed in accordance with the Agreement up to and including the date of termination. DISTRICT shall not pay for loss profit or overhead/extended overhead fees and at its sole discretion may deduct fees for any non-conforming or non-complying work.

- 14.2 TERMINATION FOR CONVENIENCE.** DISTRICT will have the express right to terminate this Agreement at any time without cause by giving seven (7) consecutive days advanced written notice to CONSULTANT. This Agreement shall be automatically terminated without further action of any party upon expiration of the seven (7) day period.

Promptly upon receipt of any termination notice from the DISTRICT, CONSULTANT shall cease all further work and services, except as otherwise expressly directed by the DISTRICT in the written termination notice. In the event the DISTRICT exercises its termination right, CONSULTANT shall be paid only for work and services performed and approved by the DISTRICT to the date this Agreement terminates. The DISTRICT will have the express right to withhold any payment otherwise due CONSULTANT to correct any labor or materials determined to be defective by the DISTRICT at the time of termination.

All plans, maps, drawings, reports, designs, or other writings of any type or nature prepared by CONSULTANT as a result of this Agreement shall become and remain the sole property of the DISTRICT. All such writings shall be provided to the DISTRICT not later than seven (7) consecutive days after termination of this Contract for any reason. All labor, supplies, work and materials provided by CONSULTANT in conjunction with this Agreement will become and remain the sole property of the DISTRICT.

15. ASSIGNMENT AND DELEGATION.

- 15.1** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated or subcontracted, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment shall not be deemed to be consent to any subsequent assignment.

- 15.2** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. AUDIT DISCLOSURE.

Pursuant to Government Code section 8546.7, if the Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment under the Agreement. CONSULTANT shall cooperate with any such examination or audit at no cost to DISTRICT.

17. ENTIRE AGREEMENT.

This Agreement, and the attached Exhibit "A", comprise the entire integrated understanding between DISTRICT and CONSULTANT concerning the services to be performed pursuant to this Agreement and supersedes all prior negotiations, representations, or agreements whether express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms herein. In the event of any conflict between the provisions of the Agreement and the Exhibit(s), the terms of the Agreement shall prevail.

18. INTERPRETATION OF THE AGREEMENT.

- 18.1** The interpretation, validity, and enforcement (including, without limitation, provisions concerning limitations of actions) of the Agreement shall be governed by and construed under the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule requiring construction against the draftsman. The Agreement does not limit any other rights or remedies available to DISTRICT.
- 18.2** CONSULTANT shall be responsible for complying with all applicable local, state, and federal laws whether or not said laws are expressly stated or referred to herein.
- 18.3** Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.
- 18.4** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake of otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion.

19. AGREEMENT MODIFICATION.

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

20. DISPUTE RESOLUTION.

Upon the written demand of either party, any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, shall be first submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 *et seq.* if applicable, and prior to the commencement of any legal action or other proceeding. Any mediation shall take place in the State of California, County of San Diego, and shall be concluded within sixty (60) days of the written demand, unless such time is extended by mutual written consent of the parties. Nothing herein waives or excuses compliance with the California Government Claims Act.

In the event mediation has not been successfully concluded within the time allowed, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). The use of arbitration shall allow full discovery by all parties associated with the dispute or claim. Judgment on the award may be entered in any court having jurisdiction. This clause shall

not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court.

21. JURISDICTION, FORUM AND VENUE.

Except as otherwise required by Section 20 of this Agreement concerning dispute resolution, the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, northern district of the County of San Diego. DISTRICT and CONSULTANT agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. DISTRICT and CONSULTANT hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this Agreement whether on grounds of inconvenient forum or otherwise.

22. MAILING ADDRESSES.

Notices given pursuant to this Agreement shall be deemed communicated as of the earlier of the day of receipt or the fifth (5th) calendar day after deposit in the United States mail, postage prepaid, and addressed to the following:

DISTRICT: **Rainbow Municipal Water District**
 3707 Old Hwy 395
 Fallbrook, CA 92028
 Phone: (760) 728-1178

CONSULTANT: **Firm:** _____
 Address: _____
 Address: _____
 Phone: _____
 Email: _____

Notices delivered personally will be deemed communicated as of actual receipt.

23. SIGNATURES.

Each party represents that the individual executing this Agreement on its behalf has the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of such party.

24. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

25. ATTORNEY'S FEES.

In the event of a dispute arising under terms of this Agreement, it is agreed that the prevailing party may be awarded reasonable attorneys' fees and actual costs.

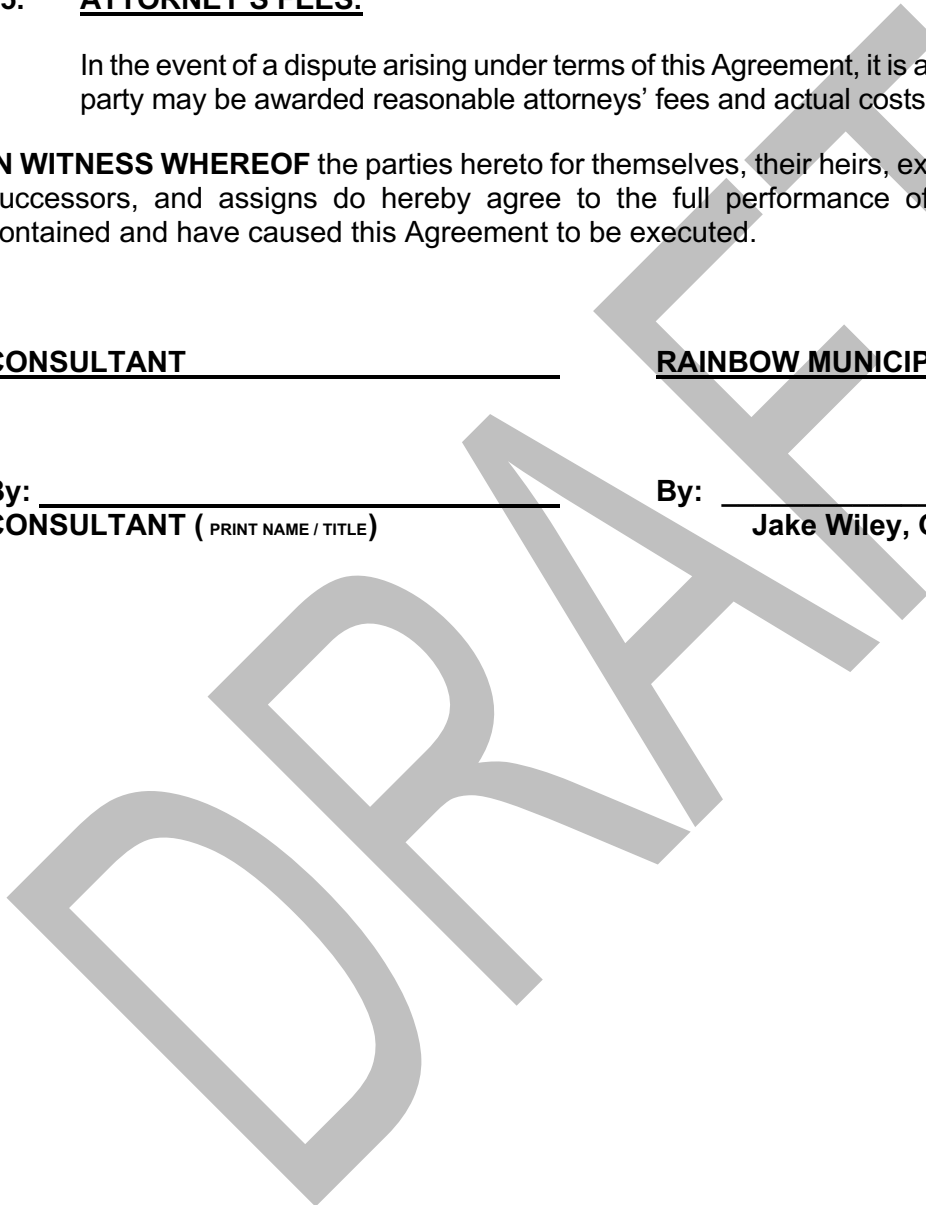
IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed.

CONSULTANT _____

RAINBOW MUNICIPAL WATER DISTRICT _____

By: _____
CONSULTANT (PRINT NAME / TITLE)

By: _____
Jake Wiley, General Manager



BOARD ACTION

BOARD OF DIRECTORS

February 25, 2025

SUBJECT

CONSIDER APPROVAL OF AN AGREEMENT TO SPECIALTY MOWING SERVICES, INC. FOR WEED ABATEMENT AND BRUSH CLEARING SERVICES AT DISTRICT FACILITIES (DISTRICTWIDE)

BACKGROUND

The Rainbow Municipal Water District (District) was established in 1953 and is a Special District, organized under Section 71000 of California Water Code. The District maintains over 320 miles of water main, seven (7) pump stations, four (4) reservoirs, and 13 storage tanks to deliver water to its customers. The District also provides sewer services to parts of the District's service area and maintains facilities including, seven (7) lift stations and 60 miles of sewer main, and has its wastewater treated via a contract with the City of Oceanside. To safely maintain all the District owned sites, a licensed contractor is needed to perform weed abatement and brush clearing services. Currently, District staff is requesting these services on an as-needed basis from qualified vendors. Obtaining individual quotes on an as-needed basis is cumbersome and not a cost-effective method for procuring the on-going and necessary work.

The District issued a Request for Proposals (RFP) to perform both chemical and mechanical weed abatement and brush clearing services at pre-selected sites (Exhibit "A" Schedule and Site Maps). The District intends to issue a three (3) year agreement with two (2) one-year optional extensions for a possible total of five (5) years. In addition to the scheduled site maintenance costs, the District requested that potential bidders include an annual not-to-exceed \$40,000 contingency for District directed weed abatement and bush clearing services not listed for a specific site. This contingency will allow the District leeway to clear any as-needed site(s) in an expedited manner throughout the contract for facilities not included in the RFP. The District reserved the right to utilize all or none of the contingency.

DESCRIPTION

The District issued an RFP via Planet Bids on November 21, 2024. A two (2) day pre-proposal site visit on a select set of sites was conducted on December 18 and 19, 2024. Three (3) firms responded with a proposal on January 16, 2025:

Name	Cost Proposal (Maximum Annual Cost)	Proposal Status
Pest Options, Inc.	\$438,365.80	Non-Responsive
Powerland Equipment, Inc.	\$732,722	Responsive, Not Recommended for Award
Specialty Mowing Services, Inc.	\$297,574	Responsive, Recommended for Award

Per District Legal Counsel, an RFP was the appropriate route to solicit services. The RFP required the submission of a proposal in addition to a cost schedule. Pest Options, Inc. only submitted a cost schedule, therefore the submission was rejected as non-responsive.

Staff reviewed the proposals and evaluated them based on the approach to work, firm and team qualifications, and project experience. The staff evaluation found that Specialty Mowing Services, Inc. was the most qualified to perform districtwide weed abatement and brush clearing services at a maximum annual cost of \$297,574.

POLICY/STRATEGIC PLAN KEY FOCUS AREA

Strategic Focus Area Two: Asset Management -Regular clearing of weeds and brush on and around District facilities and easements provides multiple benefits including continued accessibility for operation, maintenance and repair, as well as protection from wildfire events.

ENVIRONMENTAL

In accordance with California Environmental Quality Act (CEQA) guidelines Section 15378, the action before the Board does not constitute a “project” as defined by CEQA and further environmental review is not required at this time.

BOARD OPTIONS/FISCAL IMPACTS

Funds for this agreement have been allocated in the approved Fiscal Year 24-25 budget in the amount of \$150,000. Each fiscal year (FY) staff will evaluate necessary expenditures and bring the request before the Board for its consideration as part of overall budget approval. In addition to the approved budget for FY 24/25, the District received a CalOES grant in the amount of \$161,840 for weed abatement and brush clearing at specific sites addressed in the grant throughout the District. The grant is valid through March 15, 2029. When these sites are cleared, the funding source will be from the CalOES grant until such time that funds are exhausted. While the \$161,840 from the grant is not shown in the approved budget, the two (2) funding sources are merged and will be charged accordingly.

Districtwide weed abatement throughout the District has been deferred for several years. The last time the District had an agreement with a third party to perform these services was in 2019. The dollar amounts in the proposals received are annual costs. Staff reached out to Powerland Equipment, Inc. to clarify if their submitted proposal of \$2,198,166 was their annual rate or the entire agreement total (three years), they responded that the price was for entire duration of the agreement.

Option 1:

- Approve the Professional Services Agreement with Specialty Mowing Services, Inc. for districtwide weed abatement and brush clearing services.
- Authorize the General Manager to execute the agreement on behalf of the District.
- Make a determination that the action defined herein does not constitute a “project” as defined by CEQA

Option 2:

- Provide other direction to staff.

STAFF RECOMMENDATION

Staff recommends Option 1.

Chad Williams
Eng. & CIP Program Manager

02/25/2025

Attachment(s): 1. Exhibit “A” Schedule and Site Maps 2. Draft Professional Services Agreement

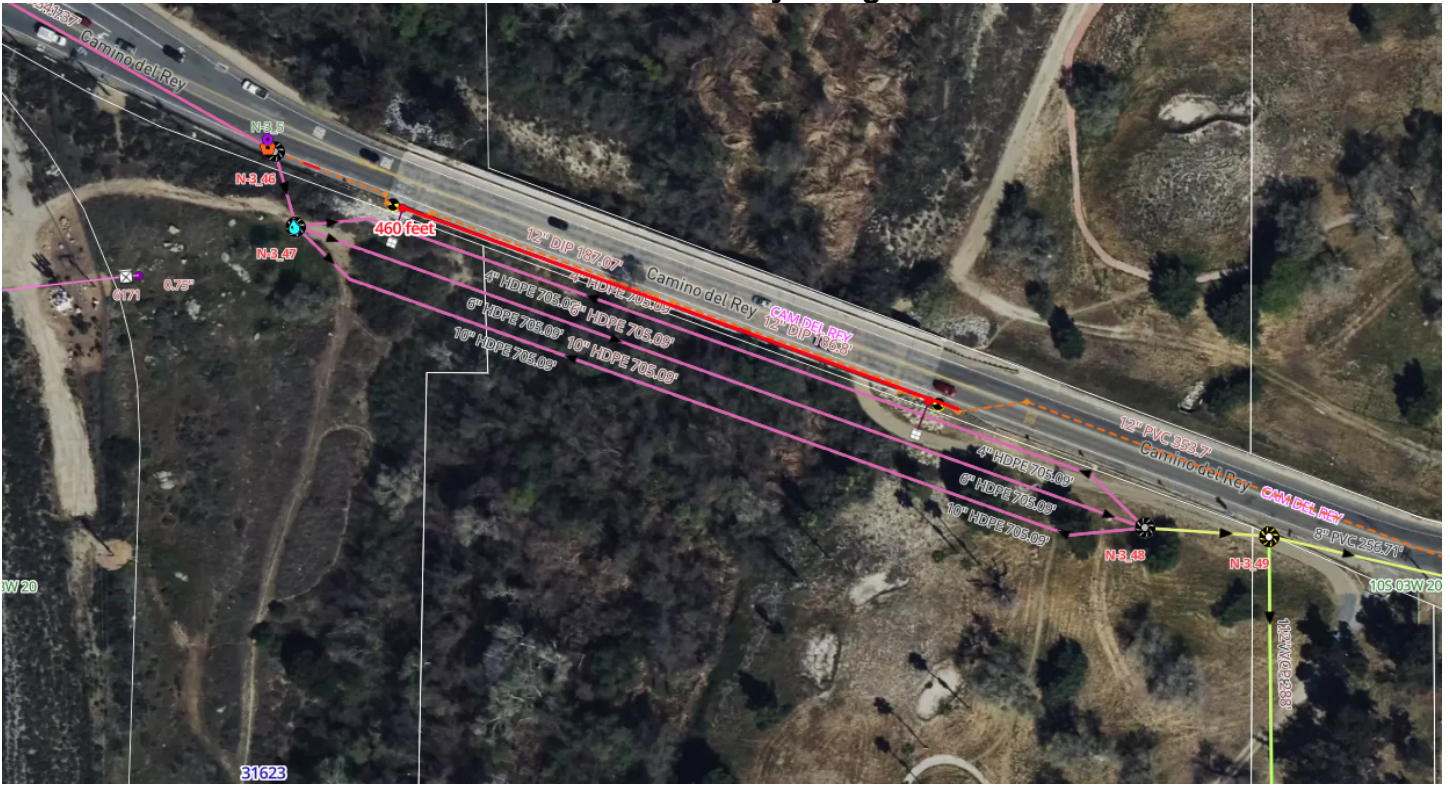
**EXHIBIT A
SCHEDULE AND SITE MAPS**

SCHEDULE AND SIZE

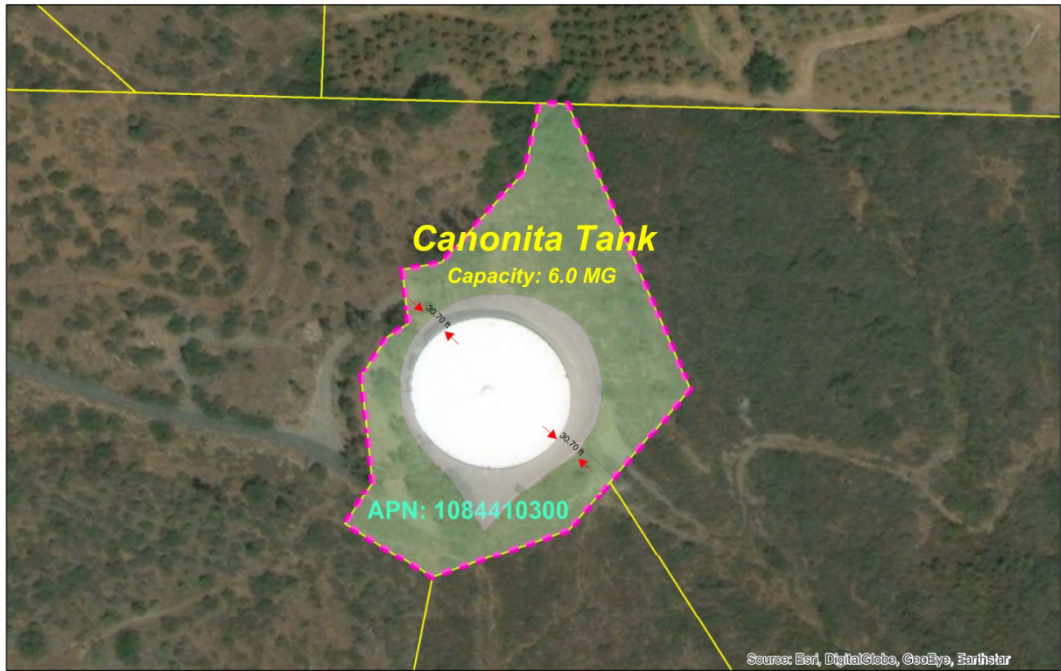
Site Name	Square Footage to Maintain	Quantity of Abatements Per Year	Total Cost
Camino Del Ray Bridge	9,200	2x	
Canonita Tank & Access Road	83,026	2x	
Gomez Tank & Access Road	31,007	2x	
Gopher Canyon Tank	64,907	2x	
Hutton Tank	85,329	2x	
Lower Lookout Mountain Tank	42,235	2x	
Upper Lookout Mountain Tank	42,235	2x	
Magee Tank	35,968	2x	
Morro Tank	209,085	2x	
Moosa Bridge 14" Sewer Line	3,500	2x	
Pala Mesa Tank	501,454	4x	
Rainbow Heights Tank	24,657	2x	
Rice Canyon Tank & Access Road	27,298	2x	
Turner Tank (to include lower property area)	635,703	2x	
Vallecitos Tank	20,668	2x	
Rainbow Heights Pump Station and Vallecitos PRV Station (B.S. NO. 1)	13,019	2x	
Huntley-Gomez Pump Station (B.S. No 6)	21,320	2x	
Magee Pump Station (B.S. No. 7)	12,856	2x	
Vallecitos Pump Station (B.S. No. 3)	21,266	2x	
Rainbow Hills Pump Station (B.S. No. 4)	13,618	2x	
Lookout Mountain Pump Station (B.S. No. 2)	480	2x	
Morro Pump Station (B.S. No. 5)	1,200	2x	
Morro Reservoir	306,400	3x	
Beck Reservoir & Adjacent Property	1,134,981	2x	
Rainbow Hills Reservoir & Access Road	272,523	2x	
North Reservoir & Access Road	137,903	2x	
Pankey Easement	96,260	2x	
Brookhills Easement	70,760	2x	
Moosa Sewer Line East Side	64,800	2X	
As-needed Contingency	N/A	N/A	\$40,000
		TOTAL FOR ALL WORK:	

Site Maps

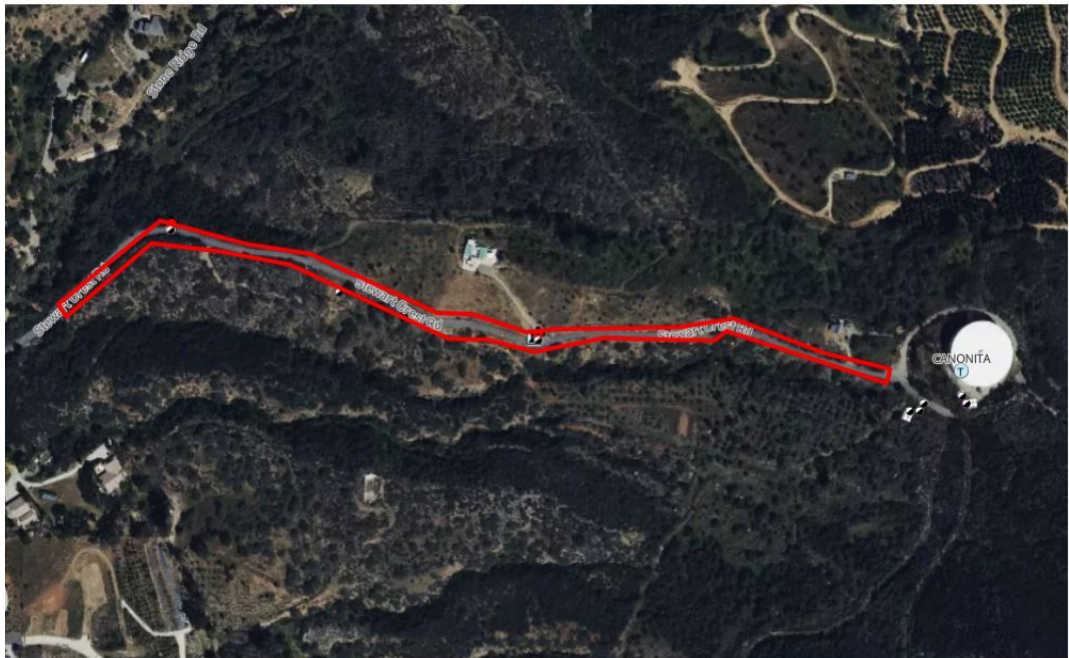
Camino Del Rey Bridge



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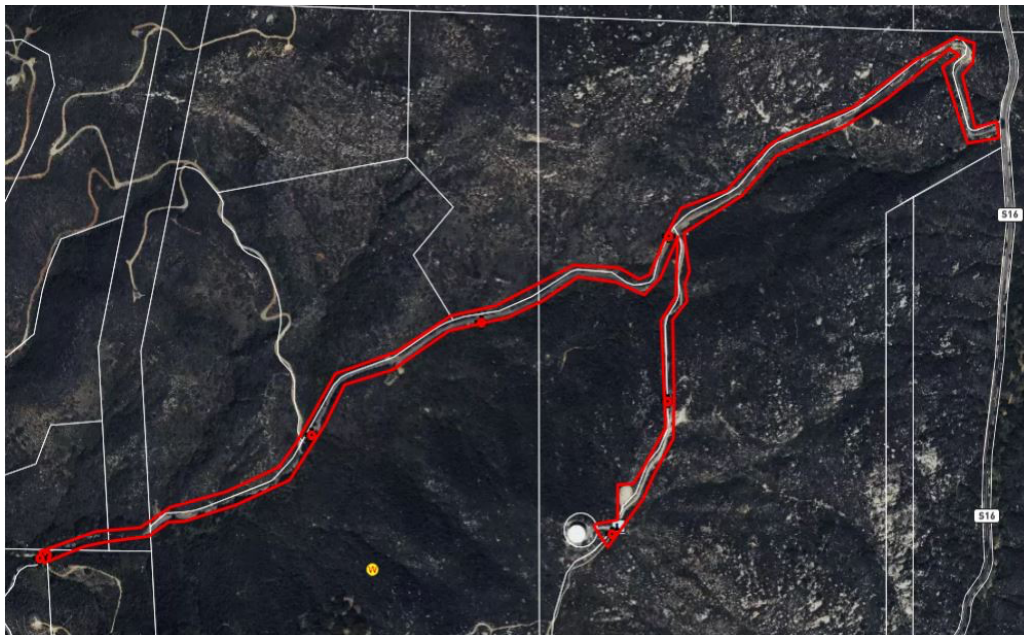


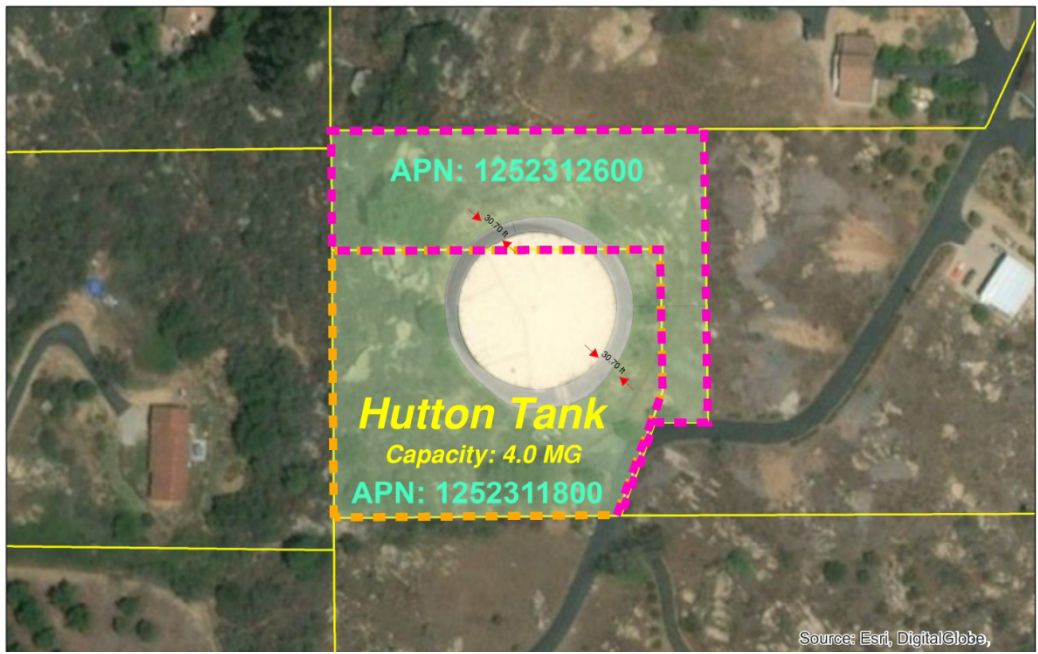
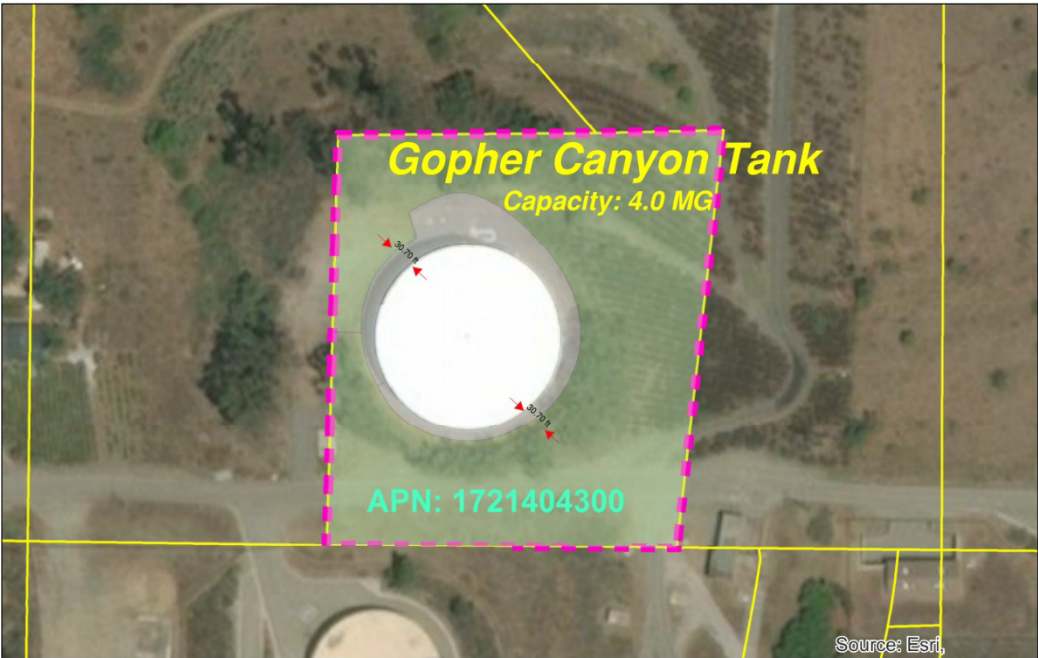
Canonita Tank Access Road

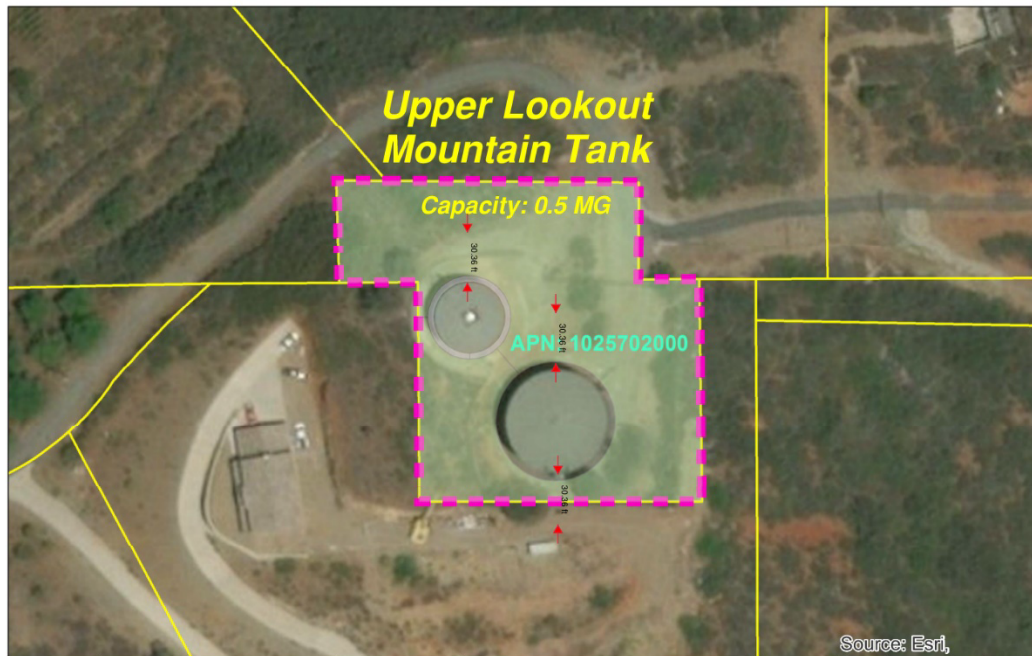
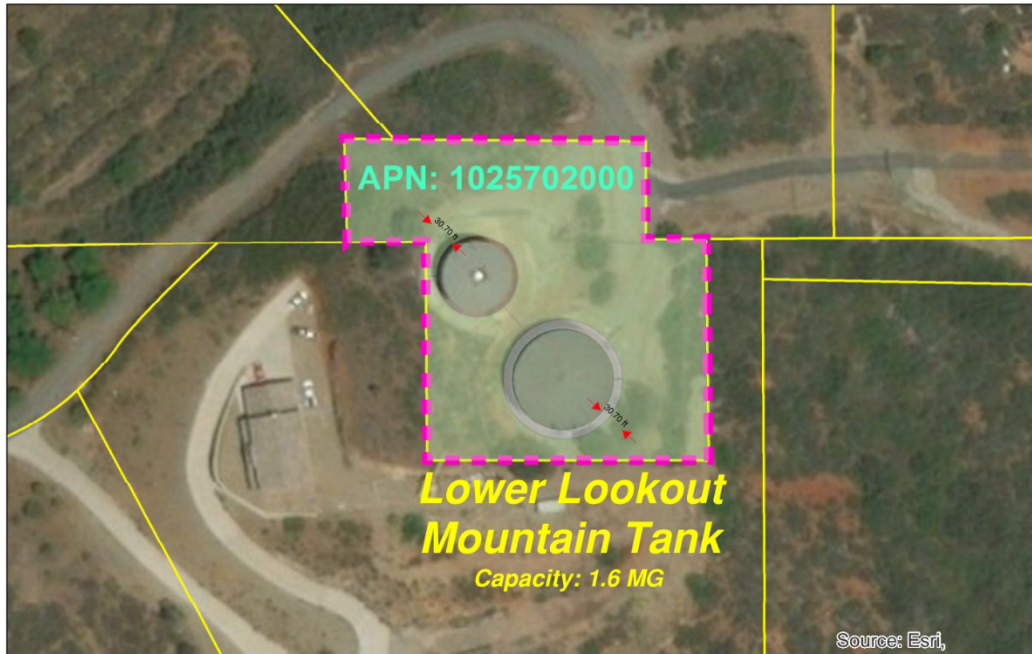




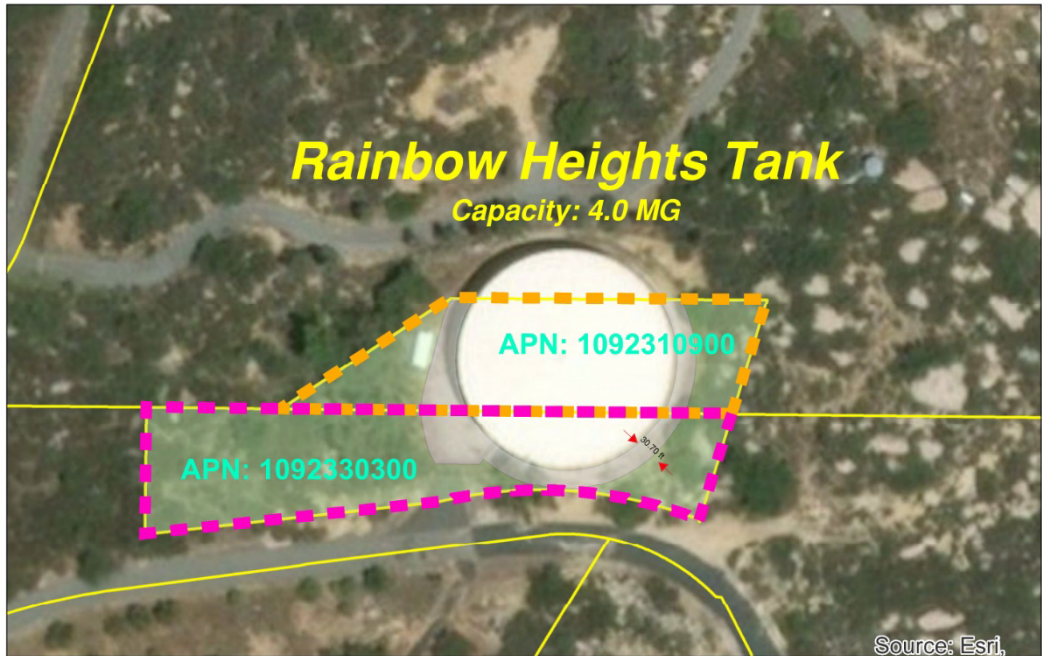
Gomez Tank Access Road



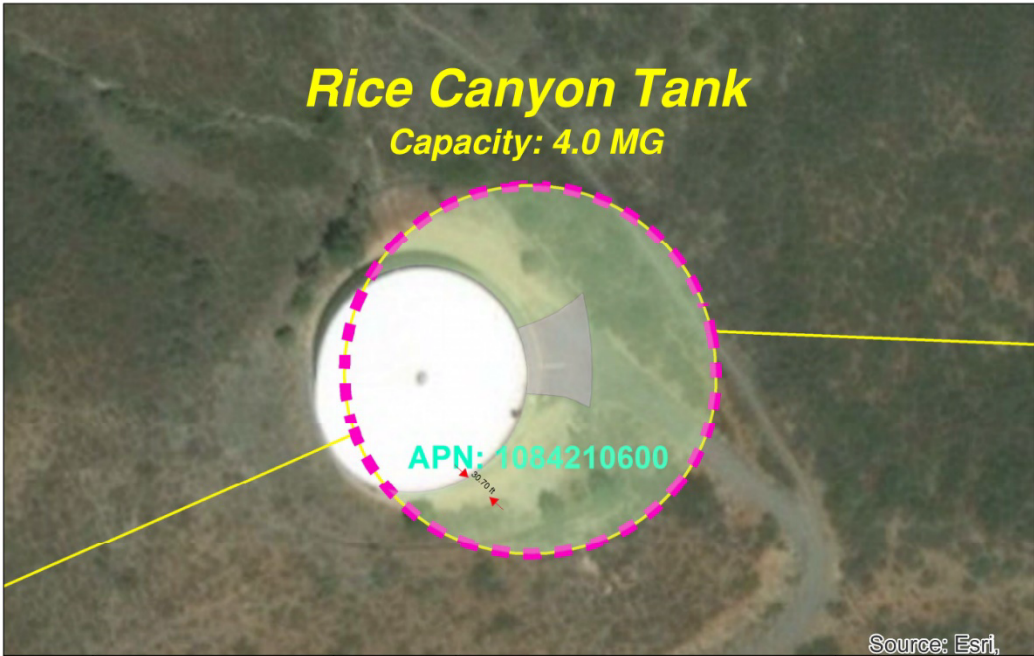




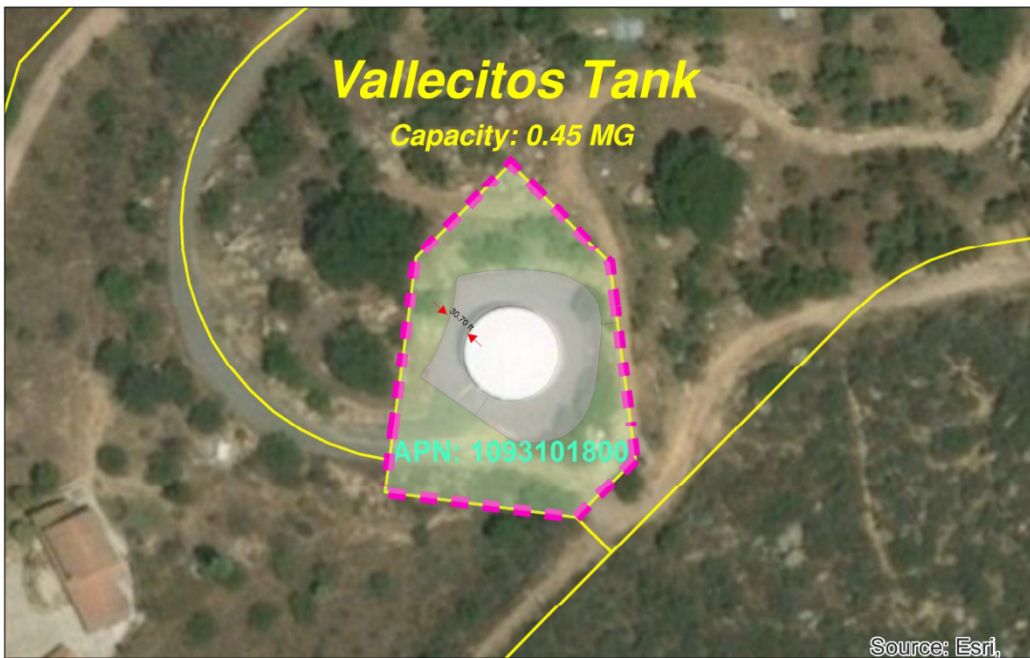
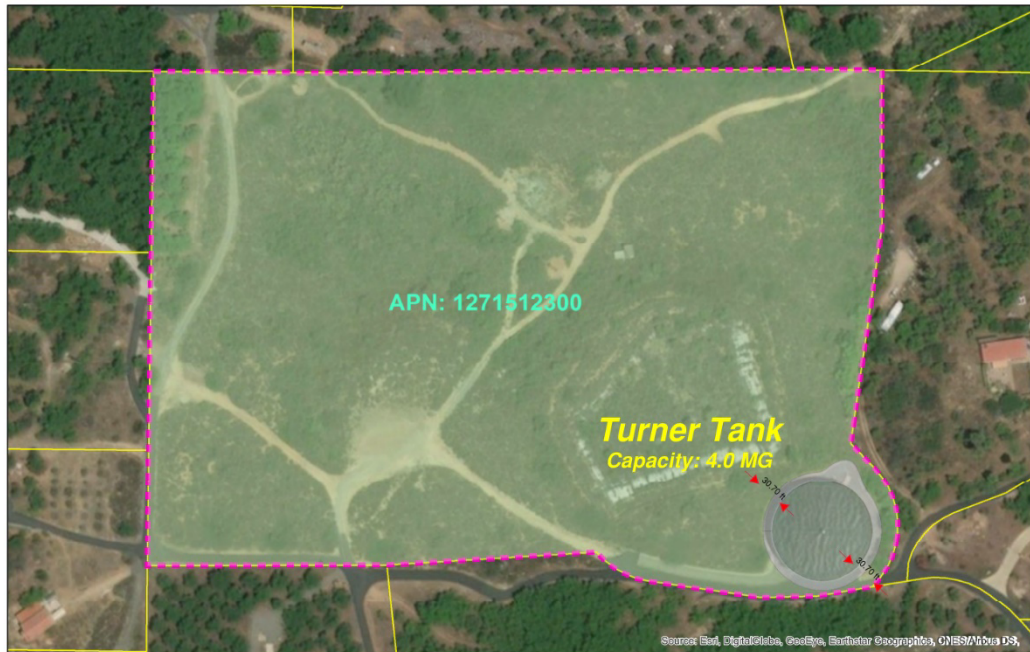




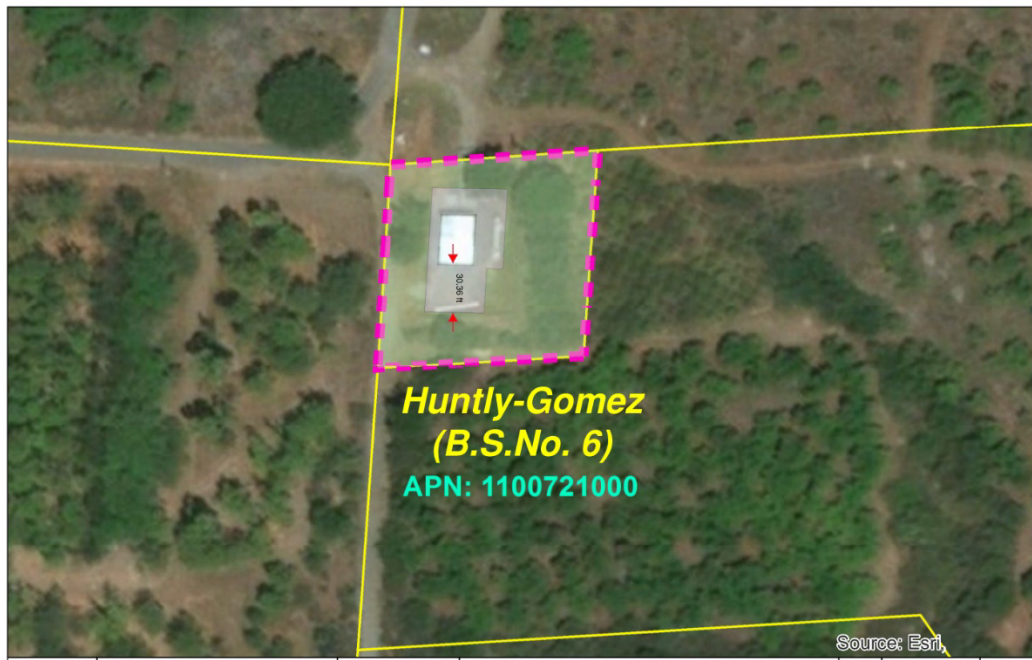
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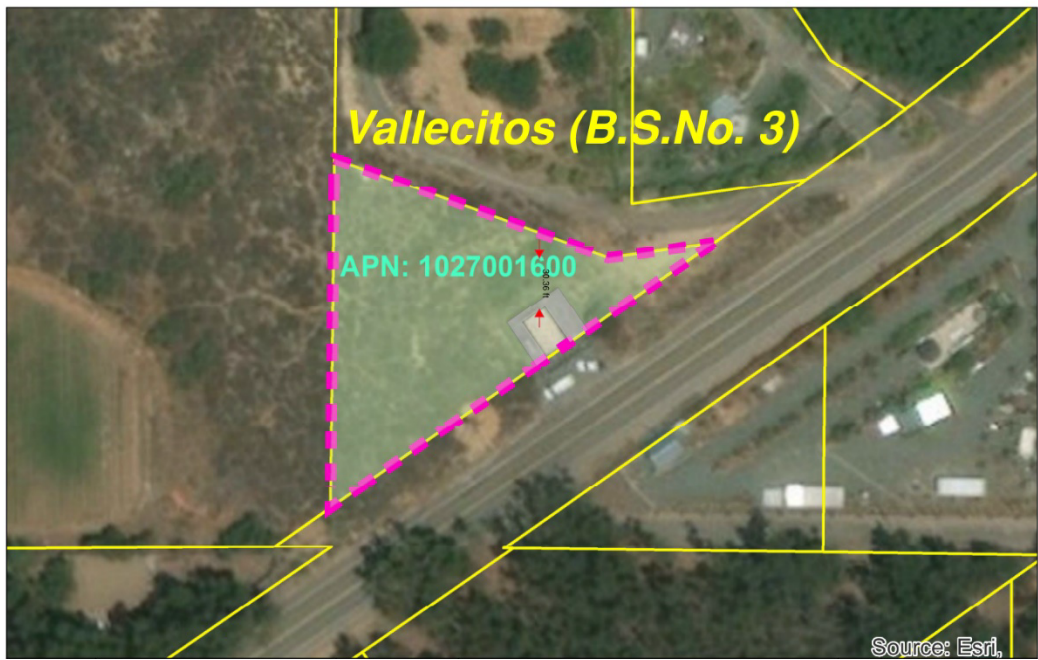
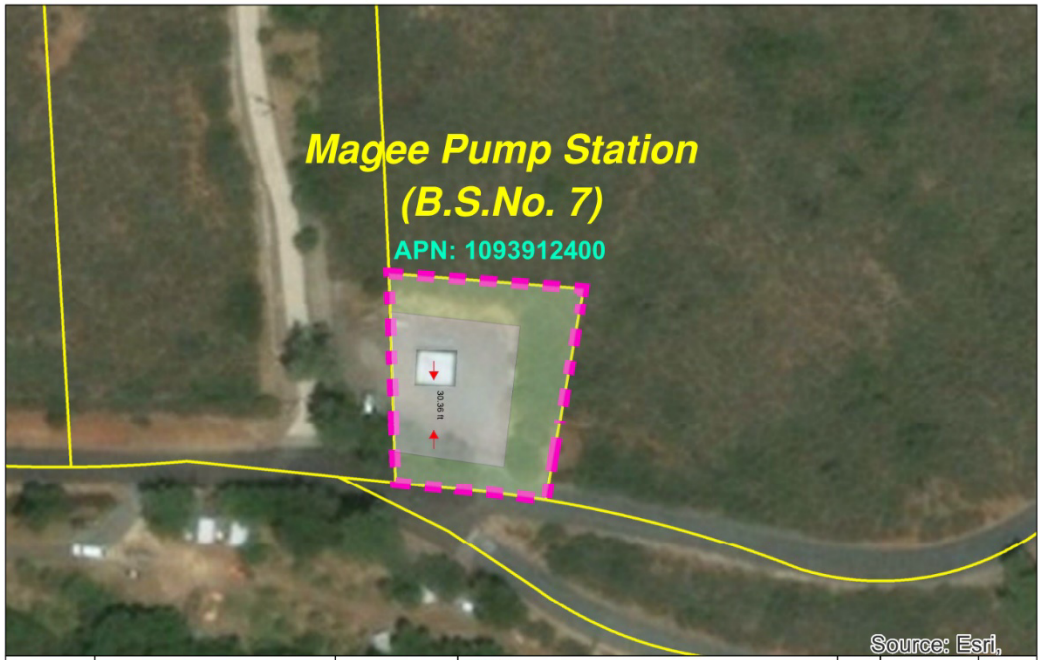


Rice Canyon Tank Access Roads

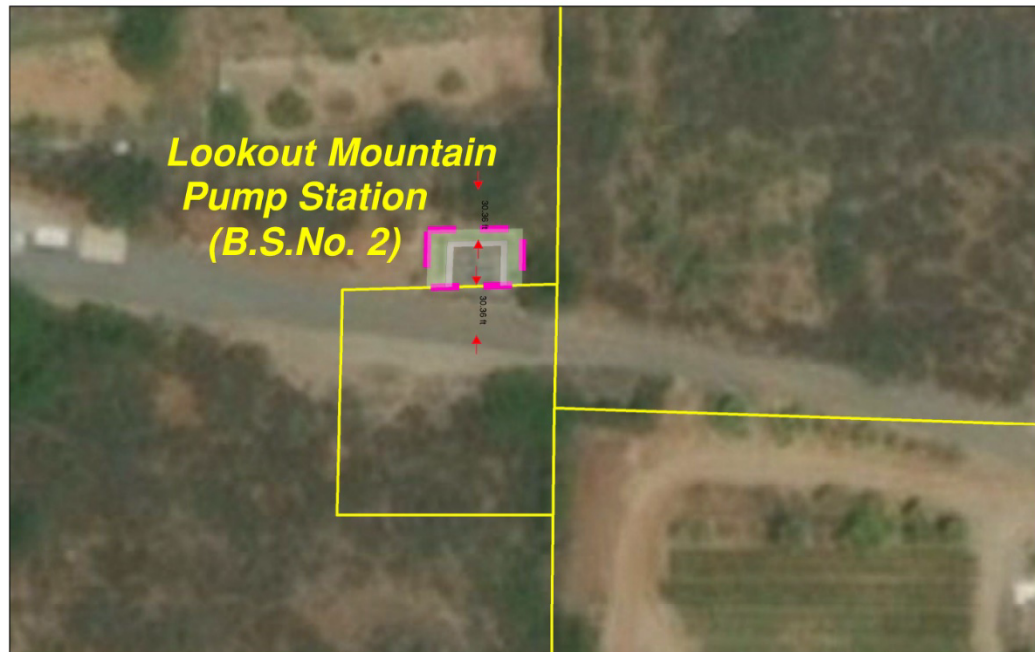


Rainbow Heights Pump Station & Vallecitos PRV Station (B.S. No.1)





Rainbow Hills Pump Station (B.S. No.4)



Morro Pump Station (B.S. No.5)



Beck Rservoir & Adjacent Property



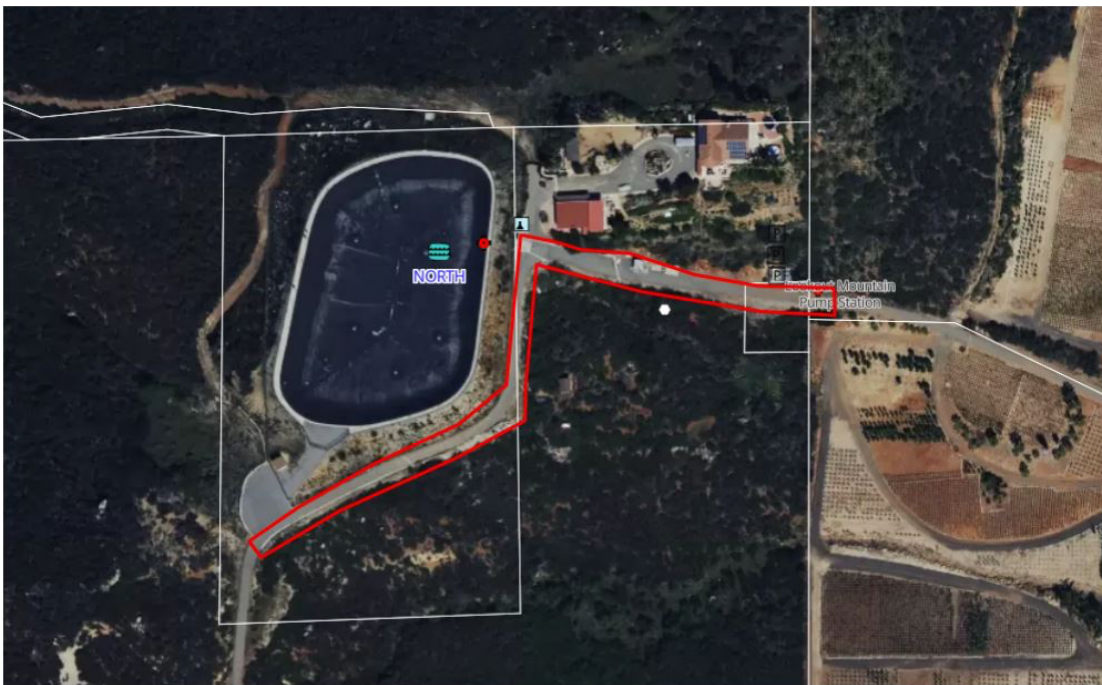
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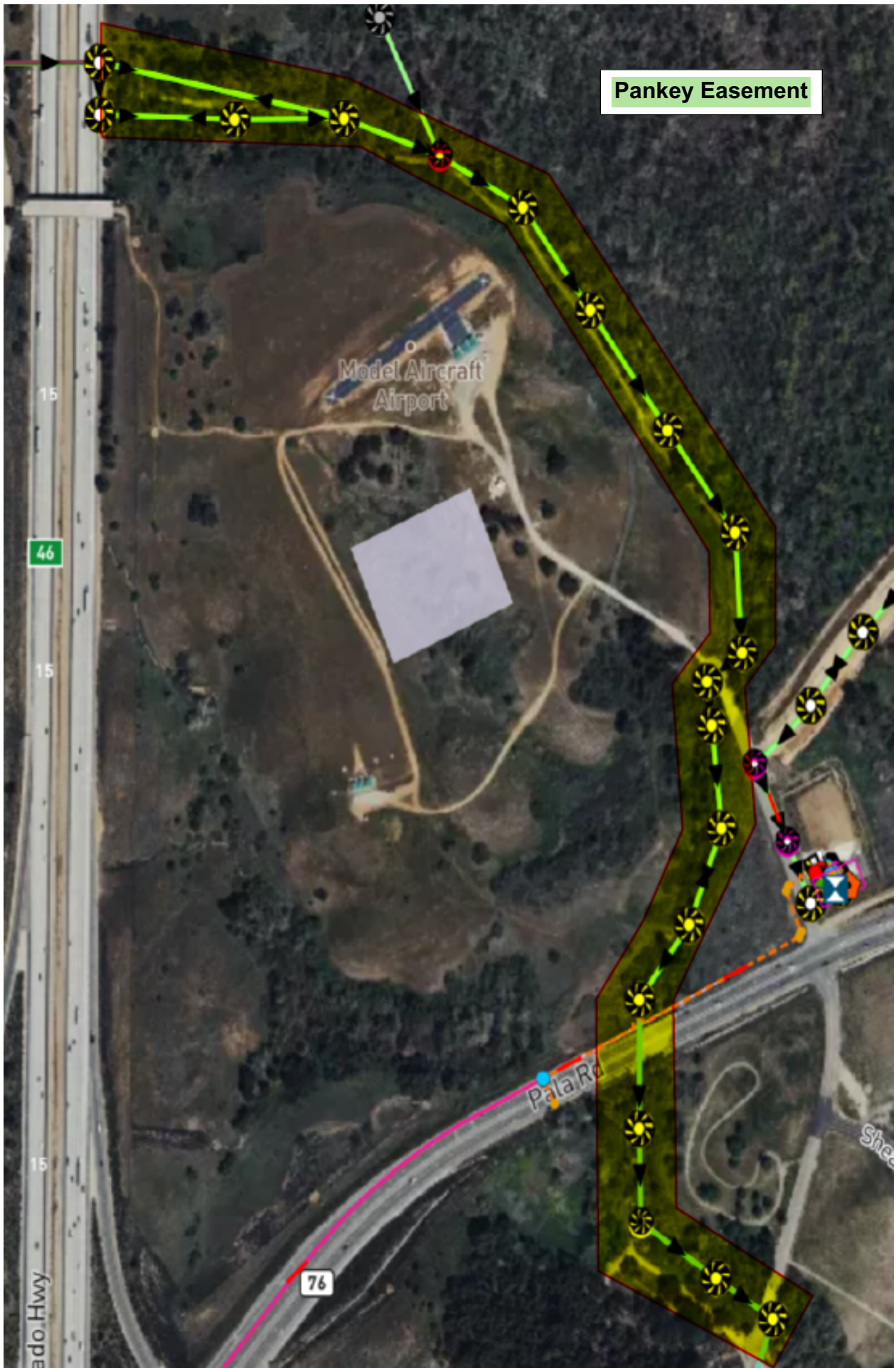


Rainbow Hills Reservoir Access Road



North Reservoir Access Road

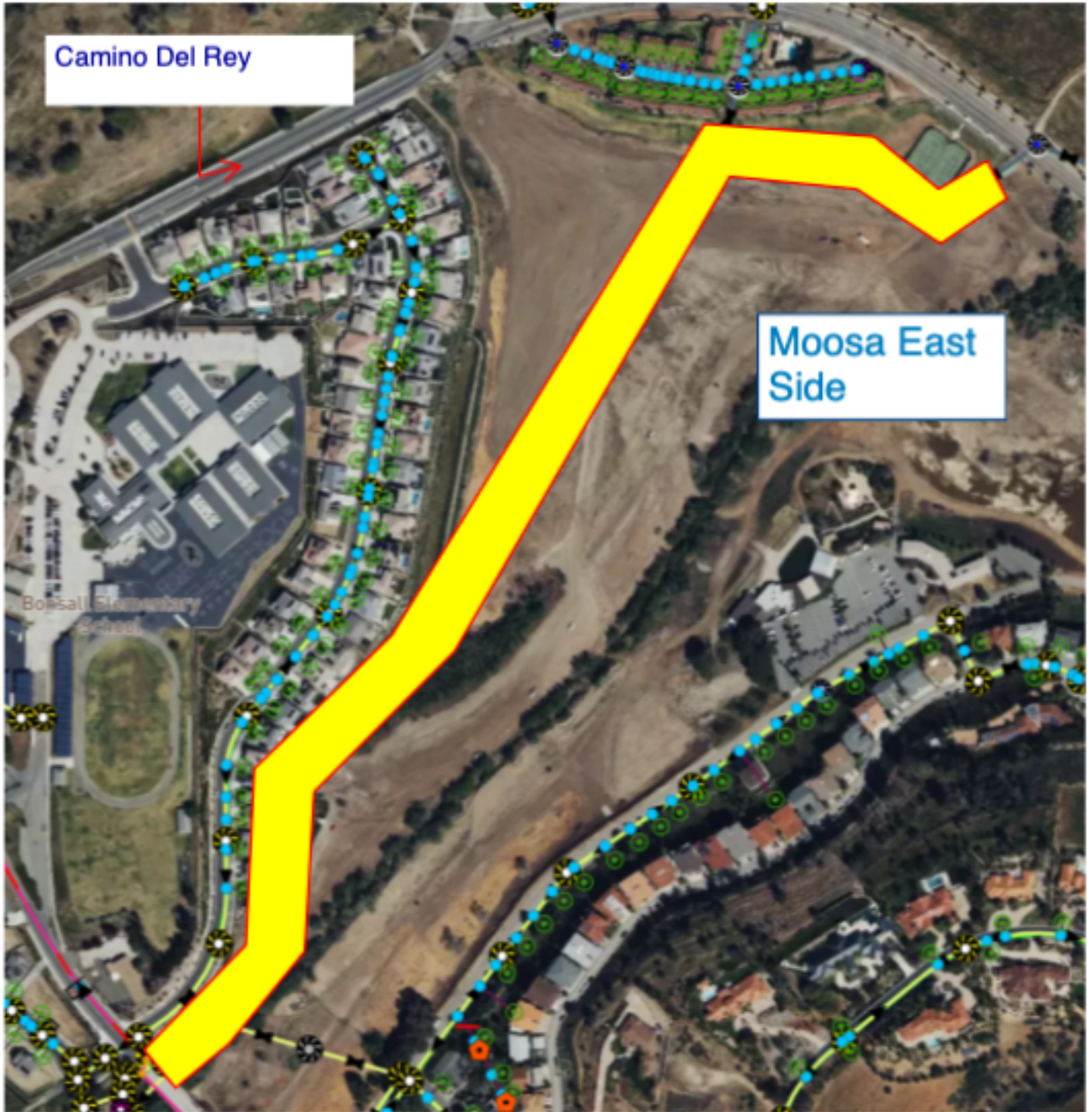


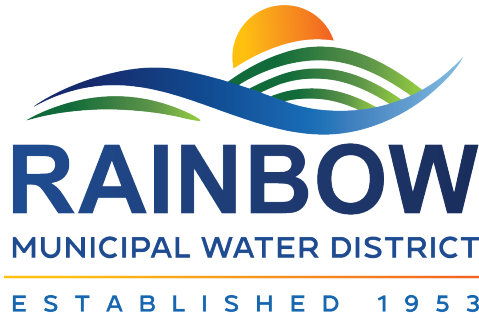


Pankey Easement



Moosa Sewer Line Eastside





RAINBOW MUNICIPAL WATER DISTRICT
3707 OLD HIGHWAY 395
FALLBROOK CA, 92028
(760) 728-1178

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Districtwide Weed Abatement
Contract No. 25-00**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of **Month, 2025** by and between the **RAINBOW MUNICIPAL WATER DISTRICT**, a municipal water district, hereinafter designated as "**DISTRICT**", and _____, a **California corporation [or other type of organization]**, hereinafter designated as "**CONSULTANT**"

RECITALS

- A.** DISTRICT desires to obtain Professional Consulting Services from an independent contractor for the above-named Project.
- B.** CONSULTANT has submitted a proposal to provide professional services for DISTRICT in accordance with the terms set forth in this Agreement.
- C.** DISTRICT desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to DISTRICT as an independent contractor.
- D.** CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.

- 1.1** The professional services to be performed by CONSULTANT shall consist of the following: **Districtwide weed abatement services.** The scope of services is more particularly defined in Exhibit "A", attached and made a part hereof. Any additional engineering services will be requested in writing as set forth in Section 19.

1.2 In performing the services set forth in Exhibit "A", CONSULTANT shall work closely with DISTRICT'S General Manager or Authorized Representative and staff in performing services in accordance with this Agreement in order to receive clarification as to the result that DISTRICT expects to be accomplished by CONSULTANT. The General Manager or Authorized Representative, shall be DISTRICT'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement.

1.3 CONSULTANT represents that its employees have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of DISTRICT. This means CONSULTANT is able to fulfill the requirements of this Agreement. Failure to perform all services required under this Agreement constitutes a material breach of the Agreement.

2. TERM AND TIMING REQUIREMENTS.

2.1 This Agreement will become effective on the date stated above, and will continue for three (3) years and the option of two (2) one-year extension upon agreement of both parties or until terminated as provided under Section 14 of this Agreement.

2.2 CONSULTANT'S performance of services under this Agreement shall be in accordance with the schedule outlined below unless otherwise modified in writing as set forth in Section 19. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by DISTRICT.

2.3 CONSULTANT shall submit all requests for extensions of time for performance in writing to the General Manager or Authorized Representative no later than two (2) business days after the commencement of the cause of any unforeseeable delay beyond CONSULTANT'S control and in all cases prior the date on which performance is due if possible. The General Manager or Authorized Representative shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.

2.4 For all time periods not specifically set forth herein, CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, e-mail or mail.

3. STUDY CRITERIA AND STANDARDS.

3.1 All services shall be performed in accordance with applicable DISTRICT, county, state and federal Codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANTS performing the same or similar work under similar conditions.

4. INDEPENDENT CONTRACTOR.

4.1 CONSULTANT'S relationship to DISTRICT shall be that of an independent contractor in performing all services hereunder. DISTRICT will not exercise any control or direction over the methods by which CONSULTANT shall perform its services and functions. DISTRICT'S sole interest and responsibility is to ensure that the services covered in this Agreement are performed in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of CONSULTANT or its employee(s)

pursuant to this Agreement shall be construed to make CONSULTANT or its employee(s) the agent, employee or servant of DISTRICT. CONSULTANT and its employee(s) are not entitled to receive from DISTRICT vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

- 4.2 CONSULTANT shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment requirements with respect to CONSULTANT or its employee(s). CONSULTANT agrees to indemnify, defend and hold DISTRICT harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) DISTRICT suffers as a result of CONSULTANT'S failure comply with the foregoing.
- 4.3 CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT represents and warrants that CONSULTANT customarily engages in the independently established trade and business of the same nature as the work to be performed under this Agreement.
- 4.4 CONSULTANT shall have no authority, express or implied, to act on behalf of as an agent, or to bind DISTRICT to any obligation whatsoever, unless specifically authorized in writing by the General Manager or Authorized Representative. If CONSULTANT'S services relate to an existing or future DISTRICT construction contract, CONSULTANT shall not communicate directly with, nor in any way direct the actions of, any bidder for that construction contract without the prior written authorization by the General Manager or Authorized Representative.

5. **WORKERS' COMPENSATION INSURANCE.**

- 5.1 By CONSULTANT'S signature hereunder, CONSULTANT certifies that CONSULTANT is aware of the provisions of Section 3700 of the California Labor Code requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and CONSULTANT will comply with such provisions before commencing the performance of the services of this Agreement.

6. **INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.**

- 6.1 All officers, agents, employees and subcontractors, and their agents, who are employed by CONSULTANT to perform services under this Agreement, shall be deemed officers, agents and employees of CONSULTANT. To the extent and in any manner permitted by law, CONSULTANT shall defend, indemnify, and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from any claims, demands, liability from loss, damage, or injury to property or persons, including wrongful death, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, including CONSULTANT'S officers, employees and agents, in connection with the services required by this Agreement, including without limitation, the payment of reasonable attorneys' fees and costs. In no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT'S proportionate percentage of fault, as determined by a court of law. The foregoing indemnity, hold harmless and defense obligation of CONSULTANT shall apply except to the extent the

loss, damage or injury is caused by the sole negligence or willful misconduct of an indemnified party.

- 6.2** To the extent and in any matter permitted by law, CONSULTANT shall defend, indemnify and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from and against any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, related to or incident to a breach of any governmental law or regulations, compliance with which is the responsibility of CONSULTANT, except any violation of law due to the DISTRICT'S negligence or willful misconduct.
- 6.3** CONSULTANT shall defend, at CONSULTANT'S own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT or DISTRICT'S directors, officers, employees, authorized volunteers and agents, and each of them. DISTRICT shall be consulted regarding and approve of the selection of defense counsel.
- 6.4** CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, authorized volunteers and agents, and each of them, in any and all such aforesaid claims, suits, action or other legal proceeding. CONSULTANT shall not agree without DISTRICT'S prior written consent, to any settlement which would require DISTRICT to pay any money or perform some affirmative act, including in the case of intellectual property infringement any payment of money or performance of some affirmative act to continue using CONSULTANT Products.
- 6.5** CONSULTANT'S indemnification, hold harmless and defense obligation shall survive the termination or expiration of this Agreement.

7. LAWS, REGULATIONS AND PERMITS.

- 7.1** CONSULTANT shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the services required by this Agreement. CONSULTANT shall be liable for, and bear all costs resulting from, any violations of the law in connection with services furnished by CONSULTANT, except any violation of the law due to the DISTRICT'S negligence or willful misconduct.
- 7.2** CONSULTANT shall comply with all of the following requirements with respect to any services as a Building/Construction Inspector, Field Soils and Material Tester, or Land Surveyor, as those trades are defined by the California Department of Industrial Relations ("DIR").
- a) CONSULTANT agrees to comply with and require its subcontractors to comply with the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.*, and California Code of Regulations, title 8, section 16000 *et seq.* (collectively, "Prevailing Wage Laws") and any additional applicable California Labor Code provisions related to such work including, without limitation, payroll recordkeeping requirements. CONSULTANT and its subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the DIR for all services described in this Section 7.2 of the Agreement and as required by law. The general prevailing wage determinations can be found on the DIR website at: [www://dir.ca.gov/dslr](http://www.dir.ca.gov/dslr). Copies of the prevailing rate of per diem wages may be accessed at the DISTRICT'S administrative office and shall be made available

upon request. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services described in this Section 7.2 of the Agreement available to interested parties upon request, and shall post and maintain copies at CONSULTANT'S principal place of business and at all sites where services are performed. Penalties for violation of Prevailing Wage Laws may be assessed in accordance with such laws. For example, CONSULTANT shall forfeit, as a penalty to the DISTRICT, Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each workman paid less than stipulated prevailing rates for services performed under this Agreement by CONSULTANT, or any subcontractor under CONSULTANT, in violation of Prevailing Wage Laws.

- b) CONSULTANT and each of its subcontractors shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONSULTANT or subcontractor in connection with the services performed pursuant to this Agreement. Each payroll shall be certified, available for inspection, and copies thereof furnished as prescribed in California Labor Code sections 1771.4(a)(3)(A) and 1776, including any required redactions. CONSULTANT shall keep the DISTRICT informed as to the location of the records and shall be responsible for the compliance with these requirements by all subcontractors. CONSULTANT shall inform the DISTRICT of the location of the payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address. Penalties for noncompliance include a forfeiture of One Hundred Dollars (\$100) per calendar day, or portion thereof, for each worker until strict compliance is effectuated, which may be deducted from any moneys due to CONSULTANT.
- c) Eight (8) hours of work shall constitute a legal day's work. CONSULTANT and any subcontractors shall forfeit, as a penalty to the DISTRICT, Twenty-Five Dollars (\$25) for each worker employed in the execution of services pursuant to this Agreement by CONSULTANT or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any calendar week in violation of the provisions of the California Labor Code, in particular, sections 1810 to 1815, thereof, inclusive, except services performed by employees of CONSULTANT and its subcontractors in excess of eight (8) hours per day at not less than the rates published by the California Department of Industrial Relations.
- d) CONSULTANT'S attention is directed to the provisions of California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning employment of apprentices by CONSULTANT or any of its subcontractors. If applicable to the services performed under the Agreement, CONSULTANT shall comply with such apprenticeship requirements and submit apprentice information to the DISTRICT. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the DIR or the Division of Apprenticeship Standards. Knowing violations of section 1777.5 will result in forfeiture not to exceed One Hundred Dollars (\$100) or Three Hundred Dollars (\$300), depending on the circumstances, for each calendar day of non-compliance pursuant to section 1777.7.

- e) CONSULTANT shall require any subcontractors performing services described in this Section 7.2 of the Agreement to comply with all the above.
- f) CONSULTANT must be, and must require, all subcontractors performing services described in this Section 7.2 to be, registered with and have paid the annual fee to the DIR prior to execution of this Agreement pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. The performance of services described in this Section 7.2 is subject to compliance monitoring and enforcement by the DIR

8. SAFETY.

In carrying out CONSULTANT'S services, CONSULTANT shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the services and the conditions under which the services are to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include instructions in accident prevention for all employees such as safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching & shoring, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries.

9. INSURANCE.

9.1 INSURANCE COVERAGE AND LIMITS.

CONSULTANT shall provide and maintain at all times during the performance of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors. Claims made policies shall not satisfy these insurance requirements unless CONSULTANT notifies DISTRICT and obtains DISTRICT'S prior written consent to the use of such claims made policies.

Coverage – CONSULTANT shall maintain coverage at least as broad as the following:

- a) Coverage for Professional Liability appropriate to CONSULTANT'S profession covering CONSULTANT'S wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
- b) Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- c) Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).

- d) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

Limits - CONSULTANT shall maintain limits no less than the following:

- a) Professional Errors and Omissions Liability - One million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate.

Professional Errors and Omissions Liability is required if CONSULTANT provides or engages in any type of professional services including, but not limited to engineers, architects and construction management.

- b) General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. 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 DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- d) Workers' Compensation insurance with statutory limits as required by California law and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

9.2 REQUIRED PROVISIONS. The insurance policies are to contain, or be endorsed to contain the following provisions:

- a) DISTRICT, its directors, officers, or employees are to be covered as insureds on the CGL and auto policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by on or behalf of CONSULTANT; and with respect to liability arising out of services or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such services or operations. General liability coverage can be provided in the form of an endorsement to CONSULTANT'S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. The Project Name shall also be included.
- b) For any claims related to the services provided hereunder, CONSULTANT'S insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, and authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, or employees shall not contribute to it.

- c) Each insurance policy specified above are to state or be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice (ten (10) days for non-payment of premium) by U.S. mail has been provided to DISTRICT.
- d) In the event any change is made in the insurance carrier, scope of coverage or retroactive date of professional liability coverage required under this Agreement (if applicable), CONSULTANT shall notify DISTRICT prior to any changes.

9.3 PROFESSIONAL WARRANTY. CONSULTANT represents and warrants that: (a) the Professional Services will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements, and (b) the Deliverables will substantially conform to the description and specifications set forth in Exhibit "A" for the specified period after delivery or if none stated, a period of XX days after the date of delivery ("Warranty Period"). To the extent any Professional Services or Deliverables do not substantially conform to the foregoing warranties, CONSULTANT shall promptly re-perform the Professional Services and/or resubmit the Deliverables. If after receiving notice of non-conformity CONSULTANT determines that the Professional Services cannot be performed or the Deliverables cannot reasonably be delivered pursuant to the specifications, within the Warranty Period, DISTRICT may elect to remedy or receive such Professional Services or Deliverable through another contractor and CONSULTANT shall reimburse DISTRICT within 30 days of request by DISTRICT. This warranty will apply only if: (a) no modification, alteration or addition has been made to the Deliverable(s) other than with CONSULTANT'S written consent; and (b) receives written notification of the breach during the applicable Warranty Period.

CONSULTANT warrants that any drawings and specifications, reports or other documents submitted by Contractor to Agency shall be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws.

9.4 WAIVER OF SUBROGATION. CONSULTANT hereby agrees to waive rights of subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of DISTRICT for all services performed by CONSULTANT, its employees, agents and subcontractors.

9.5 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductible or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retention.

9.6 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 acceptable to DISTRICT.

9.7 EVIDENCES OF INSURANCE. Prior to execution of this Agreement, CONSULTANT shall furnish DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by DISTRICT before

services commence. However, failure to obtain the required documents prior the services beginning shall not waive CONSULTANT'S obligation to provide them.

CONSULTANT shall, upon demand of DISTRICT at any time, deliver to DISTRICT complete, certified copies or all required insurance policies, including endorsements, required by this Agreement.

9.8 SUBCONTRACTORS. In the event that CONSULTANT employs subcontractors as part of the services covered by this Agreement, it shall be the CONSULTANT'S responsibility to require and verify that each subcontractor meets the minimum insurance requirements specified in this Agreement.

10. NO CONFLICT OF INTEREST.

If CONSULTANT is providing services related to a DISTRICT project, CONSULTANT shall not be financially interested in any other contract necessary for the undertaking of the project. For the limited purposes of interpreting this section, CONSULTANT shall be deemed a "district officer or employee", and this section shall be interpreted in accordance with California Government Code Section 1090. In the event that CONSULTANT becomes financially interested in any other contract necessary for the undertaking of the project, this Agreement shall be null and void and DISTRICT shall be relieved of any responsibility whatsoever to provide compensation under the terms and conditions of any such contract for those services performed by CONSULTANT.

11. OWNERSHIP OF DOCUMENTS.

All documents, drawings, reports, and specifications, including details, computations, code, scripts, workflows, and other documents, prepared or provided by CONSULTANT under this Agreement shall be the property of DISTRICT. DISTRICT agrees to hold CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the documents and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computations, and other documents, prepared or provided by CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this Project.

12. CONFIDENTIAL INFORMATION.

Any written, printed, graphic, or electronically or magnetically recorded information furnished by DISTRICT for CONSULTANT'S use are the sole property of DISTRICT. CONSULTANT and its employee(s) shall keep this information in the strictest confidence and will not disclose it by any means to any person except with DISTRICT'S prior written approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONSULTANT'S employees, agents, and subcontractors. On termination or expiration of this Agreement, CONSULTANT shall promptly return any such confidential information in its possession to DISTRICT.

13. COMPENSATION.

13.1 For services performed by CONSULTANT in accordance with this Agreement, DISTRICT shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. This is a Time-and-Materials

contract. Overtime work must be authorized by the DISTRICT. The CONSULTANT may request in writing an annual rate increase of up to three percent (3%). Written request must be received a minimum of one month prior to the start of the DISTRICT's fiscal year (July 1). Upon approval, the revised rate shall take effect on the following billing statement. Rate increases to existing Agreements shall only be considered for Agreements longer than a one-year term. Maximum allowable markups will be five percent (5%) on subconsultants and other direct costs (ODC's). **CONSULTANT'S compensation for all services performed in accordance with this Agreement shall not exceed the total contract price of \$ [REDACTED]**. No services shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the General Manager or Authorized Representative. CONSULTANT shall obtain approval from the General Manager or Authorized Representative prior to performing any services that result in incidental expenses to the DISTRICT.

- 13.2** CONSULTANT shall maintain accounting records including the following information:
- a) Names and titles of employees or agents, types of services performed, and times and dates of all services performed in connection with Agreement that is billed on an hourly basis.
 - b) All incidental expenses including reproductions, computer printing, postage, mileage billed at current Internal Revenue Service ("IRS") Rate, and subsistence.
- 13.3** CONSULTANT'S accounting records shall be made available to DISTRICT Accounting Manager, for verification of billings, within a reasonable time of the Accounting Manager's request for inspection.
- 13.4** CONSULTANT shall submit monthly invoices to DISTRICT. DISTRICT will make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the General Manager or Authorized Representative. ***Each application for partial payment shall be accompanied with a Progress Report summarizing the status of the services performed during the period.***
- 13.5** DISTRICT reserves the right to withhold payments for services to cover potential or nonconforming services. Additionally, the DISTRICT may elect not to make a particular payment if any of the following exists:
- a) CONSULTANT with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to DISTRICT.
 - b) CONSULTANT took an action without receiving DISTRICT'S prior approval as required under this Agreement.
 - c) CONSULTANT is in default of a term or condition of this Agreement.
- 13.6** CONSULTANT shall ensure that any report generated under this Agreement shall comply with Government Code Section 7550.

14. TERMINATION OF AGREEMENT.

- 14.1 TERMINATION FOR CAUSE.** If DISTRICT ("demanding party") has a good faith belief that CONSULTANT is not complying with the terms of this Agreement or is deemed non-responsive or non-responsible, DISTRICT will give written notice of the default (with reasonable specificity) to CONSULTANT and demand the default to be cured within ten (10) calendar days of the notice. Responsive is defined as conforming with material requirements and responsible is defined as possessing the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract.

If CONSULTANT fails to cure the default within ten (10) calendar days of the notice, or if more than ten (10) calendar days are reasonably required to cure the default, and CONSULTANT fails to give adequate assurance and due performance within ten (10) calendar days of the notice, DISTRICT may terminate this Agreement upon written notice to CONSULTANT. In the event of a material breach of any representation or term of this Agreement by CONSULTANT that is not curable or results in a threat to health or safety, DISTRICT may immediately terminate this Agreement by providing written notice and without a cure period.

Upon termination, DISTRICT will pay CONSULTANT for any services completed up to and including the date of termination of this Agreement, in accordance with the compensation Section 13. DISTRICT will be required to compensate CONSULTANT only for services performed in accordance with the Agreement up to and including the date of termination. DISTRICT shall not pay for loss profit or overhead/extended overhead fees and at its sole discretion may deduct fees for any non-conforming or non-complying work.

- 14.2 TERMINATION FOR CONVENIENCE.** DISTRICT will have the express right to terminate this Agreement at any time without cause by giving seven (7) consecutive days advanced written notice to CONSULTANT. This Agreement shall be automatically terminated without further action of any party upon expiration of the seven (7) day period.

Promptly upon receipt of any termination notice from the DISTRICT, CONSULTANT shall cease all further work and services, except as otherwise expressly directed by the DISTRICT in the written termination notice. In the event the DISTRICT exercises its termination right, CONSULTANT shall be paid only for work and services performed and approved by the DISTRICT to the date this Agreement terminates. The DISTRICT will have the express right to withhold any payment otherwise due CONSULTANT to correct any labor or materials determined to be defective by the DISTRICT at the time of termination.

All plans, maps, drawings, reports, designs, or other writings of any type or nature prepared by CONSULTANT as a result of this Agreement shall become and remain the sole property of the DISTRICT. All such writings shall be provided to the DISTRICT not later than seven (7) consecutive days after termination of this Contract for any reason. All labor, supplies, work and materials provided by CONSULTANT in conjunction with this Agreement will become and remain the sole property of the DISTRICT.

15. ASSIGNMENT AND DELEGATION.

- 15.1** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated or subcontracted, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the

express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment shall not be deemed to be consent to any subsequent assignment.

- 15.2 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. **AUDIT DISCLOSURE.**

Pursuant to Government Code section 8546.7, if the Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment under the Agreement. CONSULTANT shall cooperate with any such examination or audit at no cost to DISTRICT.

17. **ENTIRE AGREEMENT.**

This Agreement, and the attached Exhibit "A", comprise the entire integrated understanding between DISTRICT and CONSULTANT concerning the services to be performed pursuant to this Agreement and supersedes all prior negotiations, representations, or agreements whether express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms herein. In the event of any conflict between the provisions of the Agreement and the Exhibit(s), the terms of the Agreement shall prevail.

18. **INTERPRETATION OF THE AGREEMENT.**

- 18.1 The interpretation, validity, and enforcement (including, without limitation, provisions concerning limitations of actions) of the Agreement shall be governed by and construed under the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule requiring construction against the draftsman. The Agreement does not limit any other rights or remedies available to DISTRICT.

- 18.2 CONSULTANT shall be responsible for complying with all applicable local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

- 18.3 Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 18.4 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake of otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion.

19. **AGREEMENT MODIFICATION.**

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

20. DISPUTE RESOLUTION.

Upon the written demand of either party, any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, shall be first submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 *et seq.* if applicable, and prior to the commencement of any legal action or other proceeding. Any mediation shall take place in the State of California, County of San Diego, and shall be concluded within sixty (60) days of the written demand, unless such time is extended by mutual written consent of the parties. Nothing herein waives or excuses compliance with the California Government Claims Act.

In the event mediation has not been successfully concluded within the time allowed, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). The use of arbitration shall allow full discovery by all parties associated with the dispute or claim. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court.

21. JURISDICTION, FORUM AND VENUE.

Except as otherwise required by Section 20 of this Agreement concerning dispute resolution, the proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, northern district of the County of San Diego. DISTRICT and CONSULTANT agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. DISTRICT and CONSULTANT hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this Agreement whether on grounds of inconvenient forum or otherwise.

22. MAILING ADDRESSES.

Notices given pursuant to this Agreement shall be deemed communicated as of the earlier of the day of receipt or the fifth (5th) calendar day after deposit in the United States mail, postage prepaid, and addressed to the following:

DISTRICT: Rainbow Municipal Water District

3707 Old Hwy 395
Fallbrook, CA 92028
Phone: (760) 728-1178

CONSULTANT: Firm: _____
Address: _____
Address: _____
Phone: _____
Email: _____

Notices delivered personally will be deemed communicated as of actual receipt.

23. SIGNATURES.

Each party represents that the individual executing this Agreement on its behalf has the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of such party.

24. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

25. ATTORNEY'S FEES.

In the event of a dispute arising under terms of this Agreement, it is agreed that the prevailing party may be awarded reasonable attorneys' fees and actual costs.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed.

CONSULTANT _____

RAINBOW MUNICIPAL WATER DISTRICT

By: _____
CONSULTANT (PRINT NAME / TITLE)

By: _____
Jake Wiley, General Manager

AS-NEEDED CONTRACT EXPENDITURES REPORT

January 2025

CONTRACT INFO	FUND SOURCE	ASSIGN. NO.	STATUS	DATED	DESCRIPTION	CONTRACT AMOUNT	AUTHORIZED ASSIGNMENT	INVOICED TO DATE
Title: On-Call Civil Engineering Services, PSA #22-25 Firm: Ardurra Expires: 11/2/25 CCO:								
CONTRACT AMOUNT:						\$ 150,000		
		2023-__						
					Unspecified		\$ 150,000.00	\$ -
TOTALS:						\$ 150,000	\$ 150,000.00	\$ -
Title: On-Call Civil Engineering Services, PSA #22-26 Firm: Dexter Wilson Eng. Expires: 11/2/25 CCO:								
CONTRACT AMOUNT:						\$ 150,000.00		
		2023-__						
					Unspecified		\$ 150,000.00	
TOTALS:						\$ 150,000	\$ 150,000.00	\$ -
Title: On-Call Civil Engineering Services, PSA #22-27 Firm: Harris & Assoc. Expires: 11/2/25 CCO:								
CONTRACT AMOUNT:						\$ 150,000		
		2023-__						
					Unspecified		\$ 150,000.00	
TOTALS:						\$ 150,000	\$ 150,000.00	\$ -
Title: On-Call Civil Engineering Services, PSA #22-28 Firm: Water Works Engineers Expires: 11/2/25 CCO:								
CONTRACT AMOUNT:						\$ 150,000		
		2023-__						
					Unspecified		\$ 150,000.00	\$ -
TOTALS:						\$ 150,000	\$ 150,000.00	\$ -
Title: On-Call Real Estate Services, PSA #22-29 Firm: Anderson & Brabant Expires: 11/3/25 CCO:								
CONTRACT AMOUNT:						\$ 50,000		
		2023-__						
					Unspecified		\$ 50,000.00	\$ -
TOTALS:						\$ 50,000	\$ 50,000.00	\$ -

AS-NEEDED CONTRACT EXPENDITURES REPORT

January 2025

CONTRACT INFO	FUND SOURCE	ASSIGN. NO.	STATUS	DATED	DESCRIPTION	CONTRACT AMOUNT	AUTHORIZED ASSIGNMENT	INVOICED TO DATE
Title: On-Call Real Estate Services, PSA #22-30 Firm: Epic Land Solutions Expires: 11/3/25 CCO:								
CONTRACT AMOUNT:						\$ 50,000		
	Non CIP	2023-01	Closed	2/13/23	Bonsall Reservoir - Appraisal for Rental & Sale of Property. Beck Reservoir - Apparials for Sale of Property.		\$ 7,000.00	\$ 7,000.00
					Unspecified		\$ 43,000.00	\$ -
TOTALS:						\$ 50,000	\$ 7,000.00	\$ 7,000.00
Title: On-Call Land Surveying Services, PSA #22-33 Firm: GIS Surveyors, Inc. (GSI) Expires: 1/3/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	Non-CIP	2024-01	Closed	3/28/24	Bonsall Reservoir Staking		\$ 4,840.00	\$ 4,825.00
					Unspecified		\$ 95,160.00	\$ -
TOTALS:						\$ 100,000	\$ 4,840.00	\$ 4,825.00
Title: On-Call Land Surveying Services, PSA #22-34 Firm: KDM Meridian Expires: 1/3/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	CIP	2023-01	Closed	2/9/23	Live Oak Park Bridge - Staking of 8" and 16" Water main.		\$ 7,480.00	\$ 6,043.00
	Non-CIP	2024-02	Closed	2/9/24	Kendall Farms Staking		\$ 10,000.00	\$ 10,000.00
	CIP	2024-03	Open	4/25/24	Dentro De Lomas Pump Station Easement Staking		\$ 7,500.00	\$ 5,880.00
					Unspecified		\$ 75,020.00	\$ -
TOTALS:						\$ 100,000	\$ 24,980.00	\$ 21,923.00
Title: On-Call Land Surveying Services, PSA #22-35 Firm: Right-of-Way Eng. Expires: 1/3/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	Non-CIP	2023-01	Closed	2/1/23	Genista Place - Staking of existing utility easements.		\$ 2,860.00	\$ 2,450.00
	Non-CIP	2023-02	Closed	2/6/23	Via Monserate/Ramona - Staking of existing utility easements.		\$ 5,550.00	\$ 2,692.34
	Non-CIP	2023-03	Closed	2/28/23	Via Mariposa - Staking of existing easment.		\$ 2,970.00	\$ 2,545.00
	Non-CIP	2023-04	Closed	8/9/23	Maravilla Lane - Staking of existing pipeline.		\$ 6,750.00	\$ 5,908.70
	CIP	2024-05A	Open	8/7/24	Camino Del Ray Water Line Survey (PN: 600026)		\$ 31,980.00	\$ 29,395.00
	CIP	2024-06	Open	8/27/24	FPUD Olive Hill Lane to RMWD Olive Hill Lane (PN: 600092)		\$ 3,380.00	\$ 3,352.48
	CIP	2024-07A	Open	10/24/24	FPUD Maravilla Drive to RMWD Maravilla Drive (PN: 600091)		\$ 10,190.00	\$ 4,910.00
					Unspecified		\$ 36,320.00	\$ -
TOTALS:						\$ 100,000	\$ 63,680.00	\$ 51,253.52
Title: On-Call Geotechnical Services, PSA #22-36 Firm: Atlas Tech Consultants Expires: 1/6/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	Non-CIP	2023-01	Open	2/21/24	Morro Tank Movement		\$ 42,550.00	\$ 17,331.50
					Unspecified		\$ 57,450.00	\$ -
TOTALS:						\$ 100,000	\$ 42,550.00	\$ 17,331.50

AS-NEEDED CONTRACT EXPENDITURES REPORT

January 2025

CONTRACT INFO	FUND SOURCE	ASSIGN. NO.	STATUS	DATED	DESCRIPTION	CONTRACT AMOUNT	AUTHORIZED ASSIGNMENT	INVOICED TO DATE
Title: On-Call Geotechnical Services, PSA #22-37 Firm: Leighton Consultants Expires: 1/6/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	600013	2024-01A	Open	10/28/24	West Lilac, Rancho Amigos, & Dentro Pump Stations		\$ 84,177.00	\$ 63,105.02
					Unspecified		\$ 15,823.00	\$ -
TOTALS:						\$ 100,000	\$ 84,177.00	\$ 63,105.02
Title: On-Call Geotechnical Services, PSA #22-38 Firm: Ninyo & Moore Expires: 1/6/2026 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	CIP	2023-01	Closed	4/4/23	Sumac Communication Tower Photovoltaic & Battery System -		\$ 9,732.00	\$ 562.50
					Unspecified		\$ 90,268.00	\$ 562.50
TOTALS:						\$ 100,000	\$ 9,732.00	\$ 562.50
Title: On-Call Construction Management & Insp. Services, PSA #23-04 Firm: Acroscopic Expires: 5/23/26 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	CIP	2024-01	Open	3/22/24	District wide Construction Management Services		\$ 100,000.00	\$ 41,212.50
					Unspecified		\$ -	\$ -
TOTALS:						\$ 100,000.00	\$ 100,000.00	\$ 41,212.50
Title: On-Call Construction Management & Insp. Services, PSA #23-05 Firm: Ardurra Expires: 5/23/26 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
					Unspecified		\$ 100,000.00	\$ -
TOTALS:						\$ 100,000	\$ 100,000.00	\$ -

AS-NEEDED CONTRACT EXPENDITURES REPORT

January 2025

CONTRACT INFO	FUND SOURCE	ASSIGN. NO.	STATUS	DATED	DESCRIPTION	CONTRACT AMOUNT	AUTHORIZED ASSIGNMENT	INVOICED TO DATE
Title: On-Call Construction Management & Insp. Services, PSA #23-06 Firm: Valley CM Expires: 5/23/26 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	Non-CIP	2023-01	Open	8/2/23	District staff support with coordination & logistics in finalizing the Standard Specifications and Drawings.		\$ 18,500.00	\$ 12,765.00
	Both	2023-02A	Open	8/4/23	Inspection support services on various District projects.		\$ 81,500.00	\$ 70,914.00
					Unspecified		\$ -	\$ -
					TOTALS:	\$ 100,000	\$ 100,000.00	\$ 83,679.00
Title: On-Call Environmental Services, PSA #23-07 Firm: Helix Expires: 5/23/26 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
	Non-CIP	2023-01	Closed	8/4/23	Nesting bird surveys for upcoming tree trimming at District headquarters.		\$ 2,025.00	\$ 652.50
	600013	2023-02	Open	8/17/23	Environmental compliance support for the West Lilac, Rancho Amigas, & Dentro de Lomas Pump Station project.		\$ 6,240.00	\$ 5,880.00
	530001	2023-03	Open	10/24/23	LS-1 Replacement environmental compliance support services		\$ 43,711.00	\$ 31,801.69
	600013	2024-04	Open	1/12/24	Pump Stations Bird Surveys		\$ 3,200.00	\$ 3,151.30
	Non-CIP	2024-05A	Open	3/19/24	Bird Nesting Surveys Canonita Tank & HQ B-Plant		\$ 3,155.01	\$ 3,866.78
	Non-CIP	2024-06	Open	4/18/24	Environmental Beck Reservoir		\$ 4,262.00	\$ 2,403.14
	Various CIP	2024-07	Open	8/1/24	Year 1 CIP Categorical Exemptions		\$ 15,290.00	\$ 3,565.00
					Unspecified		\$ 22,116.99	\$ -
					TOTALS:	\$ 100,000	\$ 77,883.01	\$ 51,320.41
Title: On-Call Environmental Services, PSA #23-08 Firm: RECON Expires: 5/23/26 CCO:								
CONTRACT AMOUNT:						\$ 100,000		
		2024-____			Unspecified		\$ 100,000.00	\$ -
					TOTALS:	\$ 100,000	\$ 100,000.00	\$ -