

**Request for Proposal**  
**Construction Management Services**

ALTERNATE RAW WATER TRANSMISSION LINE (ARWTL)  
FEMA-1952-DR-CA PW 79 and Cal OES ID: 059-91099

The Submittal Deadline is:  
December 12, 2016, 2:00 PM



Trabuco Canyon Water District  
32003 Dove Canyon Drive  
Trabuco Canyon, CA 92679

## **Introduction**

This scope of work outlines the minimum tasks required by Consultant to provide Construction Management (CM) services for the ARTWL Project (Project). The Project is a major component of TCWD's existing raw water transmission line that supplies up to 5 million gallons per day of untreated raw water to TCWD's Dimension Water Treatment Plant in the City of Lake Forest. The Project consists of the construction of approximately 4,560 feet of 16-inch pipeline, the demolition of select portions of the existing pipeline, and connection to the existing pipeline. The Project is funded by grant programs from FEMA and Cal OES and as such must follow the grant program requirements for construction and administration.

## **Reference Documents**

Electronic copies of the Initial Study and Mitigated Negative Declaration, the Notice Inviting Bids, Bid Documents, list of plan holders, list of attendees at mandatory pre-bid meeting, and addendums can be found at [www.crplanwell.com](http://www.crplanwell.com) or by calling the Planwell Administrator at (714) 424-8525 or through [www.tcwd.ca.gov](http://www.tcwd.ca.gov).

## **Scope of Services**

The Consultant will provide the staff and resources necessary to perform professional CM services, inspections and testing as required for the Project and in compliance with the California Department of Industrial Relations prevailing wage requirements and shall include, at a minimum, the following:

### **Task 1: Pre-Construction Services**

#### **1.1 Project Kick-Off Meeting and CM Plan**

At the commencement of the Project, the Consultant shall attend a "kick-off" meeting with TCWD and the Design Engineer to review the scope of work and present Consultant's Construction Management Plan (CM Plan) that includes procedures, methods, and overall plan for the Construction Management of the Project. The Consultant will be prepared to present its CM Plan including all templates and formats proposed for administering the construction contract (including submittal and RFI tracking, daily inspection reports, electronic document controls system, change order and other forms, and meeting minutes format). The CM Plan shall include procedures and methods for construction work, offsite fabrication of equipment and materials, and startup and commissioning activities. The CM Plan shall include a communication protocol for all Project stakeholders. Plan shall include Quality Assurance/Quality Control (QA/QC) measures to ensure that Project is delivered in accordance with the contract documents and CM's Scope of Work.

CM Plan shall include specifics of the process and method for assisting TCWD with the proper documentation and format required or expected of a Cal OES/FEMA funded project (see Task 2), including submittal of reimbursement requests of Cal OES/FEMA.

Consultant will submit a draft CM Plan for review and comment by TCWD before the pre-construction meeting and issue final plan within two weeks following pre-construction meeting.

## **1.2 Constructability Review**

The Consultant shall perform a constructability review on the plans and specifications for the project. The Consultant shall meet with TCWD and the Design Engineer to provide their evaluations and comments to the current design. Constructability review is limited to the proposed alignment, detailed design drawings, geotechnical report review, specifications, and CEQA and NEPA requirements to be implemented during construction.

## **1.3 Pre-Construction Meeting**

Consultant shall facilitate a pre-construction meeting with the Contractor, subcontractors, TCWD operations, OC Parks, IRWD, the City of Lake Forest, SCE, and environmental consultant. The pre-construction meeting will include as a minimum the following:

- permitting requirements and coordination
- other utility constraints and requirements
- specification requirements
- submittal and RFI and RFC requirements
- construction schedule format, submittal, review, and approval
- requests for shutdown, connections, and other operational issues
- change orders and field changes
- schedule of values and progress payment submittals
- field tests
- environmental requirements and constraints

Consultant shall prepare meeting agenda for TCWD review and approval. Consultant shall coordinate meeting invites with all attendees and shall prepare and distribute meeting minutes to all attendees.

## **Task 2: Construction Manager/Resident Engineer, Inspectors and Testing Services**

The Consultant shall provide full time project inspection services, as required, to perform inspection, special inspection, and materials testing services as necessary for the Project to ensure conformance with the plans and specifications throughout construction. The Consultant will review and evaluate the tests and make appropriate recommendations to the Contractor and TCWD throughout the construction duration and ensure continued conformance and compliance with the plans and specifications. Sufficient coverage of these personnel is required to ensure the Contractor's conformance to the approved plans, specifications, and permit requirements throughout the Construction.

Additionally, the Consultant shall provide a part time Construction Manager/Resident engineer to manage project, costs, scheduling, and Cal OES/FEMA support and assistance as required. Support services include assisting TCWD to prepare and process Cal OES and FEMA required documentation related to the Project including the preparation of grant submittal documents.

Sub-tasks include:

## **2.1 Project Meetings**

The Consultant shall facilitate and coordinate meetings as required by Project or necessary, including:

- Weekly progress/scheduling meeting with applicable stakeholders
- shutdown and tie-in/connection meetings
- progress pay and schedule

## **2.2 Project Correspondence and Communication**

The Consultant will establish a communication protocol with all Project stakeholders at the commencement of the Project. The Consultant shall provide written correspondence to the contractor/stakeholders as necessary to manage the Project in an efficient and timely manner and in accordance with the contract documents and in coordination with TCWD. The Consultant shall prepare meeting agendas (standard format) in advance of the meeting and transmit meeting minutes to all attendees within three business days, as applicable.

## **2.3 SWPPP, BMP's, NPDES**

The Consultant shall inspect, observe, and monitor the Contractor's implementation of the NPDES requirements including SWPPP and BMP's. The Consultant shall prepare and file the required pre and post storm event inspection paperwork.

## **2.4 Electronic Document Control System**

The Consultant shall use and maintain an electronic document control system to manage and track all Project documentation including, at a minimum, contract plans and specifications, correspondence, meeting minutes, progress payments, submittals, shop drawings, requests for information (RFIs), requests for clarifications (RFCs), potential change orders, change orders, field memos, daily reports and photographs. The document control system shall use standard and off the shelf software, be accessible by TCWD, the Design Engineer, and the contractor. The document control system shall be capable of generating logs for submittals, RFIs and change orders. Upon completion of the Project, all documentation uploaded to the document control system shall be neatly organized in a project archive with a standard and uniform file naming convention, and shall be transmitted in a format acceptable to TCWD. The Consultant shall include provisions in its proposal to provide two separate training sessions on the proposed document control system to Project staff.

## **2.5 Submittal Review**

The Consultant shall coordinate the submittal/shop drawing review process and route all transmittals to the appropriate reviewer (e.g., Construction Manager, Design Engineer, TCWD, etc.). The Consultant will maintain a log to track the status and review action of all submittals. The Consultant will ensure that all submittals required by the contract documents have been submitted by the contractor. Included in this task are the Consultants review of tie-in/connection plans and schedules.

The Consultant is responsible for reviewing the contract documents and identifying the submittals for which it is responsible for reviewing (e.g., schedule of values, schedule updates, submittal schedule, etc.). The Consultant will maintain a neatly organized electronic system with PDF copies of all submittals using a standard and uniform file naming convention.

**2.6 Requests for Information (RFIs)/Requests for Clarification (RFCs)**

The Consultant shall coordinate the RFI/RFC review process and route all RFIs/RFCs to the appropriate reviewer (e.g., Construction Manager, Design Engineer, TCWD, etc.) The Consultant shall maintain a log to track the status of all RFIs and RFCs. The Consultant shall maintain a neatly organized electronic system with PDF copies of all RFIs/RFCs.

**2.7 Change Orders**

The Consultant shall manage the change order process and review, negotiate and respond to proposed change orders from the contractor. The Consultant will implement a proactive approach to minimize change orders to the extent possible. Responses to change order requests shall be provided in accordance with the contract documents. All negotiated change orders shall be reviewed and approved by TCWD.

Documentation related to all change orders for time extensions and additional costs whether initiated or facilitated by the Contractor or by TCWD shall be prepared for submittal to Cal OES/FEMA throughout the construction process.

**2.8 Schedule Review**

The Consultant shall be principally responsible for reviewing and approving the contractor's Baseline Schedule, weekly look-ahead schedules, monthly schedule updates and time impact analyses (TIAs). The Consultant shall submit its schedule review procedures to TCWD's Project Manager for review and approval.

**2.9 Inspection and Special Inspection**

The Consultant shall provide inspection and special inspection services for all work performed by the contractor to ensure compliance with the contract documents, all permits, CEQA, NEPA, and other special requirements. The Consultant shall provide inspection and special inspection personnel with relevant experience and certifications for the work being performed. The Consultant shall coordinate with the contractor and the Design Engineer to schedule the special inspections and inspections by other agencies. The Consultant shall document the contractor's daily activities with a daily construction report using the electronic document control system. Daily construction reports shall be filed each day. The Consultant will take color digital photographs of construction activities on a daily basis. Daily construction reports and progress photos shall be neatly organized and incorporated into the Consultant's electronic filing system and periodically saved and backed up to a separate electronic storage device kept in a secure and safe location at consultant's office.

**2.10 Materials Testing/Inspection**

The Consultant shall provide and schedule materials testing and inspection services as required by the contract documents. The Consultant's resident/field engineers will accompany and oversee all inspection activities to ensure they have been properly and thoroughly performed and correctly documented. The

Consultant shall develop and maintain a log of inspection and materials testing services to document compliance with the contract documents and construction permits.

#### **2.11 Schedule of Values**

The Consultant shall review and approve the Schedule of Values submitted by the contractor at the commencement of the Project. The Consultant will ensure that the Schedule of Values contains sufficient detail to track the progress of the work and to facilitate review and approval of the contractor's monthly progress payment applications. The Consultant will confirm that the Schedule of Values has been correctly used to cost load the Baseline Schedule.

#### **2.12 Progress Payments**

The Consultant shall review and approve the contractor's monthly progress payment requests. The Consultant shall ensure that all supporting documentation and releases have been provided before transmitting the pay application to TCWD's Project Manager for review and approval.

#### **2.13 Monthly Progress Report**

The Consultant shall prepare a Monthly Progress Report summarizing the key project parameters for the reporting period. The Report shall include, at a minimum, schedule, budget, RFI, submittal and change order status; potential claims; a description of key construction activities performed; activities scheduled for the next reporting period; color photographs; a summary of key Project issues; and items that need to be addressed with Cal OES/FEMA. The Monthly Progress Report shall be submitted by the final work day each month.

#### **2.14 Permits**

The Consultant shall ensure that the contractor has obtained all permits necessary for the performance of the work and that all permit conditions are met by the contractor. The Consultant shall provide the required coordination with the permitting agencies during construction.

#### **2.15 Safety**

The Consultant shall provide their IIPP for their Construction Management Personnel. The Consultant will monitor the contractor's work practices to ensure that all safety requirements are met. The Consultant will review the contractor's Injury and Illness Prevention Plan (IIPP) and Job Hazard Analyses (JHA), and shall observe the contractor's work to ensure conformance with OSHA requirements. The Consultant shall promptly notify the contractor and TCWD of any observed safety violations.

#### **2.16 Record Drawings**

The Consultant shall review the contractor's record drawings on a weekly basis to ensure that the drawings are up to date and accurate. The Consultant will review the contractor's record drawings at the end of each month prior to approving the contractor's monthly progress payment request. The Consultant shall also maintain an independent, up-to-date set of record drawings in its office.

#### **2.17 Cal OES/FEMA/Environmental Documentation Compliance**

Monitor the Project for compliance with the environmental documentation, in coordination with the Environmental Consultant (separate Consultant, not in this RFP), to ensure that the Contractor follows the requirements and details outlined in

the bid documents. The Consultant shall immediately inform the Contractor and TCWD of any non-conformance items and state or reference the required corrective action.

### **Task 3: Project Close-Out**

#### **3.1 Punch List**

The Consultant shall coordinate with TCWD, the Design Engineer, and the contractor to prepare punch lists for outstanding items of work, including all documentation and submittals required by the contract documents, upon Substantial Completion of the Project. The Consultant will be prepared to assign cost values for outstanding punch list items to facilitate prompt and timely close-out of the Project. The Consultant shall ensure that all punch list items have been addressed to the satisfaction of TCWD and the Design Engineer.

#### **3.2 Record Drawings**

The Consultant shall review the Contractor's final as-built drawing set to ensure that the drawings are accurate and complete. The Consultant will certify the accuracy of the final record drawing set before final payment is approved and before the record drawings are transmitted to the Design Engineer for incorporation into AutoCAD.

#### **3.3 Final Payment**

The Consultant shall reconcile all contract Bid Items, change order work and outstanding punch list items in the preparation of the final payment to the contractor.

#### **3.4 Close-Out Report**

The Consultant shall prepare a Close-Out Report including, at a minimum, a summary of the Project construction, key issues, lessons learned, change summary, schedule summary, as-built schedule and other items for documentation and as applicable for Project close-out and by CalOES, FEMA, and other agencies. The Consultant shall include provisions to submit a DRAFT and FINAL Close-Out Report.

#### **3.5 Project File**

At the conclusion of the Project, the Consultant shall transmit all Project-related documentation to TCWD's Project Manager. An electronic version in PDF format shall be maintained through the duration of the Project and transmitted to TCWD. The Project file shall be neatly organized and all files shall be accurately titled and labeled to facilitate ease of access by TCWD staff. The Consultant will present the Project file structure to the TCWD Project Manager when transmitted.

#### **3.6 Surveying**

- a. Provide a licensed surveyor or pre-1983 licensed engineer authorized to practice the act of land surveying in the State of California
- b. Provide construction staking services to facilitate the proposed construction.
- c. Consultant will provide one set of line and grade stakes for the raw water transmission pipeline per Bid Documents. Stakes will be set at approximate 50 foot intervals and at BCs, ECs and angle points and marked cut or fill to top of curb or finished surface. Stakes shall be marked with cuts to flowline in conformance with flowline grades that are profiled on the approved plans. Consultant shall

- provide another set of line and grade stakes for air release assembly's, blowoffs, and all remaining appurtenances and points of connection.
- d. Provide an itemized summary of the anticipated construction staking tasks with an hourly breakdown in the fee proposal.
  - e. Submit survey data in electronic format. In addition, provide and submit GPS data for all valves and appurtenances.

### **3.7 Geotechnical Engineering and Testing**

- a. Provide a licensed soils engineer authorized to practice the act of geotechnical engineering in the State of California. Include a material testing firm to provide as needed services to facilitate the proposed construction.
- b. Review Bid Documents, including Geotechnical Report.
- c. Construction services shall include, but not limited to soil borings (hand auger), soil analysis and testing, compaction testing, concrete testing, and coring.
- d. Provide an itemized summary of the anticipated tasks and hours breakdown in the fee proposal.

### **Schedule**

Issue RFP	November 10, 2016
Receive Proposals	December 12, 2016 @ 2:00 PM
Consultant Selection (Board Meeting)	December 21, 2016
Notice of Award	December 22, 2016
Project Kick-off Meeting	Week of January 9, 2016
Construction Period	January 2016- April 14, 2017

### **Proposal Contents and Submittals**

Proposals shall be concise and shall not exceed fifteen (15) pages, excluding resumes and Firm's cover letter. Proposals should be submitted in a stapled, letter proposal format without a formal cover or binding. Proposal should contain the following information as a minimum:

1. Construction Management Firm: Description of construction management firm's capability and office(s) of resources where proposed work will be performed.
2. Project Understanding and Approach: Firms understanding of project and, if applicable, description of any particular features, criteria, concepts, or issues. Include description of firms approach and quality control.

Include any value added scope of service, not included in the RFP's tasks, as optional scope of services items that Consultant deems necessary; required of TCWD, CalOES, or FEMA; or that provide added value and efficiency and also result in significant measurable cost savings by Consultant or to Project.

3. Project Team and Experience: Description of specific experience and capabilities of proposed project key team members, including designated project manager, inspector(s), and Cal OES/FEMA experience as related to the previously outlined scope of work. Include description of the project team's past record of performance on similar projects. Include client references that may be contacted by the District. Discuss any proposed subcontract arrangements which would be utilized during this project.



4. Scope of Work: Detailed scope of work and methodology that comprehensively define and describe the individual tasks. This scope of work will be used as a basis for later contract negotiations. Scope of work may be based, but is not limited to, the information contained in this Request for Proposal.
5. Contract and Insurance Requirements: See Appendix A

### **Fee Proposal**

The fee proposal shall be submitted in a separate sealed envelope labeled "Fee Proposal" in the subject and Consultant's name. The fee proposal shall include:

- A cover letter stating the estimated labor hours and personnel and costs per task;
- The fee schedule shall depict individual project tasks and subtasks, labor-hours, and basic hourly rates for specific personnel to be used. Personnel hourly rates will reflect all costs for office overhead, including direct and indirect costs. The fee proposal shall be for the duration of the contract.

### **Proposal Evaluation and Selection Criteria**

The proposals will be evaluated on the basis of each Firm's response to all the provisions of this RFP. TCWD will use the following criteria, of which is not intended to be all inclusive and the order is not intended to indicate relative importance or weight, in its evaluation of the proposals submitted:

- Project Understanding and Approach
  - Approach and methodology to performing scope of services, including completeness, demonstrated capability, responsiveness to TCWD's needs, and understanding of the Project and work requirements
- Proposed Team Experience and Qualifications
  - Experience of the Firm's team with respect to the RFP's tasks and role (i.e. Project Manager, Inspector, Special Inspectors, Quality Control, etc.)
  - Experience on similar projects and complexity, including multi-agency permitting and coordination
  - Availability of the proposed team
  - Qualifications, including certifications, of team and members performing the work
  - Experience and references from coordination with Orange County permitting agencies involved in this Project, including Southern California Edison
  - Recent references from clients on similar type of work performed and successful completion of previous work
  - Experience of team members with Cal OES and FEMA funded projects
- Good Faith Effort in procuring services from Disadvantaged Business Enterprises (DBEs)
- Level of Effort
  - Proposed level of effort to meet and respond to project requirements

- Project Responsiveness
  - Ability to respond to project requirements, including potential separate site construction in paved and unpaved areas, day and night time work, and work within public and private easements
  
- Contractual Requirements
  - Ability to meet all of TCWD's administrative requirements, including insurance, liability, equal opportunity practices, labor compliance, and any exceptions take to TCWD's Professional Services Contract
  
- Value Added
  - Consideration of any optional added value scope of services tasks/items with demonstrated significant and measureable cost savings

This is not a competitive bid process based on price alone. The District may conduct interviews with one or more Firms prior to final selection of the prospective Consultant. The District may review the Fee Proposal for consideration as part of its evaluation and selection. After selection of the prospective Consultant deemed most qualified, the District will initiate negotiations. If an acceptable contract cannot be reached with the prospective Consultant deemed most qualified, the District may then negotiate with the next most qualified prospective Consultant.

The District reserves the right, after opening the proposals, to reject any or all proposals, or to accept proposal(s) that in its sole judgment are in the best interest of the District. Proposals (including accompanying materials) will become the property of the District. Proposals will be held in confidence to the extent permitted by law. After award of a contract or after rejection of all proposals, the proposals will be public records subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.).

Consultants cost for developing, preparing and submitting a proposal are not reimbursable.

### **Contact Person**

The District's contact person for this project is Lorrie Lausten at (949) 858-0277 x130.

### **Proposal Submission**

Proposals will be accepted by regular mail or hand delivery to Lorrie Lausten until 2:00 P.M. on Monday, December 12, 2016.

Submission of a proposal shall be evidence that Consultant did, in fact, conduct all necessary review of Project Documents and necessary inspections and is aware of and acknowledges all conditions, restrictions, and limitations affecting performance and costs.

Firm may submit a written request for interpretation of correction of a meaning of any part or section of this Request For Proposal (RFP) or documents, or for finding of any discrepancy or omission in RFP or documents by Firm. Any interpretation or correction of this RFP or documents will be made only by addendum issued by TCWD.

## **ATTACHMENT A**

### **DISTRICT'S STANDARD CONSULTANT CONTRACT**

#### **PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT** ("Contract") is entered into \_\_\_\_\_ by and between **Trabuco Canyon Water District**, hereinafter called "TCWD," and \_\_\_\_\_ hereinafter called "Consultant."

**WHEREAS**, TCWD desires certain services hereinafter described and Consultant is capable of providing and desires to provide such service.

**NOW, THEREFORE**, TCWD and Consultant, for the consideration and upon the terms and conditions hereinafter specified, agree as follows:

#### **SECTION I**

##### SCOPE OF SERVICE

- 1.1 The services to be performed under this Contract are as described in Appendix One hereunto attached and by this reference made a part hereof ("Scope of Services"). In the event that a conflict or contradiction is discovered between the proposal language and TCWD's standard Contract terms, TCWD's standard Contract terms shall prevail. Such service shall be performed by employees of the Consultant, operating as an independent Contractor, and not by or as employees of TCWD.

#### **SECTION II**

##### DUTIES OF CONSULTANT

- 2.1 Standards. All work performed by Consultant or under its direction shall be rendered in accordance with the accepted practices and to the standards of Consultant's business or industry.

Employees or agents of Consultant who are experienced and skilled in their business and in accordance with the standards of work in their respective professions hereunder shall perform all services. Consultant's findings, recommendations, and professional advice shall be based on practices and procedures customary in its profession. Consultant shall provide additional services needed to correct any deficiency in its work at no additional cost or expense to TCWD.

- 2.2 Additional Work. Consultant shall not undertake any work beyond the scope of this Contract unless such additional work is approved in advance and in writing by TCWD's General Manager. The cost of such additional work shall be reimbursed to Consultant by TCWD on the same basis as provided in Section IV. TCWD shall not incur any liability related to any work performed beyond the scope of this Contract until such change has been approved in writing by the General Manager.
- 2.3 Security and Safety. If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the responsibility of Consultant, excluding therefrom the security and safety of any TCWD facility within the job site not under the control of Consultant.

In providing its services hereunder, unless otherwise specifically called for in the Scope of Services, Consultant shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material present on the project site either prior to Consultant's commencement of work or by reason other than due to the actions of the Consultant. In the event that TCWD becomes aware of the presence of asbestos or hazardous material at the job site, TCWD shall be responsible for complying with all applicable federal and state rules and regulations and shall immediately notify Consultant, which shall then be entitled to cease any of its services that may be affected by such presence, without any liability to Consultant arising therefrom.

- 2.4 Consultations. Consultant shall meet with TCWD personnel, or third parties as necessary, on all matters related to the carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party. Contractor shall obtain TCWD's review and approval of completed work monthly, or at such intervals as may be mutually agreed upon, during the course of this work.
- 2.5 Data. Consultant agrees that all data and information, including without limitation specifications, designs, drawings, reports, and blueprints, generated in the performance of this Contract and data and information that are specified to be delivered or which are, in fact, delivered pursuant to this Contract shall be and remain the sole property of TCWD, with the exception of any intellectual property rights expressly contained therein, owned or created by Consultant prior to the effective date of this Contract; and/or created wholly outside the scope of this Contract. Consultant understands and agrees that all copyright and patent rights arising under this Contract belong to and shall constitute the property of TCWD, unless otherwise stated herein. Consultant hereby assigns any and all rights under copyright and patent law to TCWD and agrees to assist TCWD in perfecting the same. Consultant shall deliver all data and information to TCWD upon TCWD's request and in any event upon the completion of all work hereunder or the termination or expiration hereof, whichever shall first occur, and shall be fully responsible for the care and protection of all data and information until such delivery to TCWD. Except as otherwise provided in this Contract, said documents shall be delivered to TCWD without additional cost to TCWD. Any reuse or modification of Consultant's work product without Consultant's permission shall be at TCWD's sole risk.

- 2.6 Subcontracting. Consultant shall perform the work contemplated by this Contract with resources available within its own organization and no portion of the work pertinent to this Contract shall be subcontracted without TCWD's prior written authorization. Consultant may submit with its proposal a list of proposed subcontracts, in which case listed subcontracts shall be deemed accepted by TCWD upon acceptance of such proposal.

### **SECTION III**

#### **DUTIES OF TCWD**

- 3.1 Provision of Information. TCWD shall make available to Consultant all data and information in the possession of TCWD that TCWD deems necessary to the preparation of the work, and TCWD shall actively aid and assist Consultant in obtaining such information from other agencies and individuals. Except as specifically provided in the scope of services, Consultant shall be entitled to rely upon the accuracy of data and information provided by TCWD or others without independent review or evaluation.
- 3.2 Review of Progress of Work. TCWD Management may authorize a staff person as a representative to confer with Consultant relative to Consultant's services hereunder. The work in progress hereunder shall be reviewed from time to time by TCWD at the discretion of TCWD or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, TCWD will inform Consultant of the changes or revisions necessary to secure approval.

### **SECTION IV**

#### **FEES AND PAYMENTS**

- 4.1 Payment Schedule. Payment for the services hereinabove described shall be made upon a schedule and within the limit or limits shown upon Appendix Two hereunto attached and made a part hereof, and such payment shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work. In the event that a conflict or contradiction is discovered between the proposal language and TCWD's standard Contract terms, TCWD's standard Contract terms shall prevail.
- 4.2 Statements. Unless otherwise specified in said Appendix Two, Consultant's fees shall be payable on monthly statements. Such statements shall give a detail of time worked by each class of employee, services (or tasks) performed, and the expenses incurred for which billing is made and shall contain the following affidavit signed by a principal of the firm of Consultant:

"I hereby certify as principal of the firm of \_\_\_\_\_ that the charge of \$\_\_\_\_\_ as summarized above and shown in detail on the attachments

is fair and reasonable, is in accordance with the terms of the Contract dated \_\_\_\_\_ and has not been previously paid.”

## **SECTION V**

### **CHANGES IN WORK**

- 5.1 **Extra/Changed Work.** TCWD may order major changes in scope or character of the work, either decreasing or increasing the amount of Consultant’s services. Increased compensation for major changes shall be determined in accordance with Appendix Two hereof, or as otherwise agreed to, in writing, between the parties.
- 5.2 **Change of Schedule.** In the event that major changes are ordered, the schedule for completion as stated in Appendix Three hereto will be adjusted by negotiation between Consultant and TCWD.
- 5.3 **Change Authorization.** No representative of TCWD, other than the General Manager, is authorized to obligate TCWD to pay the cost or value of services beyond the scope thereof as herein described. Except in the event of an emergency, all changes authorized by the General Manager shall be in writing. TCWD shall not incur any liability related to any change until such change has been approved in writing by the General Manager.

## **SECTION VI**

### **TIME OF BEGINNING AND SCHEDULE FOR COMPLETION**

- 6.1 **Commencement of Work.** Consultant shall begin work upon receipt by it of written Notice to Proceed from TCWD Management. Said Notice shall not be issued until after this Contract has been approved and authorized by TCWD.
- 6.2 **Completion Schedule.** The schedule for completion of the work shall be as shown upon Appendix Three hereunto attached and made a part hereof. Consultant shall complete the work set forth in Appendix One in accordance with the schedule for completion shown in Appendix Three.
- 6.3 **Suspension of Services.** TCWD may, at any time and without cause, suspend all or a portion of the services of Consultant for a period of not more than ninety (90) days by notice in writing to Consultant. Consultant shall resume the service on receipt from TCWD of a notice of resumption of services. Any change to the Contract, price, or time of completion sought by Consultant as a result of suspension hereunder, shall be processed as a change order under the provisions of Section V hereof.

## **SECTION VII**

### DELAYS AND EXTENSIONS

- 7.1 Delays. In the event Consultant is delayed in performance of its services by circumstances beyond its control, it will be granted a reasonable adjustment in the Schedule for Completion as described in Appendix Three. Consultant must submit to TCWD all claims for adjustments to the Schedule for Completion within thirty (30) calendar days of the time of occurrence of circumstances necessitating the adjustment.

## **SECTION VIII**

### TERMINATION

- 8.1 Termination by Owner. TCWD may terminate this Contract at any time by giving Consultant written notice thereof. Upon termination, Consultant will be paid for that portion of the work completed prior to termination.
- 8.2 Termination by Consultant. Consultant may terminate this Contract upon written notice to TCWD should TCWD fail to fulfill duties as set forth in Section III or IV.
- 8.3 Effect Upon Records. Upon termination, Consultant shall turn over to TCWD all of the documents, records, and papers related to this Contract, which shall, at the option of TCWD, become TCWD property. TCWD shall not be liable for any costs other than as specified in this Contract.
- 8.4 Examination of Records. TCWD shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of Consultant involving transactions related to this Contract.
- 8.5 Change in Consultant's Status. The financial capability and status of Consultant were substantial inducements for TCWD to enter into this Contract. Therefore, Consultant shall, and hereby specifically acknowledges its duty to do so, notify TCWD of any significant financial change, or significant change in status of Consultant within seven (7) days of significant financial change or significant change in status. "Significant financial change" or "significant change in status" shall mean the following:
- Any action(s) by which Consultant shall consolidate with, merge, or convert the Consultant into another partnership or corporation,
  - Any filing of bankruptcy by the Consultant (or any of its partners),
  - Loss of Consultant's professional qualifications, and
  - The fact that Consultant is no longer in compliance with federal or state equal opportunity laws.

## **SECTION IX**

### **ATTORNEY'S FEES**

- 9.1 If either party brings an action or proceeding against the other party by reason of default of any term or condition of this Contract, or otherwise arising out of this Contract, the prevailing party in such action or proceeding shall be entitled to recover, as an element of its cost of suit, and not as damages, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. The "prevailing party" as the term is used herein, shall be the party who is entitled to recover costs of suit, whether or not such suit proceeds to final judgment, and shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or considerations substantially equal to the relief sought in such action.

## **SECTION X**

### **INDEMNIFICATION-HOLD HARMLESS**

- 10.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless and defend TCWD, its directors, officers, employees, and authorized volunteers and each of them from and against:
- a. When the law establishes a professional standard of care for Consultant's services, all claims and demands of all persons arising out of the performance (or actual or alleged non-performance) of the work under this Contract, for damages to persons or property due to the Consultant's negligent or willful acts, errors, or omissions committed. Consultant shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of Consultant's performance or non-performance of the work hereunder, and shall not tender such claims to TCWD nor to its directors, officers, employees, or authorized volunteers, for defense or indemnity.
  - b. Other than in the performance of professional services, all claims and demands of all persons arising out of the performance of the work or the furnishing of materials; including, but not limited to, claims by the Consultant or Consultant's employees for damages to persons or property except for the negligence or willful misconduct or, with respect to construction, the active negligence of TCWD, its directors, officers, employees, and authorized volunteers.
  - c. Any and all actions, proceedings, damages, costs, expenses, penalties, or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Consultant.



November 9, 2016

- d. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Consultant to faithfully perform the work and all of the Consultant's obligations under this Contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- e. The duty to indemnify and defend pursuant to this Section 10.1 shall apply only to the extent such claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees or agents. This Section to be interpreted in light of current State law.

Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against TCWD or its directors, officers, employees, and authorized volunteers.

Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against TCWD or its directors, officers, employees, and authorized volunteers, in any and all such aforesaid suits, actions, or other legal proceedings.

Consultant shall reimburse TCWD or its directors, officers, employees, and authorized volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by TCWD or its directors, officers, employees, and authorized volunteers.

## **SECTION XI**

### **INSURANCE**

- 11.1 Insurance requirements shall be as set forth attached hereto.

## **SECTION XII**

### **MISCELLANEOUS PROVISIONS**

- 12.1 Gratuities. Consultant warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to TCWD's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.

- 12.2 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Contract with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Contract.
- 12.3 Project Manager. Consultant shall designate within its proposal its project manager or project representative, who shall have the authority to act on behalf of Consultant for all purposes under this Contract. TCWD Management reserves the right to approve the project manager assigned by Consultant to said work. In the event TCWD disapproves of the project manager assigned to perform work under this Contract, TCWD shall notify Consultant in writing. Consultant shall meet and confer with TCWD Management within ten (10) days of such written notice, and, absent an agreement to the contrary, assign a new project manager within five (5) days of such meeting. Any substitution of Consultant's project manager shall first be approved in writing by TCWD, which shall not unreasonably hold such approval.
- 12.4 Limitation on Assignment. All services to be furnished under this Contract shall be deemed professional services. As such, the Consultant shall have neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in or obligations under this Contract without the prior written consent of TCWD.
- 12.5 Status of Consultant. Consultant is employed to render a contract service only, and any payments made to Consultant are compensation solely for such services as Consultant may render. Consultant shall at all times retain the status of an independent Contractor with TCWD. Nothing within this Contract shall be construed so as to make Consultant, or any of its agents or employees, the employee(s), partner(s), or joint venturer(s) of or with TCWD.
- 12.6 Licensing. Consultant warrants that they have complied, and shall comply, with any and all applicable state licensing requirements.
- 12.7 Entire Contract. This Contract supersedes any and all other Contracts, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Contract, statement, or promise related to the subject matter of this Contract which is not contained in this Contract shall be valid or binding.
- 12.8 Ownership of Work. All work performed pursuant hereto shall, upon completion, become the property of TCWD. In the event the work is not completed, the completed portions thereof shall become the property of TCWD.
- 12.9 Waiver. Either party to this Contract may specifically and expressly waive, in writing, compliance by the other party hereto with any term, condition, or requirements set forth in this Contract. Either party to this Contract may specifically and expressly waive, in writing, any breach of any term, condition, or requirement of this Contract by the other party hereto. However, in the event that either party makes or gives such a waiver, such action shall not constitute a further or continuing waiver of any preceding or succeeding breach, or requirement of compliance with, the same or any other provision or contractual requirement,

unless a specific statement to the contrary is contained within such waiver. The waiving party may, at any time thereafter, require further compliance by the other party hereto with the requirements or provisions of this Contract that have been so waived. The consent of one party to any act by the other party for which such written consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such written consent for the same or similar acts in the future. No waiver or consent shall be implied from the silence or from the failure of any party to an act, except as otherwise specified in this Contract

12.10 Job Costing. Any opinion of the Construction Cost prepared by Consultant represents its judgment as a design professional and is supplied for the general guidance of TCWD. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to TCWD.

12.11 Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder by law, shall be validly given and made only if in writing and delivered in person to an officer or duly authorized representative of the party, or deposited in the United States mail, first class postage prepaid, and addressed to the party for whom intended as follows:

To TCWD:

To Consultant: \_\_\_\_\_

Trabuco Canyon Water District  
Attention: General Manager  
32003 Dove Canyon Dr  
Trabuco Canyon, CA 92679

12.12 Jurisdiction. The parties hereby understand and agree that this Contract, and the attachments hereto, have been negotiated and executed in the State of California and shall be governed by, and construed under, the laws of the State of California. The parties hereto do expressly agree that in the event of a dispute concerning the terms hereof, venue for any legal action shall be with the appropriate court of the County of Orange, State of California.

12.13 Amendments. No addition to, or modification of, any provision contained in this Contract shall be effective unless fully set forth in writing signed by the authorized representative of both of the parties hereto.

12.14 Signatories. The signatories hereto do warrant that they are appropriately authorized to execute this Contract on behalf of the party for which they signed.

**IN WITNESS WHEREOF**, the parties have executed this Contract the day first hereinabove written.

\_\_\_\_\_(CONSULTANT)

**TRABUCO CANYON WATER DISTRICT**

By: \_\_\_\_\_  
Title

By: \_\_\_\_\_  
Hector Ruiz, General Manager

Print  
Name: \_\_\_\_\_

## DISTRICT'S INSURANCE REQUIREMENTS

The following coverages will be provided by Consultant and maintained on behalf of TCWD, its directors, officers, employees, and authorized volunteers in accordance with the requirements set forth herein.

**Commercial General Liability Insurance.** Primary coverage shall be provided on Insurance Services Office CGL form No. CG 00 01 11 85 or 88. Policy limits shall be no less than one million dollars per occurrence for all coverages and two million dollars general aggregate applicable exclusively to this project. There shall be no cross liability exclusion. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance (primary or excess) available to TCWD, its directors, officers, employees, and authorized volunteers. General liability insurance will not be limited to coverage for the vicarious liability or the supervisory role of the additional insureds. Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of TCWD as established by agreement between the parties or by the findings of a court of competent jurisdiction. TCWD, its directors, officers, employees, and authorized volunteers shall be added as insureds using Insurance Services Office additional insured endorsement form CG 20 10 11 85.

**Business Auto Coverage.** Primary coverage shall be written on Insurance Services Office Business Auto Coverage form CA 00 01 06 92 including owned, non-owned, and hired autos. Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy as applicable. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**Workers' Compensation/Employer's Liability** shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects TCWD, its directors, officers, employees, and authorized volunteers. By the signatures hereunder, each party certifies that it is aware of the provision of Section 3700 of the California Labor Code which requires every employer (and their consultants and subcontractors) to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this Contract.

**Professional Liability or Errors and Omissions Insurance.** Coverage as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors, or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Contract. Any policy exclusions affecting work performed under this Contract (such as lead, asbestos, testing, soil work, laboratory analysis, etc.) must be deleted. The policy limit shall be no less than one million dollars per claim and in the aggregate. The limit must be separate from other project limits and applicable to this project only. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance (primary or excess) available to TCWD, its directors, officers, employees, and authorized volunteers. If the work contemplated by this Contract includes any asbestos removal, identification or other treatment, any failure to detect asbestos exclusion must be deleted. Exclusions for any claims arising out of suspected deficiency, or the malfunction of any products, process technique, system, or piece of equipment sold, procured, or otherwise furnished, is to be deleted.

**General conditions pertaining to provision of insurance coverage.** Consultant and TCWD agree to the following provisions regarding insurance provided:

1. Consultant agrees to provide insurance in accordance with the requirements set forth here. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement, or endorse the existing coverage to do so. In the event any policy of insurance required under this Contract does not comply with these requirements or is canceled and not replaced, TCWD has the right, but not the duty, to obtain the insurance it deems necessary and Consultant will promptly reimburse any premium paid by TCWD.
2. All insurance coverage and limits provided by Consultant and available or applicable to this Contract are intended to apply to the full extent of the policies. Nothing contained in this Contract or any other contract relating to TCWD or its operations limits the application of such insurance coverage.
3. Unless otherwise approved by TCWD, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of A-:VII. Self-insurance will not be considered to comply with these insurance specifications.
4. Any deductible or "self-insured retention" must be declared and approved by TCWD. TCWD reserves the right to require any specified deductible or the self-insured retention to be reduced, eliminated, or, in the case of a self-insured retention, replaced by a deductible. Self-funding, policy fronting, or other mechanisms to avoid risk transfer are not acceptable. If Consultant has such a program, Consultant must fully disclose such program to TCWD before any notice to proceed is issued.
5. Prior to the commencement of work, Consultant agrees to provide evidence of the insurance required herein, satisfactory to TCWD, consisting of: a) certificate(s) of insurance evidencing all of the coverages required and, b) an additional insured endorsement to Consultant's general liability policy using Insurance Services Office form CG 20 10 11 85. Consultant agrees, upon request by TCWD, to provide complete, certified copies of any policies required by this section, within ten (10) days of such request. Any actual or alleged failure on the part of TCWD or any other additional insured under these requirements to obtain proof of insurance required under this Contract in no way waives any right or remedy of TCWD or any additional insured, in this or any other regard.
6. Certificate(s) are to reflect that the insurer will provide thirty (30) days' notice to TCWD of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificate(s) to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation or that any party will "endeavor (as opposed to being required) to comply with the requirements of the certificate(s)."
7. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in

these specifications applicable to the renewing or new coverage must be provided to TCWD within five (5) days of the expiration of the coverages.

8. Consultant agrees to require all subcontractors or other parties hired for this project to provide the same insurance as required of Consultant unless otherwise agreed to by TCWD. The subcontractor's general liability insurance shall add as additional insureds all parties to this Contract using Insurance Services Office form CG 20 10 11 85. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.