

**MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
(MWDOC)**



**REQUEST FOR PROPOSALS (RFP)
TO PROVIDE
FEDERAL GOVERNMENT ADVOCACY SERVICES**

RFP No. GA0915-002

Proposals Due: October 14, 2015

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SECTION 1 – NOTICE TO PROPOSERS

1. Sealed proposals for RFP No. GA0915-002 – Federal Government Advocacy Services, as described herein, will be received by the receptionist at Municipal Water District of Orange County (MWDOC) Offices until **5:00 p.m. on Wednesday, October 14, 2015.**

Proposals shall be enclosed and sealed in an envelope, clearly marked **RFP NO. XXXX, on the outside of the envelope**, and addressed to Municipal Water District of Orange County.

2. **Proposals may be delivered in one of the following methods:**

- a. **Hand delivered to:**

- Municipal Water District of Orange County
Attn: Governmental Affairs Department
18700 Ward Street
Fountain Valley, CA 92708

- b. **Delivered via common carrier (e.g., UPS or FedEx) to:**

- Municipal Water District of Orange County
Attn: Governmental Affairs Department
18700 Ward Street
Fountain Valley, CA 92708

- c. **Mailed via U.S. Postal Service to:**

- Municipal Water District of Orange County
Attn: Governmental Affairs Department
P.O. Box 20895
Fountain Valley, CA 92728

It is the Proposer's sole responsibility to ensure that their proposal, inclusive of any or all addenda, is received at the proper place by the deadline. Postmarks will not validate proposals which arrive after the deadline listed above. Faxed or electronic proposals will not be accepted. Any proposal received after the deadline will be disqualified and not considered.

3. To facilitate the evaluation process, **four (4) printed copies of the proposal shall be provided as well as an electronic copy on a flash drive** (using PDF format, with search capability, to ensure readability and compatibility). These materials will be retained by MWDOC.

SECTION 2 – INTRODUCTION AND OVERVIEW

1. PURPOSE OF THE REQUEST FOR PROPOSALS

The Municipal Water District of Orange County (MWDOC) is seeking proposals from qualified firms (Proposers, Contractors) for services to consult, monitor and lobby to engage MWDOC in developing a strong legislative presence in Washington D.C. and assist on regulatory issues and representing MWDOC as its liaison with regulatory agencies.

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified firms/consultants with a proven track record in advocacy/lobbying at the federal level, to assist MWDOC in developing and successfully pursuing its legislative and regulatory priorities.

The successful firm will be awarded a one-year contract with an annual option to renew four additional years.

This RFP describes the district, the required scope of services, the contractor selection process, and the minimum information that must be included in the proposal. Failure to submit information in accordance with the RFP requirements and procedures that may be cause for disqualification.

2. DISTRICT OVERVIEW

MWDOC is a wholesale water supplier and resource planning agency. Our efforts focus on sound planning and appropriate investments in water supply development, water use efficiency, public information, legislative advocacy, water education, and emergency preparedness. MWDOC's service area covers all of Orange County, with the exception of the cities of Anaheim, Fullerton, and Santa Ana.

Local water supplies meet nearly half of Orange County's total water demand. To meet the remaining demand, MWDOC purchases imported water – from Northern California and the Colorado River – through the Metropolitan Water District of Southern California. MWDOC delivers this water to its 28 member agencies (local water agencies and city water departments), which provide retail water services to the public. MWDOC is governed by an elected, seven-member Board of Directors. Additional information about MWDOC is available at www.mwdoc.com.

3. PROJECT TIMELINE

The following table identifies and estimates the dates/timeframe for receipt, evaluation, award, and implementation of this work. Please note these key dates when preparing your response to this RFP.

Description	Date
Release of RFP to Vendors	September 23, 2015
Deadline for Written Questions Regarding RFP	October 2, 2015
Proposal Due Date	October 14, 2015
Proposal Review	October 15, 2015
<i>Vendor Interviews (Tentative, if needed)</i>	<i>October 20-21, 2015</i>
Vendor Selection (Board approval)	November 18, 2015
Contract Execution	December, 2015
Contract Duration	January 1, 2016 – December 31, 2016

SECTION 3 – SCOPE OF WORK

I. FEDERAL GOVERNMENT ADVOCACY SERVICES

MWDOC seeks a federal advocate/lobbying firm to develop and execute an effective federal advocacy strategy plan. The scope of work for such support services includes the following:

1. Represent MWDOC’s interests with congressional & senate offices, the executive branch, and agencies such as (but not limited to): Department of Interior, U.S. Army Corps of Engineers, Environmental Protection Agency, and the Department of Energy.
2. Monitor and report of legislative initiatives of interest that may promote or hinder MWDCOC’s goals or interests including but not limited to:
 - a) Provide strategic guidance and recommendations to assist MWDOC maximize its policy influence and achieve its legislative goals/objectives
 - b) Advocate on legislation and issues in response to formal positions taken by MWDOC
 - c) Attend legislative and/or public hearings, testify when needed (as requested), and provide information regarding those hearings as they may affect MWDOC
 - d) Assist with the preparation of legislative correspondence, written testimony and/or talking points for hearings and other legislative activities
3. Track appropriations bills and analyze programs from where MWDOC may be able to obtain funding and assist MWDOC and our member agencies in securing funding for projects.
4. Prepare monthly written federal legislative report and additional items (as requested) for MWDOC’s monthly Public Affairs and Legislation (PAL) Committee.

5. Assist in producing content for a member agency legislative newsletter.
6. Assist in developing legislative strategies and policy principles to raise consciousness and awareness of issues relating to MWDOC and its member agencies that is both proactive and strategic; as well as reactive when dealing with the legislation or proposed legislation during the legislative session.
7. Assist in developing strategies to successfully implement MWDOC's legislative program and to acquire funding for MWDOC projects.
8. Assist MWDOC staff with coordination and interfacing with legislative and other offices. Participate in crafting itineraries and facilitating meetings between MWDOC staff, Board members, and D.C. legislative delegation and staff, and various regulatory agencies.
9. Comply with all applicable federal and state legal registering and reporting requirements.

SECTION 4 – PROPOSAL REQUIREMENTS

I. PROPOSAL ELEMENTS

The emphasis of the proposal should be on responding to the requirements set forth herein. Proposers must demonstrate their capabilities, background, expertise, and experience in order for the District to effectively evaluate the proposals. The proposal should be concise, well organized, and demonstrate the Contractor's understanding of the project.

The Proposal should be organized as follows. Please use the section headings and sub-headings listed in bold, below.

1. **Proposal Contents** – Proposals shall contain the following specific information and be no longer than five pages (excluding resumes):
 - a. **Cover Letter** - The cover letter shall provide a summary of the services to be provided. The cover letter must be signed by an authorized officer or employee of the firm who has authority to negotiate and contractually bind the organization. The title of the authorized officer or employee, their name, address, e-mail, and phone and fax number must be included. The District intends to correspond only with respondent's authorized officer or employee for all correspondence regarding this RFP. Submitting accurate and updated contact information is the responsibility of the respondent. Obligations committed by such signatures shall be binding.
 - b. **Background Information**
 - i. Legal name, address, and telephone and fax numbers of the principal office (national headquarters), Washington D.C. office and local office (if applicable). If services will be provided from additional locations, provide this information for these offices.
 - ii. Year established.
 - iii. Type of organization (partnership, corporation, etc.).
 - iv. Name, title, address, e-mail and telephone and fax number of the person to whom correspondence shall be directed.
 - v. Description of the scope of services usually provided.
 - vi. Description of any relevant pending litigation or litigation against the firm, or any of its proposed sub-consultants that was settled in the past three years.
 - c. **Organization**
 - i. Provide an organizational chart indicating names, job titles, functional roles and responsibilities of proposed staff.

- ii. Describe how the responding firm is organized to provide the required services.
- d. **Work Plan/Technical Approach/Project Management** – Submit a work plan for each task for carrying out the scope of services described in this RFP, including strategy, tools, techniques, critical path items, and decision points which reflects an understanding of the District’s requirements. Assumptions, desired outcomes and deliverables must be included as part of your firms approach to each major task area.
- e. **Project Team and Resumes** - Indicate the Project Team by name and title, including the individual(s) who would be assigned overall responsibility for performing the services and serve as the main lobbyist/point of contact. Provide a project team organizational chart indicating the primary role and responsibility of each team member. The proposal should clearly associate specific staff to work tasks, estimate the percentage time they will be available to the project and their qualifications. Submit resumes for each identified individual, including prime personnel, and their key qualification and experience which makes them suited for their proposed assignment on the project. Every effort should be made to ensure that staff resources identified in the proposal will be available for the project in the event an agreement is awarded to your firm.
- f. **Qualifications and Experience** – Describe the firm's qualifications for performing similar, relevant, or related services. Identify the team's experience in working with elected officials, committees, and various regulatory agencies. Demonstrate an understanding of Metropolitan Water District of Southern California, Colorado River Aqueduct, and California/regional issues. In addition, describe your specific experience with writing and amending bill language along with your access to a team member who is an active member of the D.C. Bar.
- g. **Client References** - A list of three former clients and representative services undertaken in the last two years, demonstrating experience relevant to this RFP. Provide each reference’s contact person’s name, title, address, phone number and email address. In addition, provide information on cost of services, dates of engagement, description of services, and member(s) of the proposed team for this RFP, including any sub-consultants that performed the services.
- h. **Cost/Pricing Information - Cost/Pricing Information** - One of the areas on which you will be evaluated is your cost for performing the scope of services, including without limitation, cost for consulting services plus an estimated lump sum for travel and other direct expenses. The proposed price and cost basis for the price shall be stated as a monthly fixed fee, plus an estimated yearly lump sum for travel and other direct costs.

Acceptance of District Standard Consultant Agreement and Insurance Requirements -

Please note that the successful firm will be expected to execute the District’s Standard Consultant Agreement and to provide evidence of the required insurance, as well as demonstrate that it has no Conflicts of Interest. A completed W9 form may also be required. These do not need to be attached to your firm’s proposal at this time. However, the proposal shall include a statement that you have reviewed the District’s Standard Consultant Agreement and the General

Insurance Requirements; and, if selected, will execute said agreement; your firm and any sub-consultants will fulfill the insurance requirements; and, your firm will provide the required insurance documents as well as the additional insured endorsements as specified.

Any questions as to the meaning of the scope of work, proposal requirements or selection process must be submitted in writing and shall be directed to Heather Baez, Governmental Affairs Manager at hbaez@mwdoc.com. To be given consideration, questions must be received by 5:00 p.m. on October 2, 2015. All questions asked by Proposers and answers provided in response will be immediately posted to MWDOC's website at <http://www.mwdoc.com/business/rfp>.

Under no circumstances may the Proposer contact any other staff member or Board Member of MWDOC or its member agencies (or the cities of Santa Ana, Fullerton, or Anaheim) to discuss this RFP or clarify any requirements herein. Failure to comply with this requirement may be grounds for immediate disqualification.

II. SUBMITTAL REQUIREMENTS

1. To facilitate the evaluation process, **four (4) printed copies of the proposal shall be provided as well as an electronic copy** (using PDF format, with search capability) **on a flash drive.**
2. The proposal shall be signed by an individual authorized to execute legal documents on behalf of the contractor.
3. Any changes or addenda to a submitted proposal must be received by the submittal deadline.

III. TERMS AND CONDITIONS

1. MWDOC and local water agencies may make such investigations as it deems necessary to determine the ability of the Proposer to provide the goods and/or service as specified, and the Proposer shall furnish to MWDOC, upon request, all such information and data for this purpose. MWDOC may discuss or negotiate with one or more firms prior to award.
2. MWDOC reserves the right to reject any or all proposals, either separately or as a whole, and accept any proposal presented which it deems best suited to the interest of MWDOC and its member agencies, and is not bound to accept the lowest price.
3. The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of MWDOC.
4. Be advised that all information contained in proposals submitted in response to this solicitation may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

SECTION 5 – SELECTION PROCESS

I. PROPOSAL REVIEW PROCESS

1. An evaluation committee will review and score the proposals received in response to this RFP.
2. If deemed necessary by the evaluation committee, interviews with short-listed Contractors will be conducted on October 20-21, 2015. (It is highly recommended that all Proposers reserve this date in advance.)
3. The evaluation committee will recommend one or more firms to fulfill the requirements of this RFP.
4. Upon approval by the Board of Directors, MWDOC will enter into negotiations with the selected Contractor and execute an agreement.

II. SELECTION CRITERIA

The criteria for vendor selection shall be based on, but not limited to, the following:

1. Qualifications and experience of firm and project manager (lobbyist/point of contact)
2. Demonstration of bi-partisan relationships with legislators, staff, committee staff and regulatory boards.
3. Understanding of the District, functions and mission
4. Management Plan and approach to Scope of Work
5. Compliance with standard district terms and conditions and insurance requirements
6. Cost of services

EXHIBIT A – MWDOC SERVICE AREA MAP



**MWDOC Service Area
and Member Agencies**

**Figure
1-1**

Drawn for Design/Build Review, CSJF 2011.
Portions of this map are copyrighted, and reproduced with permission granted by THE CALIFORNIA WATER SERVICE BOARD.

EXHIBIT B – MWDOC STANDARD AGREEMENT

STANDARD AGREEMENT FOR CONSULTANT SERVICES

This **AGREEMENT** for consulting services, which includes all exhibits and attachments hereto, "**AGREEMENT**" is made on the last day executed below by and between **MUNICIPAL WATER DISTRICT OF ORANGE COUNTY**, hereinafter referred to as "**DISTRICT**," and, (FIRM NAME) hereinafter referred to as "**CONSULTANT**" for State Legislative Advocacy Services hereinafter referred to as "**SERVICES.**"¹ **DISTRICT** and **CONSULTANT** are also referred to collectively herein as the "**PARTIES**" and individually as "**PARTY.**" The **PARTIES** agree as follows:

PURPOSE AND SCOPE OF WORK

A. Consulting Work.

DISTRICT hereby contracts with **CONSULTANT** to provide general or special **SERVICES** as more specifically set forth in **Exhibit "8"** attached hereto and incorporated herein. Tasks other than those specifically described therein shall not be performed without prior written approval of **DISTRICT's** General Manager.

B. Independent Contractor.

CONSULTANT is retained as an independent contractor for the sole purpose of rendering professional and/or special **SERVICES** described herein and is not an agent or employee of **DISTRICT**. **CONSULTANT** shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance **CONSULTANT**, as an independent contractor, is responsible for paying under federal, state or local law. **CONSULTANT** is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS. Unless, expressly provided herein, **CONSULTANT** is not eligible to receive overtime, vacation or sick pay. **CONSULTANT** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **DISTRICT**. **CONSULTANT** shall have the sole and absolute discretion in determining the methods, details and means of performing the **SERVICES** required by **DISTRICT**. **CONSULTANT** shall furnish, at his/her own expense, all labor, materials, equipment and transportation necessary for the successful completion of the **SERVICES** to be performed under this **AGREEMENT**. **DISTRICT** shall not have any right to direct the methods, details and means of the **SERVICES**; however, **CONSULTANT** must receive prior written approval from **DISTRICT** before using any sub-consultants for **SERVICES** under this **AGREEMENT**.

C. Changes in Scope of Work

If **DISTRICT** requires changes in the tasks or scope of work shown in **Exhibit "8"** or additional work not specified therein, **DISTRICT** shall prepare a written change order. If **CONSULTANT** believes work or materials are required outside the tasks or scope of work described in **Exhibit "8,"** it shall submit a written request for a change order to the **DISTRICT**. A change order must be approved and signed by the **PARTIES** before **CONSULTANT** performs any work outside the scope of work shown in **Exhibit "8."** **DISTRICT** shall have no responsibility to compensate **CONSULTANT** for such work without an approved and signed change order. Change orders shall specify the change in the budgeted amount for **SERVICES**.

¹ Pursuant to Section 8002 of the District's Administrative Code, the District's "Ethics Policy" set forth at sections 7100-7111 of the Administrative Code is attached hereto as Exhibit "A" and incorporated herein by this reference.

II TERM

This **AGREEMENT** shall commence upon the date of its execution and shall extend thereafter for the period specified in **Exhibit "B"** or, if no time is specified, until terminated on thirty (30) days notice as provided herein.

III BUDGET, FEES, COSTS, BILLING, PAYMENT AND RECORDS

A. Budgeted Amount for SERVICES

CONSULTANT is expected to complete all **SERVICES** within the Budgeted Amount set forth on **Exhibit "B."** The total compensation for the **SERVICES** to be performed under this **AGREEMENT** shall not exceed the Budgeted Amount unless modified as provided herein. Upon invoicing the **DISTRICT** 80% of the Budgeted Amount, **CONSULTANT** shall prepare and provide to **DISTRICT** a "cost to complete" estimate for the remaining **SERVICES**. The **PARTIES** shall work together to complete the project within the agreed-upon Budgeted Amount, but the obligation to complete the **SERVICES** within the Budgeted Amount lies with the **CONSULTANT**.

B. Fees

Fees shall be billed per the terms and conditions and at the rates set forth on **Exhibit "B"** for the term of the **AGREEMENT**. Should the term of the **AGREEMENT** extend beyond the period for which the rates are effective, the rates specified in **Exhibit "B"** shall continue to apply unless and until modified by consent of the **PARTIES**.

C. Notification Clause

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

Notices shall be made as follows:

Municipal Water District of Orange County
Robert J. Hunter
General Manager
P.O. Box 20895
Fountain Valley, CA 92728

D. Billing and Payment

CONSULTANT's fees shall be billed by the 10th day of the month and paid by **DISTRICT** on or before the 10th of the following month. Invoices shall reference the Purchase Order number from the **DISTRICT**.

DISTRICT shall review and approve all invoices prior to payment. **CONSULTANT** agrees to submit additional supporting documentation to support the invoice if requested by **DISTRICT**. If **DISTRICT** does not approve an invoice, **DISTRICT** shall send a notice to **CONSULTANT** setting forth the reason(s) the invoice was not approved. **CONSULTANT** may

re-invoice **DISTRICT** to cure the defects identified in the **DISTRICT** notice. The revised invoice will be treated as a new submittal. If **DISTRICT** contests all or any portion of an invoice, **DISTRICT** and **CONSULTANT** shall use their best efforts to resolve the contested portion of the invoice.

E. **Billing Records**

CONSULTANT shall keep records of all **SERVICES** and costs billed pursuant to this **AGREEMENT** for at least a period of seven (7) years and shall make them available for review and audit if requested by **DISTRICT**.

IV **DOCUMENTS**

All **MATERIALS** as defined in Paragraph XI below, related to **SERVICES** performed under this **AGREEMENT** shall be furnished to **DISTRICT** upon completion or termination of this **AGREEMENT**, or upon request by **DISTRICT**, and are the property of **DISTRICT**.

V **TERMINATION**

Each **PARTY** may terminate this **AGREEMENT** at any time upon thirty (30) days written notice to the other **PARTY**, except as provided otherwise in **Exhibit "B."** In the event of termination: (1) all work product prepared by or in custody of **CONSULTANT** shall be promptly delivered to **DISTRICT**; (2) **DISTRICT** shall pay **CONSULTANT** all payments due under this **AGREEMENT** at the effective date of termination; (3) **CONSULTANT** shall promptly submit a final invoice to the **DISTRICT**, which shall include any and all non-cancelable obligations owed by **CONSULTANT** at the time of termination, (4) neither **PARTY** waives any claim of any nature whatsoever against the other for any breach of this **AGREEMENT**; (5) **DISTRICT** may withhold 125 percent of the estimated value of any disputed amount pending resolution of the dispute, consistent with the provisions of section III D above, and; (6) **DISTRICT** and **CONSULTANT** agree to exert their best efforts to expeditiously resolve any dispute between the **PARTIES**.

VI **INSURANCE REQUIREMENTS**

CONSULTANT shall obtain prior to commencing work and maintain in force and effect throughout the term of this **AGREEMENT**, all insurance set forth below.

A. **Workers' Compensation Insurance**

By his/her signature hereunder, **CONSULTANT** certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that **CONSULTANT** will comply with such provisions before commencing the performance of the **SERVICES** under this **AGREEMENT**.

CONSULTANT and sub-consultant will keep workers' compensation insurance for their employees in effect during all work covered by this **AGREEMENT**. An ACORD certificate of insurance or other certificate of insurance satisfactory to **DISTRICT**, evidencing such coverage must be provided (1) by **CONSULTANT** and (2) by sub-consultant's upon request by **DISTRICT**.

B. **Professional Liability Insurance**

CONSULTANT shall file with **DISTRICT**, before beginning professional **SERVICES**, an ACORD certificate of insurance, or any other certificate of insurance satisfactory to **DISTRICT**, evidencing professional liability coverage of not less than \$1,000,000 per claim and \$1,000,000

aggregate, requiring 30 days notice of cancellation (10 days for non-payment of premium) to **DISTRICT**.

Such coverage shall be placed with a carrier with an A.M. Best rating of no less than A: VII, or equivalent. The retroactive date (if any) of such insurance coverage shall be no later than the effective date of this **AGREEMENT**. In the event that the **CONSULTANT** employs sub-consultants as part of the **SERVICES** covered by this **AGREEMENT**, **CONSULTANT** shall be responsible for requiring and confirming that each sub-consultant meets the minimum insurance requirements specified herein.

C. **Other Insurance**

CONSULTANT will file with **DISTRICT**, before beginning professional **SERVICES**, ACORD certificates of insurance, or other certificates of insurance satisfactory to **DISTRICT**, evidencing general liability coverage of not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage; automobile liability (owned, scheduled, non-owned or hired) of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non payment of premium) notice of cancellation to **DISTRICT**. For the coverage required under this paragraph, the insurer(s) shall waive all rights of subrogation against **DISTRICT**, and its directors, officers, agents, employees, attorneys, consultants or volunteers. **CONSULTANT's** insurance coverage shall be primary insurance as respects **DISTRICT**, its directors, officers, agents, employees, attorneys, consultants and volunteers for all liability arising out of the activities performed by or on behalf of the **CONSULTANT**. Any insurance pool coverage, or self-insurance maintained by **DISTRICT**, and its directors, officers, agents, employees, attorneys, consultants or volunteers shall be excess of the **CONSULTANT's** insurance and shall not contribute to it.

The general liability coverage shall give **DISTRICT**, its directors, officers, agents, employees, attorneys, consultants and authorized volunteers additional insured status using ISO endorsement CG2010, CG2033, or equivalent. Coverage shall be placed with a carrier with an A.M. Best rating of no less than A: VII, or equivalents. In the event that the **CONSULTANT** employs sub-consultant as part of the work covered by the **AGREEMENT**, it shall be the **CONSULTANT's** responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified herein.

D. **Expiration of Coverage**

If any of the required coverages expire during the term of the **AGREEMENT**, **CONSULTANT** shall deliver the renewal certificate(s) including the general liability additional insured endorsement to **DISTRICT** at least ten (10) days prior to the expiration date.

INDEMNIFICATION

To the fullest extent permitted by applicable law, **CONSULTANT** shall indemnify, defend and hold harmless **DISTRICT**, its officers, Directors and employees and authorized volunteers, and each of them from and against:

- a. When the law establishes a professional standard of care for the **CONSULTANT's** services, all claims and demands of all persons that arise out of, pertain to, or relate to the **CONSULTANT's** negligence, recklessness or willful misconduct in the performance (or actual or alleged non-performance) of the work under this agreement. **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 **DISTRICT** nor its directors, officers, employees, or authorized volunteers, for defense or indemnity.
- b. 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**.
- c. Any and all losses, expenses, damages (including damages to the work itself), attorney's 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 the agreement. 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.

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 **DISTRICT** or its directors, officers, employees, or authorized volunteers with legal counsel reasonably acceptable to **DISTRICT**.

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

CONSULTANT shall reimburse **DISTRICT** or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing indemnity herein provided.

CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by **DISTRICT**, or its directors, officers, employees, or authorized volunteers.

VII FINANCIAL DISCLOSURE AND CONFLICTS OF INTEREST

Although **CONSULTANT** is retained as an independent contractor, **CONSULTANT** may still be required, under the California Political Reform Act and **DISTRICT's** Administrative Code, to file annual disclosure reports. **CONSULTANT** agrees to file such financial disclosure reports upon request by **DISTRICT**. Further, **CONSULTANT** shall file the annual summary of gifts required by Section 7105 of the **DISTRICT's** Ethics Policy, attached hereto as **Exhibit "A."**

Failure to file financial disclosure reports upon request and failure to file the required gift summary are grounds for termination of this **AGREEMENT**. Any action by **CONSULTANT** that is inconsistent with **DISTRICT's** Ethic's Policy current at the time of the action is grounds for termination of this **AGREEMENT**. The Ethics Policy as of the date of this **AGREEMENT** is attached hereto as **Exhibit "A."**

VIII PERMITS AND LICENSES

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

IX LABOR AND MATERIALS

CONSULTANT shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and other items or services necessary for the successful completion of the **SERVICES** to be performed under this **AGREEMENT**. **CONSULTANT** shall give its full attention and supervision to the fulfillment of the provisions of this **AGREEMENT** by its employees and sub-consultant and shall be responsible for the timely performance of the **SERVICES** required by this **AGREEMENT**. All compensation for **CONSULTANT's** **SERVICES** under this **AGREEMENT** shall be pursuant to **Exhibit "B"** to the **AGREEMENT**.

Only those **SERVICES**, materials, administrative, overhead and travel expenses specifically listed in **Exhibit "B"** will be charged and paid. No other costs will be paid. **CONSULTANT** agrees not to invoice **DISTRICT** for any administrative expenses, overhead or travel time in connection with the **SERVICES**, unless agreed upon and listed in **Exhibit "B"**.

X CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE

A. Confidential Nature of Materials

CONSULTANT understands that all documents, records, reports, data, or other materials (collectively "**MATERIALS**") provided by **DISTRICT** to **CONSULTANT** pursuant to the **AGREEMENT**, including but not limited to draft reports, final report(s) and all data, information, documents, graphic displays and other items that are not proprietary to **CONSULTANT** and that are utilized or produced by **CONSULTANT** pursuant to the **AGREEMENT** are to be considered confidential for all purposes.

B. No Disclosure of Confidential Materials

CONSULTANT shall be responsible for protecting the confidentiality and maintaining the security of **DISTRICT MATERIALS** and records in its possession. All **MATERIALS** shall be deemed confidential and shall remain the property of **DISTRICT**. **CONSULTANT** understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or sub-consultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, or other materials except as provided herein or as authorized, in writing, by **DISTRICT's** representative. **CONSULTANT** agrees not to make use of such **MATERIALS** for any purpose not related to the performance of the **SERVICES** under the **AGREEMENT**. **CONSULTANT** shall not make written or oral disclosures thereof, other than as necessary for its performance of the **SERVICES** hereunder, without the

prior written approval of **DISTRICT**. Disclosure of confidential **MATERIALS** shall not be made to any individual, agency, or organization except as provided for in the **AGREEMENT** or as provided for by law.

C. Protections to Ensure Control Over Materials

All confidential **MATERIALS** saved or stored by **CONSULTANT** in an electronic form shall be protected by adequate security measures to ensure that such confidential **MATERIALS** are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

The provisions of this section survive the termination or completion of the **AGREEMENT**.

XI OWNERSHIP OF DOCUMENTS AND DISPLAYS

All original written or recorded data, documents, graphic displays, reports or other **MATERIALS** which contain information relating to **CONSULTANT's** performance hereunder and which are originated and prepared for **DISTRICT** pursuant to the **AGREEMENT** are instruments of service and shall become the property of **DISTRICT** upon completion or termination of the Project. **CONSULTANT** hereby assigns all of its right, title and interest therein to **DISTRICT**, including but not limited to any copyright interest. In addition, **DISTRICT** reserves the right to use, duplicate and disclose in whole, or in part, in any manner and for any purpose whatsoever all such data, documents, graphic displays, reports or other **MATERIALS** delivered to **DISTRICT** pursuant to this **AGREEMENT** and to authorize others to do so.

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

XII EQUAL OPPORTUNITY

DISTRICT is committed to a policy of equal opportunity for all and to providing a work environment that is free of unlawful discrimination and harassment. In keeping with this commitment, **DISTRICT** maintains a policy prohibiting unlawful discrimination and harassment in any form based on race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy or childbirth, marital status, gender, sex, sexual orientation, veteran status or age by officials, employees and non-employees (vendors, contractors, etc.).

This policy applies to all employees, consultants and contractors of the **DISTRICT** whom the **DISTRICT** knows or has reason to know are violating this policy. Appropriate corrective action will be taken against all offenders, up to and including immediate discharge or termination of this **AGREEMENT**. During, and in conjunction with, the performance of this **AGREEMENT**, **CONSULTANT** shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status or national origin.

XIII INTEGRATION OF ALL OTHER AGREEMENTS

This **AGREEMENT**, including any Exhibits and Addenda, contains the entire understanding of the **PARTIES**, and there are no further or other agreements or understandings, written or oral, in effect between the **PARTIES** hereto relating to the subject matter hereof. Any prior understanding or agreement of the **PARTIES** shall not be binding unless expressly set forth herein and, except to the extent expressly provided for herein, no changes of this **AGREEMENT** may be made without the written consent of both **PARTIES**.

XIV ATTORNEYS' FEES

In any action at law or in equity to enforce any of the provisions or rights under this **AGREEMENT**, the prevailing **PARTY** shall be entitled to recover from the unsuccessful **PARTY** all costs, expenses and reasonable attorney's fees incurred therein by the prevailing **PARTY** (including, without limitations, such costs, expense and fees on any appeals), and if such prevailing **PARTY** shall recover judgment in any such action or proceeding, such costs, expenses, including those of expert witnesses and attorneys' fees, shall be included as part of this judgment.

XV JURISDICTION AND VENUE SELECTION

In all matters concerning the validity, interpretation, performance, or effect of this **AGREEMENT**, the laws of the State of California shall govern and be applicable. The **PARTIES** hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that venue of any action brought hereunder shall be in Orange County, California.

XVI DRUG AND ALCOHOL FREE WORKPLACE

Section 1. Introduction

Using, possessing, purchasing, selling, negotiating sale or purchase or being under the influence of drugs, or being under the influence of alcohol, during working time, or on District premises, including parking lots, or while operating a personal vehicle on company business, is absolutely forbidden and will result in discharge or other discipline as the District deems appropriate.

Section 2. Prescription Drugs

The use of prescription drugs which would not alter an employee's work performance is acceptable, if prescribed to the employee by a licensed healthcare provider. In the event there is a question regarding an employee's ability to perform assigned duties safely and effectively while using such drugs, clearance from a licensed health care provider may be required before the employee is allowed to resume the employee's regular duties.

Section 3. Employees Duties and Responsibilities

- A. Notify their supervisor before beginning work when taking drugs (prescription or non-prescription), which the employee reasonably believes may interfere with the safe and effective performance of their duties;
- B. Not report to work, be at work, or work while under the influence of, or while his or her ability to perform job duties is impaired due to, on or off-duty alcohol or drug use;

- C. Not possess or use alcohol or impairing drugs or substances while on duty, at work, or working;
- D. Not directly, or through a third party, sell or provide drugs or alcohol to any person, including an employee, while either or both employees is on duty, at work, or working;
- E. Submit immediately to an alcohol or drug test when directed by a supervisor or manager;
- F. Provide, within 24 hours of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be from a licensed health care provider and in the employee's name; and
- G. Report any conviction received pursuant to a criminal drug statute for violations for conduct occurring on or off District premises while conducting District business. A report of conviction must be made to the Administrative Services Manager within five (5) days after conviction, as mandated by the Federal Drug-Free Workplace Act of 1988.
- H. The unlawful manufacture, distribution, dispensing, possession or consumption of any controlled substance is prohibited anytime an employee is on duty, at work or working.
- I. Any violation of this section and other provisions of this Policy may result in discipline, up to and including termination.

Section 4. Alcohol at District Sponsored Events

With prior approval of Management and in Management's sole discretion, the District may allow employees to consume moderate amounts of alcohol at District sponsored social events outside of normal business hours where such use is appropriate in the circumstances. Employees who are found to be under the influence of alcohol, or who engage in misconduct at such events, are subject to discharge or discipline, in accordance with District processes and procedures.

Section 5 Pre-Employment Testing

- A. As a condition of every offer of employment or any promotion or new assignment, the District reserves the right to require any new hire to undergo and successfully complete a blood, urine, or other chemical test for drugs or alcohol.
- B. The drug and/or alcohol test may test for any substance which could impair an employee's ability to perform the functions of their job effectively and safely, including, but not limited to, prescription drugs, alcohol, and other controlled substances.
- C. All testing (including sample collection, chain of custody and laboratory services) shall be conducted in accordance with the approved procedures of the substance Abuse and Mental Health Services Administration, formerly NIDA. The results of testing shall be reviewed by a medical review officer, who shall be a licensed physician, possessing appropriate training, and knowledgeable about substance abuse disorders.
- D. Pre-employment drugs and/or alcohol test result.

1. A positive result from a drug and/or alcohol analysis may result in the applicant not being hired where the applicant's use of drugs and /or alcohol could affect requisite job standards, duties or responsibilities.
2. If a drug screen is positive at the pre-employment physical, the applicant must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the job duties, the applicant may not be hired.

Section 6. Reasonable Cause Testing

- A. As a condition of continued employment, the District may require any employee to undergo and successfully complete a blood, urine, or other chemical test for drugs or alcohol whenever the District has reasonable suspicion to believe the employee is under the influence of or impaired by drugs or alcohol while on duty, at work, or working.
- B. A determination that an employee is under the influence of or impaired by drugs or alcohol will be based on specific personal observations of any of the following, which alone or in combination, may constitute reasonable suspicion depending upon the circumstances in which the behavior is observed and/or reported:
 1. Bloodshot eyes;
 2. Glassy eyes;
 3. Dilated pupils;
 4. Slurred Speech;
 5. Odor on breath;
 6. Drowsiness;
 7. Euphoria;
 8. Mood swings;
 9. Inattentiveness;
 10. Excitement and confusion
 11. Irritability;
 12. Aggressiveness;
 13. Shaking or erratic movement;
 14. Disorientation;
 15. Unsteady walking and movement;
 16. An accident involving District property, where it appears the employee's conduct is at fault;
 17. Physical altercation;
 18. Verbal altercation;

19. Unusual behavior;
 20. Use or possession of alcohol, drugs or paraphernalia; and/or
 21. Information obtained from a reliable person with personal knowledge.
- C.** Any Manager or supervisor requiring an employee to submit to a drug/and or alcohol test should document in writing the facts constituting reasonable suspicion that the employee in question is impaired or under the influence. A manager or supervisor's failure to comply with this paragraph does not invalidate the directive to submit to testing.
- D.** All testing will be conducted at a clinic or laboratory selected by the District, with appropriate safeguards for privacy, confidentiality, and accuracy. Test results will be kept confidential to the fullest extent required by law, and will be maintained separate from the individual's personnel file. All testing (including sample collection, chain of custody and laboratory services) shall be conducted in accordance with the approved procedures of the Substance Abuse and Mental Health Services Administration, formerly NIDA. The results of testing shall be reviewed by a medical review officer, who shall be a licensed physician, possessing appropriate training, and knowledgeable about substance abuse disorders. The manager or supervisor may arrange for the employee to be transported to a testing facility, and then home afterwards. The manager or supervisor may also notify appropriate law enforcement agencies.
- E.** The reports or test results may be disclosed to District management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or pursuant to a lawfully issued subpoena; (2) the information has been placed at issue in a formal dispute between the employee and the District; (3) the information is to be used in administering an employee benefit plan; or (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
- F.** Managers and supervisors shall notify their department head or designee when they have reasonable suspicion to believe that an employee may have controlled substances in his or her possession or in an area not jointly or fully controlled by the District. If the department head or designee concurs that there is a reasonable suspicion of illegal drug possession, the department head shall notify the appropriate law enforcement agencies.

Employees are required to cooperate with the District and its clinic or laboratory in conducting tests. Employees who refuse to undergo testing or who interfere with the testing process, including but not limited to interference by unreasonable delay or contamination or tampering of the sample, will be subject to immediate discharge or discipline.

Employees who test positive, fail to cooperate with testing procedures, or otherwise violate this policy are subject to discharge or other discipline.

In any case involving unusual or extenuating circumstances, the District in its sole discretion may allow an applicant or employee who tests positive to commence or continue employment, subject to the condition that the employee undergo some form of treatment for addictions or abuse of drugs and alcohol as determined by the District, in its sole discretion and submit to periodic or random testing as required by the District.

Section 7. Accommodation for Drug and Alcohol Rehabilitation Programs

The District will reasonably accommodate any employee who comes forward before violating this policy and requests to enter voluntarily into a drug or alcohol rehabilitation program. Such requests will be kept confidential as provided by law. Once an employee violates this policy, however, any request to enroll in a rehabilitation program in lieu of discharge or discipline will be left to the sole discretion of the District, and will require random testing and other necessary follow-up measures. Employees who wish to enroll in drug or alcohol rehabilitation are encouraged to come forward before they are found in violation of this policy.

§7100 PURPOSE

The policy of MWDOC is to maintain the highest standards of ethics from its Board members, officers and employees (all shall be referred to as employees for the purposes of this section). The proper operation of MWDOC requires decisions and policy to be made in the proper manner, that public office not be used for personal gain, and that all individuals associated with MWDOC remain impartial and responsible toward the public. Accordingly, all employees are expected to abide by the highest ethical standards and integrity when dealing on behalf of MWDOC with fellow Board members or employees, vendors, contractors, customers, and other members of the public.

§7101 RESPONSIBILITIES OF BOARD MEMBERS

Board members are obliged to uphold the Constitution of the United States and the Constitution of the State of California and shall comply with all applicable laws regulating Board member conduct, including conflicts of interest and financial disclosure laws. No Board member or officer shall grant any special consideration, treatment, or advantage to any person or group beyond that which is available to every other person or group in the same circumstances.

§7102 PROPER USE OF MWDOC PROPERTY AND RESOURCES

Except as specifically authorized, no employee shall use or remove or permit the use or removal of MWDOC property, including MWDOC vehicles, equipment, telephones, office supplies, and materials for personal convenience or profit. No employee shall require another MWDOC employee to perform services for the personal convenience or profit of another employee. Each employee must protect and properly use any MWDOC asset within his/her control, including information recorded on paper or in electronic form. Employees shall safeguard MWDOC property, equipment, monies, and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.

Employees are responsible for maintaining written records, including expense reports, in sufficient detail to reflect accurately and completely all transactions and expenditures made on MWDOC's behalf. Creating a document with misleading or false information is prohibited.

Motion- 1/17/96;

§7103 CONFLICT OF INTEREST

All MWDOC Directors, officers, and employees at every level shall comply with the requirements of Section 1090 of the California Government Code which prohibits such persons from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members, or from being a purchaser at any sale or a vendor at any purchase made by them in their official capacity.

All Directors and employees designated under MWDOC's Conflict of Interest Code ("designated employees") and employees required to report under Chapter 7, Article 2 of the Political Reform Act (Government Code Section 7300 et seq.) shall promptly and fully comply with all requirements thereof.

MWDOC employees who are not designated employees under MWDOC's Conflict of Interest Code shall refrain from participating in, making a recommendation, or otherwise attempting to influence MWDOC's selection of a contractor, consultant, product, or source of supply if the

non-designated employee, or an immediate family member, has a direct or indirect financial interest in the outcome of the selection process. No employee shall use his/her position with MWDOC in any manner for the purpose of obtaining personal favors, advantages or benefits for him/herself or an immediate family member from a person or entity doing business or seeking to do business with MWDOC. Such favors, advantages, or benefits would include, but are not limited to: 1) offers of employment; 2) free or discounted goods or services; or 3) gifts.

§7104 GIFTS

No employee shall accept, directly or indirectly, any compensation, reward or gift from any source except from MWDOC, for any action related to the conduct of MWDOC business, except as set forth below:

1. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a breakfast, luncheon or dinner meeting or other meeting or on an inspection tour where the arrangements are consistent with the transaction of official business.*

2. Acceptance of transportation, lodging, meals or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical or professional organizations; or in connection with attendance at public ceremonies or similar activities financed by nongovernmental sources where the employee's participation on behalf of MWDOC is the result of an invitation addressed to him or her in his/her official capacity, and the transportation, lodging, meals or refreshment accepted is related to, and is in keeping with, his/her official participation.*

3. Acceptance of unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, or other items of nominal value.*

4. Acceptance of plaques and commemorative mementoes, of nominal value, or of value only to the recipient, such as service pins, recognition awards, retirement mementoes.

5. Acceptance of incidental transportation from a private organization provided it is furnished in connection with an employee's official duties and is of the type customarily provided by the private organization.

* Nothing herein shall be deemed to relieve any Director or designated employee from reporting the value of such meals, transportation, lodging or gifts and abstaining from participation in any decision of MWDOC which could foreseeably have a material financial effect on the donor when the value of such gifts reaches the limits set forth in MWDOC's Conflict of Interest Code and the Political Reform Act.

In no event shall any employee accept gifts from any single source, the cumulative value of which exceeds the applicable gift limit under California law.

A gift or gratuity, the receipt of which is prohibited under this section, shall be returned to the donor. If return is not possible, the gift or gratuity shall be turned over to a public or charitable institution without being claimed as a charitable deduction and a report of such action and the reasons why return was not feasible shall be made on MWDOC records. When possible, the donor also shall be informed of this action.

Motion- 1/17/96;

§7105 PERSONS OR COMPANIES REPORTING GIFTS

All persons and companies doing business with MWDOC, with the exception of public agencies, shall submit a summary, by January 31 of each calendar year, of all gifts claimed for internal

vendor audits (including meals) made to, or on behalf of, employees or Directors of MWDOC, or their immediate family members, that have occurred in the normal course of business during the previous calendar year. Failure to provide this information to MWDOC may result in the termination of MWDOC business with that person or company.

Motion- 7/21/93; Motion- 8/18/93;

§7106 USE OF CONFIDENTIAL INFORMATION

Confidential information (i.e., information which is exempt from disclosure under the California Public Records Act) shall not be released to unauthorized persons unless the disclosure is approved by the Board, President of the Board, or General Manager. Employees are prohibited from using any confidential information for personal advantage or profit.

§7107 POLITICAL ACTIVITIES

Employees are free to endorse, advocate, contribute to, or otherwise support any political party, candidate, or cause they may choose; however, employees are prohibited from soliciting political funds or contributions at MWDOC facilities. In any personal political activity an employee may be involved in, it shall be made clear that the employee is acting personally and not for MWDOC.

§7108 IMPROPER ACTIVITIES

Employees shall not interfere with the proper performance of the official duties of others, but are strongly encouraged to fulfill their own moral obligations to the public, MWDOC, and its member agencies by disclosing, to the extent not expressly prohibited by law, improper activities within their knowledge. No employee shall directly or indirectly use or attempt to use the authority or influence of his/her position for the purpose of intimidating, threatening, coercing, commanding, or influencing any person with the intent of interfering with that person's duty to disclose improper activity.

§7109 VIOLATION OF POLICY- STAFF AND STAFF OFFICERS

If an employee is reported to have violated MWDOC's Ethics Policy, the matter shall be referred to the General Manager for investigation and consideration of any appropriate action warranted which may include employment action such as demotion, reduction in salary, or termination. If a Board appointed officer (Secretary, Treasurer or General Manager) is reported to have violated MWDOC's Ethics Policy, the matter shall be referred to the Executive Committee for investigation and consideration of any appropriate action.

Motion- 1/17/96;

§7110 VIOLATION OF POLICY-- DIRECTORS

A perceived violation of this policy by a Director should be referred to the President of the Board or the full Board of Directors for investigation, and consideration of any appropriate action warranted. A violation of this policy may be addressed by the use of such remedies as are available by law to MWDOC, including, but not limited to: (a) adoption of a resolution expressing disapproval of the conduct of the Director who has violated this policy, (b) injunctive relief, or (c) referral of the violation to MWDOC Legal Counsel and/or the Grand Jury.

§7111 PERIODIC REVIEW OF CONFLICT OF INTEREST AND ADMINISTRATIVE GUIDELINES

During the first quarter of the year immediately following an election (every two years), the Board shall meet to review and/or receive a presentation that addresses principles relating to reporting guidelines on compensation, conflict of interest issues, and standards for rules of conduct.

