



## **REQUEST FOR PROPOSALS (RFP)**

**For Professional Services  
For the  
Development of a Plant Database  
and Garden Website  
for  
Orange County, California**

**Proposals Due: 2:00 pm  
Monday  
March 4, 2019**

## **Plant Database and Garden Website**

### **I. Introduction**

The Municipal Water District of Orange County (MWDOC) is seeking an established Webpage/Software/Database Developer (Consultant) to develop an online Plant Database and Garden Website (“Plant Website”) specific to Orange County, California. The selected Consultant shall have demonstrated capabilities and experience in the fields of webpage/software/database development to provide a Plant Website that works seamlessly with MWDOC’s existing [www.mwdoc.com](http://www.mwdoc.com) and <https://mwdoc.dropletportal.com/> websites.

After the successful execution of MWDOC’s Professional Services Agreement between Consultant and MWDOC, Consultant will begin the work as described in the Scope of Work section of this document. It is also anticipated work by the Consultant would begin in May 2019 and conclude by September 2019, with maintenance services ongoing thereafter on a year-by-year basis as agreed to by the parties.

#### **Overview**

Water agencies throughout Orange County have a long standing commitment to water use efficiency. MWDOC is a recognized leader in its water use efficiency programs (WUE). Our suite of outdoor landscape and plumbing programs have been in existence since 1994 and have save more than 100,000 acre-feet of water in the landscape. MWDOC’s Turf Removal Rebate Program (TRRP), in particular, has operated since 2010 and has facilitated the removal of over 22 million square feet of turf in Orange County.

While the TRRP has been extremely successful, MWDOC has found that one of the major hurdles to participating in the TRRP is a lack of access to design ideas and plant knowledge. With the development of the Plant Database and Garden Website, MWDOC hopes to minimize this barrier to participation and provide an invaluable resource to not only TRRP participants, but also the entire Orange County population.

### **II. Plant Database and Garden Website - Scope of Services**

The Online Plant Database and Garden Website consists of two main tasks, as described below, that shall be used as the basis to produce Consultant’s submitted cost structure. MWDOC WUE Staff will preside over project management and coordination. The primary role of the Consultant is to develop, facilitate, and launch the Plant Website, coordinate with MWDOC’s website developer and the TRRP Droplet portal developer to ensure compatibility/seamlessness, as needed, and troubleshoot any issues that arise. Consultant’s Budget included in their Response should reflect these objectives.

## Description of Work

### Task 1 – Database and Website Development

The selected Consultant shall develop a web-based plant database and garden website (Plant Website) that will work fluidly with the existing MWDOC website and TRRP Droplet portal. The Plant Website, at a minimum, must incorporate the following elements:

- MWDOC-established branding specifics such as fonts, color schemes, logos, etc.
- Plants relevant to the Orange County area. Native and California Friendly Plants should be identified. Database must contain a minimum of 750 plants. Plants identified as Invasive by the California Invasive Plant Council need to be referred to as unacceptable and must be excluded.
- Each plant shall have its own profile page that includes at least one color photo, a description of the plant, a list of its physical features, its water, sun, and soil requirements, the types of designs it is commonly used in, its blooming season, etc.
- Ability to search for Plants by various criteria, including:
  - Common Name
  - Botanical Name
  - Characteristics, i.e., type, water need, sun exposure, function, size at maturity, etc.
- Ability for the user to “bookmark” or save plant records and information for reference and printing.
- Photo gallery of garden tours depicting a variety of garden styles, such as:
  - Mediterranean, Spanish, or other similar style
  - Tuscan, Italian, or other similar style
  - California Native, CA Friendly Rain Garden, Ocean Friendly Garden, or other similar style
  - Modern, or other similar style
  - Cottage, or other similar style
  - Coastal, or other similar style
- Photo gallery of garden/planting categories, such as:
  - Small spaces
  - Hedges
  - Trellises,
  - Patios,
  - Front yards

- Back yards
- Slopes
- Clay soil
- A Garden Resources Section with information on maintenance, plant care, pruning, soil care, irrigation, water conservation tips, etc.
- Watering Calculator
- Ability for MWDOC to customize messaging to promote programs and provide other information as needed.
- Be free of pop-ups or other advertisements.
- Any other features that MWDOC and Consultant may deem appropriate.
- It is anticipated that the Plant Database and Garden Website will be expanded/enhanced over time. Possible expansions/enhancements include a how-to videos, additional tours spotlighting Orange County TRRP participants, etc. The ability to easily include these types of enhancements should be considered when designing/developing the Plant Database and Garden Website.

## **Task 2 –Website Administration**

The selected Consultant shall provide all Plant Website administration and technical support services. Administration includes, but is not limited to:

- Attending meeting(s) to discuss Plant Website development and any necessary input required of Consultant and MWDOC.
- Establishing a unique URL address, with MWDOC input
- Providing ongoing administration of the Plant Website including, but not limited to:
  - Tracking visitors/hits and providing usage reports to MWDOC
  - Providing minor updates and changes when desired and needed
  - Troubleshooting and repairing any issues within two business days of notification of said issue.
  - Invoicing MWDOC for services rendered. Consultant must submit any invoices by the 30<sup>th</sup> day of the month and to be paid by MWDOC on or before the end of the following month.

## **III. Project Implementation Schedule**

The table below outlines anticipated schedule, subject to modifications as needed.

<b>Task Description</b>	<b>Date</b>
Release of RFP to Contractor(s)	February 22, 2019
Proposal Due Date	March 4, 2019, 2pm PST
Proposal Review	Week of March 4, 2019
Consultant Selection	Week of March 11, 2019
MWDOC Board Approval Request	April 17, 2019
Contract Execution	April 30, 2019
Begin Plant Database and Garden Website	May 1, 2019
Submit Draft Site for Feedback	June 30, 2019
Plant Database and Garden Website Complete	By July 15, 2019

#### **IV. Information to Be Submitted**

The Proposal must be clear, concise, and limited to 13 pages (not including Design samples), well organized, and should demonstrate your firm’s and team’s qualifications and experience for developing the Plant Database and Garden Website as described in this RFP. The Consultant’s response to this Request for Proposals must contain the following information:

- 1. CONSULTANT INFORMATIONAL FORM (1 page maximum)** Using the provided form (Attachment A), please fill out completely, and return as part of your response.
- 2. SCOPE (5 pages maximum):** A detailed Scope of Work and Deliverables that comprehensively defines and describes the proposed design and approach for implementing Tasks 1 and 2. This Scope of Work, once augmented to meet the needs of the Program, will be used as a basis for contract execution. The Scope of Work shall, at minimum, address the items shown in Section II “Scope of Services.”
- 3. TEAM (2 pages maximum):** Descriptions of specific experience and capabilities of designated project manager and key team members that are directly relevant to the Scope of Work. Key personnel assigned to the project shall not be reassigned without prior MWDOC written approval.
- 4. REFERENCES (3 pages maximum):** Description of the Consultant’s past record of performance on similar projects. Include a concise summary of such factors as quality of work and ability to meet schedules. Include three (3) client references, preferably from Orange County and/or Southern California, who may be contacted by MWDOC.
- 5. CONFLICT OF INTEREST STATEMENT (1 page maximum):** Provide a statement/documentation that personal or organizational conflicts of interest that are prohibited by law do not exist.
- 6. DETAILED BUDGET (1 page maximum):** Contractor(s) must fill out the provided form (Attachment B) completely to provide a detailed breakdown of the estimated cost for development of the Plant Database and Garden Website (Task 1) and Website

Administration (Task 2). The budget and supporting documentation submitted by the Consultant will be used to negotiate a contract.

**7. SAMPLES (3-4 pages per sample up to a maximum of 18-24 pages for all samples):**

Consultant must submit website urls and/or sample pages/printouts that show examples of Plant Website designs comparable to what Consultant proposes to develop for MWDOC. MWDOC will compare samples submitted from all responding Consultants as part of selection process. These pages are not counted in the overall maximum of 13 pages.

**8. CONTRACT:** A sample copy of MWDOC's professional services agreement is included as Attachment (C) to this Request for Proposals. Submittal of a Proposal in response to this RFP will be deemed your willingness to accept the agreement terms and conditions. If you require any changes, please include them in your Proposal and any proposed modifications to the standard terms and conditions. While MWDOC negotiates such changes with Consultants, MWDOC will consider your proposed modifications during Consultant selection and retains the right to reject any portion of your proposed modifications.

**9. PROPOSAL LENGTH and SIZE:** The Consultant Informational Form, Scope, Team, References, d Conflict of Interest Statement, and Detailed Budget shall be limited to 13 single-sided 8½ by 11 inch pages with a font size no smaller than 12. Supporting Samples specific to this project shall not exceed an additional 18-24 single-sided 8½ by 11 inch pages. The total Proposal length shall not exceed 36 pages. To accommodate emailing the Proposal, the overall Proposal file size shall not exceed 20 MB.

**10. ORDER OF PROPOSAL:** The Proposal should be in the following order:

1. Consultant Informational Form, 1 page
2. Scope of Work and Deliverables, 5 pages
3. Team, 2 pages
4. References, 3 pages
5. Conflict of Interest Statement, 1 page
6. Detailed Budget, 1 pages
7. Samples, 18-24 pages

**Failure to meet the Proposal requirements will result in an unfavorable review of the Proposal.**

Following the contract award by MWDOC's Board of Directors, the agreement documents will be sent out for execution by the Consultant and then by MWDOC, and Consultant will then be instructed to commence work.

## **V. Selection Process and Other Instructions/Limitations**

A selection panel consisting of representatives from MWDOC and Retail Agency Staff will review all submitted Proposals for completeness and clarity. MWDOC will then select the Consultant who has demonstrated the ability to perform the Tasks outlined in this RFP at a competitive price/cost. Consultant(s) selected will be informed on or about March 12, 2019 and invited to proceed to the next step (execution of the Professional Services Agreement). Execution of the Professional Services Agreement will take place after April 17, 2019.

Based upon this process, MWDOC Staff will recommend the selected Consultant to MWDOC's Board of Directors for award of this work. The selected Consultant must be able to begin work immediately upon award and must be able to maintain the required level of effort to perform the work on schedule.

MWDOC may make such investigations/inspections as it deems necessary to determine the ability of the Consultant to provide the goods and services as specified, and the Consultant shall furnish to MWDOC, upon request, all such information and data for this purpose. Prior to award, MWDOC may discuss or negotiate with one or more Consultants to complete the selection process and enable a recommendation to be made to MWDOC's Committee and Board.

This Request for Proposals does not commit MWDOC to retain any Consultants, to pay costs incurred in the preparation of Proposals, or to proceed with the project. MWDOC reserves the right to reject any or all Proposals, either separately or as a whole, and to negotiate with any qualified applicant. Further, MWDOC reserves the right to accept any Proposal or portion of 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.

The cost for developing the Proposal is the sole responsibility of the Consultant. All Proposals submitted become the property of MWDOC.

At the time of the opening of Proposals, each Consultant shall be presumed to have read and be thoroughly familiar with the specifications and contract documents (including all Attachments). Consultant(s) must be capable of complying with all insurance requirements and Conflict of Interest Statements as stated in MWDOC's standard agreement (provided as Attachment C). Please review this Agreement and note if any modifications are needed in order to ensure compliance.

Be advised that all information contained in Proposals that are submitted in response to this solicitation may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

Questions and clarifications during the Proposal process should be directed to:

Beth Fahl  
Senior Water Use Efficiency Analyst  
[bfahl@mwdoc.com](mailto:bfahl@mwdoc.com)

Steve Hedges  
Water Use Efficiency Supervisor  
[shedges@mwdoc.com](mailto:shedges@mwdoc.com)

**This RFP and all forms and attachments is posted on the MWDOC website at:**

<https://www.mwdoc.com/rfps-rfqs/>

**Instructions for Submittal of Consultant Response:**

**Deadline for submittal of Consultant response to this RFP is  
Monday, March 4, 2019 at 2:00 pm PST**

Consultants may submit their responses in one of the following ways:

1. Convert your Response to Adobe PDF format and submit it by email to [bfahl@mwdoc.com](mailto:bfahl@mwdoc.com)
2. Via regular mail, responses must be delivered by mail carrier on or before Monday, March 4, 2019, at 2:00 pm PST, to

Municipal Water District of Orange County  
PO Box 20895  
Fountain Valley, CA 92728  
Attn.: Beth Fahl

3. By Consultant delivery to our offices at:

Municipal Water District of Orange County  
18700 Ward Street  
Fountain Valley, CA 92728  
Attn: Beth Fahl

**Attachments:**

- A. Consultant Informational Form
- B. Detailed Budget
- C. MWDOC's Professional Service Agreement



# Attachment A

## Consultant Informational Form

Consultant Name: \_\_\_\_\_

Consultant Company Name: \_\_\_\_\_

Consultant's License Number, if any: \_\_\_\_\_

**Consultant Contact Information:**

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

Email: \_\_\_\_\_

**Size of Company, Number of Employees**

\_\_\_\_\_

After Reviewing the provided Professional Services Agreement, can Consultant execute the Agreement in its current form? Yes \_\_\_\_\_ No \_\_\_\_\_

If No, Needed modifications?

---

---

---

---

## Attachment B

### Detailed Budget

<b>Consultant Budget</b>			
<b>Consultant Name:</b> _____			
<b>Consultant Company Name:</b> _____			
<b>Consultant Contact Information:</b>			
<b>Address</b> _____			
<b>Phone No.</b> _____			
<b>Email:</b> _____			
Task Description	Staff Name	Hours	Fee/Hour
<b>Task 1 – Database and Website Development</b>	1 _____	_____	\$ _____
	2 _____	_____	\$ _____
	3 _____	_____	\$ _____
<b>Total Cost for Task 1</b>	\$ _____		
<b>Task 2 – Program Administration</b>	1 _____	_____	\$ _____
	2 _____	_____	\$ _____
	3 _____	_____	\$ _____
<b>Total Coast for Task 2</b>	\$ _____		
<b>Ongoing Maintenance Fee, such as a Licensing Fee</b>	<b>Annual Cost:</b> \$ _____		

**The Detailed Budget is required to be completed by each Consultant.**

The costs submitted by the selected Consultant) will be used to negotiate a contract.

# Attachment C

## STANDARD AGREEMENT FOR CONSULTANT SERVICES

This AGREEMENT for consulting services dated \_\_\_\_\_, 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, \_\_\_\_\_ hereinafter referred to as "CONSULTANT" for \_\_\_\_\_ hereinafter referred to as "SERVICES."<sup>1</sup> DISTRICT and CONSULTANT are also referred to collectively herein as the "PARTIES" and individually as "PARTY". The PARTIES agree as follows:

### I 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 "B" 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.

---

<sup>1</sup> 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.

**CONSULTANT** represents and warrants that in the process of hiring **CONSULTANT's** employees who participate in the performance of **SERVICES**, **CONSULTANT** conducts such lawful screening of those employees (including, but not limited to, background checks and Megan's Law reviews) as are appropriate and standard for employees who provide **SERVICES** of the type contemplated by this Agreement.

### C. **Changes in Scope of Work**

If **DISTRICT** requires changes in the tasks or Scope of Work shown in **Exhibit "B"** 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 "B,"** 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 "B."** **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**.

## 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  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
18700 Ward Street, P.O.Box 20895  
Fountain Valley, CA 92708

Company  
Contact Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address:  
City, State, Zip:

**D. Billing and Payment**

**CONSULTANT's** fees shall be billed by the 30<sup>th</sup> day of the month and paid by **DISTRICT** on or before the 30<sup>th</sup> 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.

## **VII 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 **SERVICES** 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 incurred by counsel of the **DISTRICT's** choice 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 counsel of the **DISTRICT's** choice, incurred by the indemnified parties in any lawsuit to which they are a party.

**CONSULTANT** shall immediately 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**, and shall not tender such claims to **DISTRICT** nor its directors, officers, employees, or authorized volunteers.

**CONSULTANT** shall immediately 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 immediately 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 survive the termination or completion of this agreement for the full period of time allowed by law and shall not be restricted to insurance proceeds, if any, received by **DISTRICT**, or its directors, officers, employees, or authorized volunteers.

## **VIII 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."**

## **IX**                    **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.

## **X**                      **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"**.

## **XI**                    **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**.

## **XII 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.

**CONSULTANT** hereby assigns to **DISTRICT** or **DISTRICT**'s designee, for no additional consideration, all **CONSULTANT**'s intellectual property rights, including, but not limited to, copyrights, in all deliverables and other works prepared by the **CONSULTANT** under this agreement. **CONSULTANT** shall, and shall cause its employees and agents to, promptly sign and deliver any documents and take any actions that **DISTRICT** or **DISTRICT**'s designee reasonably requests to establish and perfect the rights assigned to **DISTRICT** or its designee under this provision.

### **XIII 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**. 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.

### **XIV 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**.

### **XV 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.

### **XVI 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.

**[For Agreements funded in whole or part by State grants, include the following provision XVI.]**

### **XVII DRUG-FREE WORKPLACE CERTIFICATION OF COMPLIANCE**

By signing this Agreement, **CONSULTANT** hereby certifies under penalty of perjury under the laws of the State of California compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and has or will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees as required by Government Code Section 8355(a).
- i. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a) (2), to inform employees about all of the following:
  - i. The dangers of drug abuse in the workplace,
  - ii. The **CONSULTANT's** policy of maintaining a drug-free workplace,
  - iii. Any available counseling, rehabilitation and employee assistance programs, and
  - iv. Penalties that may be imposed upon employees for drug abuse violations.
- ii. Provide, as required by Government Code Section 8355(a)(3), that every employee who works under this Agreement:
  - 1. Will receive a copy of the **CONSULTANT's** drug-free policy statement, and
  - ii. Will agree to abide by terms of the **CONSULTANT's** statement as a condition of employment.
- d. This Agreement may be subject to suspension of payments or termination, or both, and the **CONSULTANT** may be subject to debarment if the **DISTRICT** determines that:
  - i. **CONSULTANT** has made a false certification, or;
  - ii. **CONSULTANT** violates the certification by failing to carry out the requirements noted above.

**IN WITNESS WHEREOF**, the **PARTIES** have hereunto affixed their names as of the day and year thereafter, which shall be and is the effective date of this **AGREEMENT**.

**APPROVED BY:**

**CONSULTANT ACCEPTANCE:**

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Robert Hunter, General Manager  
Municipal Water District of Orange County  
18700 Ward Street, P.O.Box 20895  
Fountain Valley, CA 92708  
(714) 963-3058

Name:  
Address:  
Phone:  
Tax I.D. #

**EXHIBIT "A"**

<b>ETHICS POLICY</b>	<b>§7100-§7111</b>
----------------------	--------------------

**§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 for 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.



**Please note** If using Consultant's Proposal as Exhibit "B" please attach the Proposal or complete the standard Exhibit "B" Form below, BOTH Parties must verify that all sections of this form are FULLY ADDRESSED and the appropriate Exhibit is attached and labeled accordingly

**EXHIBIT "B"**

**SCOPE OF WORK, TERMS OF AGREEMENT  
AND TERMS AND CONDITIONS FOR BILLING**

<b>Company:</b> <b>Name:</b> <b>Address:</b> <b>Phone:</b> <b>Tax I.D. #</b>
--

1. Term – Commencement (Insert Date) \_\_\_\_\_ Termination (Insert Date) \_\_\_\_\_
2. Fees/Rates to be billed - \$\_\_\_\_\_
4. Budgeted Amount – Compensation is to be on a “time and material” basis, not to exceed \$\_\_\_\_\_. **CONSULTANT's** fees shall be billed by the 25<sup>th</sup> day of the month and paid by **DISTRICT** on or before the 15th of the following month. Invoices shall reference the Purchase Order number from the **DISTRICT**  
  
Upon invoicing **DISTRICT** 80% of the contract amount, **CONSULTANT** shall prepare and provide to **DISTRICT** a “cost to complete” estimate for the remaining work.
4. Scope of Work/Services – (Insert **SPECIFIC** description – do not list “refer to Exhibit “ )  
\_\_\_\_\_
5. Consultant Representative: \_\_\_\_\_