



REQUEST FOR PROPOSALS

for

**Retail Water Agency Distribution System
Flushing Services**

RFP Release Date: March 12, 2019

Proposals Due Date: 5:00 pm; March 26, 2019

Request for Proposals

Distribution System Flushing Services

I. Introduction

The Municipal Water District of Orange County (MWDOC) and its member retail agencies invite your firm to submit a proposal to provide professional services in the form of Distribution System Flushing Services to individual retail water agencies throughout Orange County. Distribution System Flushing is necessary to maintain water quality standards in urban water supplier distribution systems.

Up to 30 retail agencies may participate with the firm(s) selected for water Distribution System Flushing Services. A recent survey our member retail agencies revealed that 15 retail water agencies could flush up to 600 miles per year. The engagement could be limited to a single year or continue for as many as five years depending on the program results and desires of the participating retail agencies. MWDOC is conducting this Request for Proposals (RFP) process as a service to, and on behalf of, its member retail agencies.

II. Background

The Distribution System Flushing Services effort is a component of a broader regional Water Loss Control Shared Services Program sponsored by MWDOC. Since the spring of 2016, MWDOC has provided a Water Loss Control Technical Assistance Program to agencies throughout the county. Technical assistance includes a Water Loss Control Workgroup that provides a forum for general water loss control knowledge building and one-on-one technical assistance from a consultant specializing in water loss control. This effort is intended to assist urban water suppliers throughout Orange County to comply with requirements of Senate Bills 1420 and 555.

The success of this effort has evolved over the past three years and is now transitioning to a shared services model that includes in-house-provided shared services by MWDOC staff and contractor-provided shared services administered by contractors, as summarized in Table 1. The purpose of this RFP is to acquire contractor provided Distribution System Flushing Services.

Table 1 Municipal Water District of Orange County Water Loss Control Shared Services	
In-House-Provided Shared Services	Contractor-Provided Shared Services
<ul style="list-style-type: none">• Water Balance Validation• Distribution System Leak Detection• Distribution System Pressure Surveys	<ul style="list-style-type: none">• Customer Meter Accuracy Testing<ul style="list-style-type: none">• McCall’s Meters• Westerly Meters, Inc.• Distribution System Flushing<ul style="list-style-type: none">• To Be Determined through this RFP process

Agencies are seeking to accomplish the following four goals through Distribution System Flushing Services:

- Exceed Department of Drinking Water (DDW) water quality requirements,
- Avoid negative public perception associated with flushing water into public streets,
- Comply with National Pollutant Discharge Elimination System (NPDES) requirements, and
- Avoid the waste of potable water supplies.

III. Scope of Services

MWDOC proposes to hire a firm or firms (there may be more than one – the term “firm” used in this request for proposals should be interpreted to be both singular and plural) that will provide proactive, unidirectional Distribution System Flushing Services for up to 30 retail water suppliers throughout Orange County, California. The desired flushing services must include:

- Filtration of flush water
- Recovery of flush water
- A minimum flush velocity of 5 feet per second in pipes ranging in size from 2” to 14” to maximize scouring and biofilm removal
- Monitoring of turbidity of flush water
- Monitoring of Chlorine residual and adjusting Chlorine residual when necessary
- Assisting with the Department of Drinking Water permitting for each agency and assisting with establishing regional permits, if possible (for both the Santa Ana and San Diego Regional Water Quality Control Boards)

The proposed flushing services are outlined in the four tasks listed below. While these tasks are defined in this RFP, should a firm conclude that additional tasks are necessary to accomplish appropriate and industry standard based distribution system flushing, the firm should add additional tasks as appropriate. The tasks include:

Task 1: Kick-off Meeting

The process for flushing services shall begin with a Contract Kick-off meeting with each participating retail water agency. All meetings will take place at the offices of the participating retail water agency. This meeting will serve as a planning meeting between the selected flushing firm, retail water agency, and MWDOC. This meeting will be used to identify flushing objectives and develop a flushing plan to ensure those objectives are met at the lowest possible cost. Specific topics to be discussed shall include, but not be limited to, the schedule, flushing procedures, permitting and approvals, materials and equipment, and the roles and responsibilities of both the flushing firm and the retail water agency. Additional meetings pertaining to this contract will be scheduled, as needed, when requested by retail water agency.

Task 1 Deliverables –

1. Written Flushing Plan agreed to by retail agency, flushing firm and MWDOC. The Flushing Plan shall include, but not be limited to:
 - a. Schedule and duration. Firm shall submit an updated project schedule on a weekly basis to the retail water agency project manager
 - b. Materials/manufacture’s list

- c. Request for sub-contractor approval, and
- d. emergency contact list

Task 2: Required Approvals

Firm will work cooperatively with retail water agency and regional water quality control board to obtain all necessary approvals and/or permits prior to initiating distribution system flushing. Firm will provide contact information if helpful, example language, and specifications for flushing methods and technologies to assist retail water agency in obtaining approvals.

Task 2 Deliverables –

1. Retail agency support and documentation to facilitate required approvals.

Task 3: System Flushing

Once the written Flushing Plan and required approvals have been obtained, distribution system flushing shall begin in accordance with the Flushing Plan and required approvals. Flushing shall rely on industry standard unidirectional flushing methods for isolated areas of concern or for proactive system wide flushing.

Task 3 Deliverables –

1. Daily or weekly progress and water quality reporting
2. Report on notable issues encountered and actions to resolve

Task 4: Invoicing and Reporting

On a monthly basis, firm shall provide invoicing for work performed during the previous month. Invoices shall clearly separate work performed for each retail water agency to allow for tracking of costs associated with each retail water agency. Invoices shall be submitted to MWDOC no later than the 25th day of each month.

At the conclusion of distribution system flushing services for each retail water agency, firm shall provide a report summarizing the overall distribution system flushing services provided. The report shall include, at a minimum, the following:

- Miles of distribution system mains flushed
- General observations of flush effectiveness
- Notable issues encountered and actions to resolve
- Recommendations for future distribution system flushing

Task 4 Deliverables –

1. Invoicing for work completed
2. Final Report

IV. Responsibilities

A. Municipal Water District of Orange County

The Municipal Water District of Orange County will be the primary contracting agency with the flushing firm. MWDOC will promote and coordinate flushing services between firm and participation retail agencies. MWDOC will:

- Complete this RFP process to select flushing firm
- Coordinate retail agency access to flushing firm
- Notify flushing firm when work may begin with participating retail water agencies
- Receive and process invoices from flushing firm
- Invoice retail agencies for flushing services

B. Participating Retail Water Agency

It is recognized that the overall flushing process will require a team approach by the retail agency and the flushing firm. Retail water agency will work alongside flushing firm on a daily basis and will provide:

- Knowledge of system - staff from retail water agency will provide flushing firm with field knowledge of the distribution system. Field knowledge will include both staff and distribution system mapping of system components including all valves and fire hydrants.
- Valve crew – staff from retail water agency will be responsible for operation of all valves to facilitate flushing. Valve crew will be knowledgeable of locations and conditions of all valves and have the ability to isolate specific sections of the distribution system to facilitate flushing.
- Traffic Control – All necessary traffic control will be provided by the retail water agency staff, including traffic control planning, equipment, and equipment deployment and recovery.

C. Flushing Services Firm

Flushing firm to provide all labor, supervision, tools, equipment, materials, and incidentals necessary to perform flushing for the various diameter (2" – 14") potable water distribution mains of each retail water agency, including flushing sequence design and implementation. To accomplish this, firm shall:

- Provide at least one (1) CA State certified water operator.
- Obtain written permission for access to private property where easements are inadequate.
- Have the ability to communicate and meet in person with MWDOC and retail water agency personnel at all times.
- Provide MWDOC and the retail water agency with the cellular telephone number of the assigned Project Manager and must be able to be reached when services (including emergency services) are needed.
- Make every effort to prevent turbid water in homes and businesses while performing the scope of work. If an incident does occur, the firm shall respond immediately with the cleanup process until the satisfaction of the property owner is reached
- Provide traffic access as follows:
 - Traffic shall be maintained on all streets or private drives throughout the work. All matters related to traffic maintenance must be performed in a manner approved by MWDOC and the retail water agency
 - A minimum of one lane of traffic must be safely maintained when services are in progress.

- No roads shall be closed for flushing activities. Access to businesses and residences along the roads shall be maintained at all times. All lanes will be open when work is suspended for one hour or longer.

V. Project Implementation Schedule

The anticipated project schedule is set forth below. Each flushing firm who chooses to apply must provide their anticipated schedule if it deviates from what is specified below.

DESCRIPTION	DATE
Release of RFP	March 12 2019
Proposal Due Date	March 26, 2019
Proposal Review	March 26 – April 9, 2019
Applicant Interviews (<i>tentative, if needed</i>)	Week of April 1, 2019
Firm Selection	
Committee Consideration	May 6, 2019
Board Consideration	May 15, 2019
Contract Execution	June 28, 2019
Flushing to Begin	July 1, 2019

VI. Information to be Submitted

The proposal must be clear, organized, and fewer than 12 pages in length. Additionally, the proposal must demonstrate the qualifications and experience of your firm and staff in conducting distribution system flushing services. The proposal must contain the following information at a minimum:

- A. Team: the firm shall describe the specific experience and capabilities of the designated project coordinators and lead distribution system flushing services.
- B. Experience and References: the firm shall describe the past record of distribution system flushing services and performance on similar projects for which the firm has provided service. Include a concise summary of such factors as control of costs, quality and extent of work, coordination with multiple agencies simultaneously, and fidelity to deadlines. Include five client references that MWDOC may contact, preferably from Southern California, for similar work conducted by the firm.
- C. Equipment and Facilities: the firm shall list and describe the equipment and facilities that the firm owns and operates that are relevant to this distribution system flushing services RFP. Standard Operating Procedures for flushing shall be provided and will not be subject to the 12 page limit of information to be submitted. Identify the primary employee in charge of maintaining and/or operating equipment. Also include an explanation of the quality control measures in place to ensure effective and consistent system flushing.
- D. Capacity: the firm shall speak to its capacity to flush distribution system mains. It is possible that up to 600 miles of mains could be flushed per year. Speak to your firm’s capacity to address the extent and timeline of this system flushing effort, including the uncertainty inherent in initial planning and scoping.
- E. Detailed Pricing and Supporting Documentation: the firm shall provide a detailed breakdown of the costs of distribution system flushing services.

The firm shall also separately identify costs of all sub-contractors and other direct reimbursable costs to the project such as reproduction, mileage, etc. The costs submitted should reflect the economy of scale of having a single contract to provide assistance to multiple agencies simultaneously while working with a single point of contact at MWDOC.

- F. Schedule: the firm shall provide confirmation of adherence to the schedule outlined in this RFP. Alternatively, the firm may propose and justify an alternate flushing schedule.
- G. Conflict of Interest: the firm shall provide documentation that personal or organizational conflicts of interest prohibited by law do not exist.

VII. Selection Process and Other Instructions

A Selection Panel consisting of representatives from MWDOC and member retail agencies will review all received proposals and consider the following factors to select the most qualified firm(s):

- Completeness and professionalism of proposal
- Understanding of and approach to the proposed work
- Firm and staff experience in similar projects
- Professional qualifications
- Firm resources, technologies, facilities, and capabilities
- Quality of previous work, as indicated by references
- Demonstrated ability to manage and conduct work given the timeline and initial uncertainty
- Cost of services

The Selection Panel will review all written proposals considering the above factors and may hold interviews with selected firms. During the firm selection process, the Selection Panel may contact either the recommended firm or a short list of firms to obtain additional information and may contact recent clients. Interviews, if needed, will be scheduled to be held one week after receipt of the proposals.

Based upon this process, the Selection Panel will recommend a firm or firms to MWDOC's Board of Directors for award of this work. The selected firm(s) must be able to begin work in July 2019 and must be able to maintain the required level of effort to perform the work on-schedule.

This Request for Proposals does not commit MWDOC to retain any service providers, 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 and to negotiate with any qualified applicant.

MWDOC and member retail agencies may make such investigations as they deem necessary to determine the ability of the firm to provide the goods and/or service as specified, and the firm 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 to enable a recommendation to be made to MWDOC's Committee and Board.

MWDOC reserves the right to reject any or all proposals, either separately or as a whole, and accept any proposal or portion of any proposal presented that it deems best suited to the interest of MWDOC and its member retail agencies, and is not bound to accept the lowest price.

The cost for developing the proposal is the sole responsibility of the firm. All proposals submitted become the property of MWDOC.

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

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.).

Questions and clarifications during the proposal process should be directed to Joe Berg. Additionally, proposals should also be submitted to Joe Berg via mail, personal delivery, or e-mail:

Joe Berg
Director of Water Use Efficiency
(714)593-5008

Mailing Address:

P.O. Box 20895
Fountain Valley, CA 92728

Physical Address (personal delivery):

18700 Ward Street
Fountain Valley, CA 92708

E-mail Address:

jberg@mwdoc.com

Attachments:

- A. MWDOC Standard Contract

Attachment A

MWDOC Standard Contract

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.**"¹ **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**.

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

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.

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 25th 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**.

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** Ethics 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."**

X **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.

XI **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"**.

XII **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**.

XIII 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.

XIV 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.

XV **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**.

XVI **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.

XVII **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.]

XVIII **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"

ETHICS POLICY	§7100-§7111
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§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.

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**

Company: Name: Address: Phone: Tax I.D. #
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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 25th 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: _____