



## **Municipal Water District of Orange County**

### **REQUEST FOR PROPOSAL**

**For**

**Professional Services**

**For**

**Development of Demand Forecasts for Orange County Water Agencies**

**RFP ENG. 2024-01**

**October 7, 2024**

**Questions for clarification are due 5:00 pm October 28, 2024.**

**Proposals are due 5:00 pm November 11, 2024.**

**Electronic submittals only and must be less than 35 Megabytes (MB).**

Professional Services for Development of Demand Forecasts for Orange County Water Agencies

**REQUEST FOR PROPOSAL (RFP)**

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# Request for Proposal Information

## 1. About MWDOC

The Municipal Water District of Orange County (MWDOC) is a public agency, formed by Orange County voters in 1951 under the Municipal Water District Act of 1911 to provide imported water to Orange County.

Today, MWDOC is the third largest member agency of Metropolitan Water District of Southern California (Metropolitan) based on assessed property valuation. MWDOC is a regional water wholesaler and resource planning agency, supplying imported water supply to all of Orange County's except to the cities of Anaheim, Fullerton, and Santa Ana. MWDOC's mission is *to provide reliable, high-quality water supplies from Metropolitan and other sources to meet present and future needs, at an equitable and economical cost, and to promote water use efficiency for Orange County*. MWDOC's efforts are focused on sound planning and appropriate investment in water supply reliability, regional delivery infrastructure, water use efficiency programs, and emergency preparedness. Headquartered in Fountain Valley, MWDOC is governed by a seven-member elected Board of Directors, with each Board member representing a specific MWDOC division in the County.

Local water supplies, predominantly groundwater from the Orange County Groundwater Basin managed by Orange County Water District (OCWD) and local recycled water, meet nearly two-thirds of Orange County's total water demand. To meet the remaining demand, MWDOC purchases imported water – from Northern California and the Colorado River – through Metropolitan. MWDOC delivers this water to 27 member agencies (local water agencies and city water departments) which provide retail water services to the public. MWDOC also delivers untreated imported water to OCWD for groundwater replenishment. MWDOC together with the cities of Anaheim, Fullerton, and Santa Ana serve a population of approximately 3.1 million consumers in a 600 square mile area of Orange County.

## 2. Invitation for Proposals

MWDOC invites your firm to submit a proposal for development of water demand forecasts for all water agencies in Orange County, including MWDOC's 27 member agencies (26 retail agencies and OCWD), and the 3 direct-Metropolitan member agencies – the cities of Anaheim, Fullerton, and Santa Ana.

**Attachment A** provides a list of water agencies the Consultant will be coordinating with in this effort. A subset of these agencies together with MWDOC's representatives will form a review panel to participate in the proposal review and consultant selection process.

## 3. Project Background

The most recent Orange County water demand forecasts were developed as part of the 2023 Orange County Water Reliability Study which were based on demand forecasts developed for the 2020 Urban Water Management Plans (UWMPs). The 2020 UWMP forecast methodology was a bottoms-up approach where water demand forecasts were developed for every retail water agency in Orange County. While the same base methodology and model were used for every agency, individual retail agencies had the opportunity to refine assumptions, within the model, specific to their agency to a small degree. The focus was on single-family and multifamily residential sectors given the significant changes



in residential water use due to California plumbing codes, landscape ordinances, as well as substantial customer participation in agency rebates for water use efficiency programs in recent years leading up to the demand forecasting in 2020.

The demand forecasting model incorporated retail water use by major sector from FY2017-18, FY2018-19, and FY2019-20. Recycled water use data was included for agencies that provided recycled water to customers outside of the OCWD Groundwater Replenishment System. Water use from FY2017-18, a slightly above-normal demand year (warmer/drier than average) and FY2018-19, a slightly below-normal demand year (cooler/wetter than average) were averaged to represent an average-year base water demand. FY2019-20 water use was examined to determine potential impacts of the COVID-19 pandemic on water use.

Residential forecast methodology provided the ability to separate single-family from multi-family, existing households (HHs) from future higher efficiency HHs, and indoor from outdoor water use to support agency reporting for California's indoor residential target of 55 gallons per capita per day (gpcd) by 2025 and approximately 50 gpcd by 2030. Existing and projected population and number of households for each retail water agency were provided by the California State University Fullerton's Center for Demographic Research (CDR). CDR provides demographics data by census tract for all of Orange County under contract by MWD OC.

Commercial, Industrial, and Institutional (CII) forecast methodology assumed unit demand in 2020-2025 would remain at FY2019-20 levels to minimize any negative COVID-19 impacts; and the unit demand for 2030-2050 was assumed to be the average CII unit use from FY2017-18 and FY2018-19 to reflect the stability of Orange County's CII unit demand over recent years. Unit demand factors were classified into three broad growth scenarios: Low (no growth), Medium (0.5% annual growth in CII accounts), and High (1.5% annual growth in CII accounts).

Weather variability and long-term climate change impacts were examined using a statistical model developed by CDM Smith as part of the 2016 Orange County Reliability Study. This model incorporated total water monthly production between 1990 to 2014 using a subset of retail water agencies. The model removed impacts from population growth, the economy and drought restrictions to better estimate the impact on water use from temperature and precipitation which were represented as percent increases (for hot/dry weather) or decreases (for cooler/wet weather) on water demands compared to average weather demands.

**Attachment D** provides the 2021 Orange County Water Demand Forecast for MWD OC and OCWD Memorandum by CDM Smith.

## 4. Project Goals and Objectives

The primary goal of this project is to develop updated water demand forecasts that are regionally consistent for use in each water agency's 2025 UWMPs, Annual Water Supply and Demand Assessment (AWSDA), and for MWD OC's future regional planning efforts. Secondly, individual retail agencies may choose to use the demand projections developed under this project to lay the groundwork for more detailed demand analysis, such as water master planning and capital improvement planning, in their future endeavors separate to this project.



Specific objectives for this project include the development of water demand projections from 2025 to 2050 (25-year horizon), in five-year increments, by agency by supply source for the following:

- 26 MWDOC Member Agencies individual demands
- 3 Cities i.e. Anaheim, Fullerton, and Santa Ana individual demands
- MWDOC service area total demand
- OCWD service area total demand
- Orange County total demand

When considering supply sources, water agencies can be grouped into three study areas:

- **OC Groundwater Basin** – includes agencies in north/central Orange County that have access to local groundwater from the OC Basin managed by OCWD.
- **South Orange County** – includes agencies in south Orange County that rely predominantly on imported water from MWDOC/Metropolitan
- **Brea/La Habra** – includes the cities of Brea and La Habra located in northeast Orange County with access to local groundwater from the Los Angeles Main San Gabriel Basin.

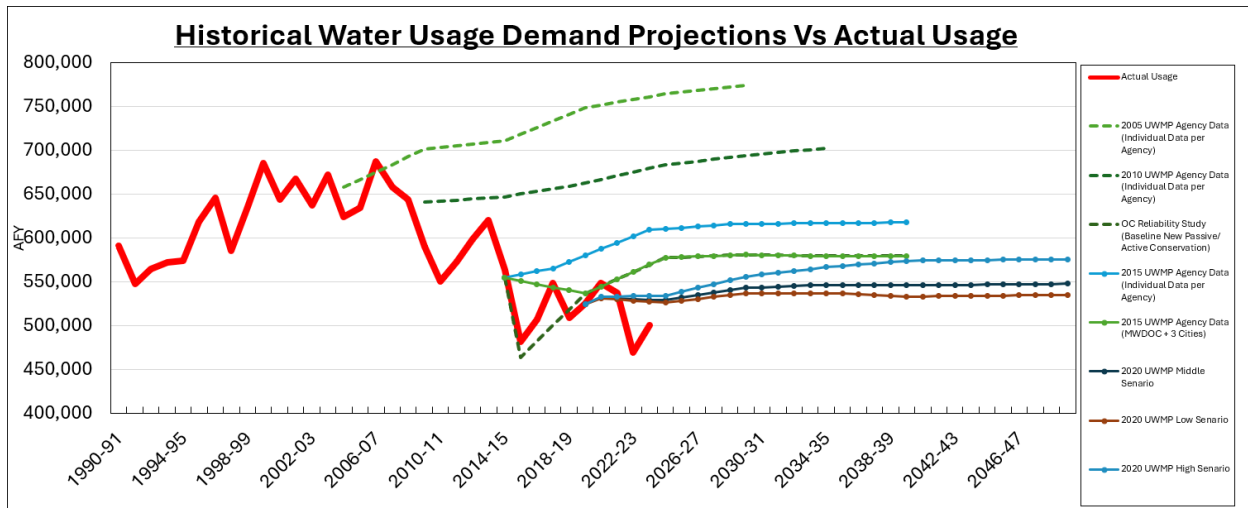
MWDOC seeks to obtain demand forecasts for the following supply sources:

- Imported water (Total demand less demand satisfied by local supplies)
- OC Basin groundwater (based on OCWD's Basin Production Percentage (BPP))
- Recycled water (non-OCWD Ground Water Replenishment System (GWRS) recycled water)
- Other local water sources (where applicable, e.g. Doheny Ocean Desalination Project)

Another key objective of this project is to incorporate into the new forecasts an updated set of influencing factors that will drive future water usage in Orange County. Some of these influencing factors include:

- Making Conservation a California Way of Life (AB 1668 / SB 606) Regulatory Requirements
- Regional Housing Needs Assessment (RHNA) Allocation
- Weather variability, climate change, and drought
- Socio-economics
- Historical use trends

With improved water use efficiency efforts accelerated by water conservation regulations and executive orders, Orange County has seen a reduction in water usage in the past 15 years or so that never returned to the pre-2012/13 drought levels. As shown in Figure 1, previous demand forecasts tended to overestimate Orange County water demands. MWDOC seeks to develop a demand forecasting methodology and model that reflects recent realities with a keen eye for possible future scenarios while appropriately weighing the risks posed by uncertainties.



**Figure 1: Historical Water Demand Projections vs Actual Water Usage for Orange County**

While the consultant agreement will be with MWDOC only, Participating Agencies will be involved throughout the project in providing data, providing input on the demand model, and reviewing deliverables.

## 5. Required Proposal Content

Proposals shall include the following sections as listed below:

### A. Cover Letter

- Provide a cover letter that serves as the executive summary of the proposal.
- Acknowledge receipt of all addenda
- Acknowledge review of MWDOC's professional services agreement (**Attachment E**) and state your firm's willingness to accept the agreement terms and conditions. If your firm requests any changes, please include any proposed modifications to the standard terms and conditions in your proposal. While MWDOC negotiates such changes with consultants, MWDOC will consider your proposed modifications during the consultant selection process and retains the right to reject any portion of your proposed modifications.
- Include a signature of the Consultant's authorized representative

### B. Experience and Qualifications

- Describe your firm's specific experience and the capabilities of the designated project manager, subject matter experts, technical staff, and support staff related to the outlined Scope of Work. Describe the capacities of your firm and all participating subconsultants to complete the Project within budget and on schedule.
- Include a schedule showing the percentage of time each team member will contribute to the project. Key personnel assigned to the project shall not be reassigned without prior MWDOC contract manager approval.



- c. Disclose any proposed subcontract arrangements that would be utilized during this project.
- d. Provide an assurance of the firm's ability, considering the firm's current and planned workload, to begin and complete the work on time for the following milestones:
  - i. Completion of Water Demand Forecasts – September 30, 2025.
- e. Document that personal or organizational conflicts of interest prohibited by law do not exist. Note conflicts as they may relate to both MWDOC and any OC water agency.

#### **C. Record of Performance**

- a. Describe the project team's [not the firm's] past record of performance on similar projects for which your firm has provided services. Include a discussion of such factors as quality of work, ability to work well with multiple project participants, control of costs, ability to meet schedules, and innovative solutions brought to the project. Provide at least three agency references that may be contacted by MWDOC or members of the review panel, including name, title/role, phone number, and email.
- b. Provide a summary table/matrix showing previous demand forecasting and related work by agency, type of agency (e.g. wholesale, retail), population served, purpose of forecast (e.g. long-range water resources planning, infrastructure planning), methodology, and project cost. Consultant may add other information to the summary table/matrix as appropriate.

#### **D. Project Work Plan**

- a. Propose a Project Work Plan consistent with the Scope of Work provided in **Attachment B**. Attachment B describes the Scope of Work and details the menu of tasks requested to assist with development of water demand forecasts for OC water agencies.
- b. Your proposal shall at minimum, meet the Scope of Work described in **Attachment B** which is the general extent of the services needed by MWDOC and agencies. If you feel additional services may provide value, please add separately as optional tasks.
- c. Describe in detail how your firm intends to develop forecasts including how you intend to address multiple uncertainties and clearly describe key assumptions related to variables such as:
  - i. Regional Housing Needs Assessment
  - ii. Making Conservation as a California Way of Life (SB 606 / AB 1668)
  - iii. Demand hardening
  - iv. Weather variability and climate change
  - v. Socio-economic trends
  - vi. Historical water use trends
  - vii. The California HOME Act (SB 9) impacts



- viii. Impacts of Metropolitan shortages and allocations
- ix. Other factors

#### **E. Project Schedule**

- a. Provide a project schedule showing the timeline by tasks (and sub-tasks, if applicable). Include key milestones, such as timeline of key meetings and deliverables. The proposed schedule shall include narrative with assumptions for agency review and data collection times, etc. ensuring completion of the final water demand forecasts on or before September 30, 2025. A straightforward, easily updatable format is preferred.
- b. Build in realistic time in the schedule for data collection and agency review of deliverables. Recognize that certain data may take a long time to obtain.

#### **F. Project Fee Schedule**

- a. Provide detailed budgets for completion of the project. The detailed services proposal shall include fee schedules and a breakdown of the fee by task, project team members, subconsultants, and other direct costs. If during the project, the consultant determines the level of effort is going to significantly exceed the agreed upon level of effort, the consultant will immediately notify MWDOC.
- b. The estimated project budget is \$290,000.

#### **G. Attachments**

- a. Resumes (may be submitted as an attachment separate from the main proposal if needed in order to meet the file size submittal limit)
- b. Proposed revisions to the MWDOC Standard Professional Services Agreement (if applicable)

## **6. Proposal Evaluation Criteria**

A review panel comprised of MWDOC and participating agency staff will review the proposals and select a preferred consultant based upon the review criteria established. An interview may or may not be requested depending on the review of the proposals and the ranking of the consultants. The agreement will be between MWDOC and the Consultant and the contract will be administered by MWDOC. The Consultant's invoices will be sent to MWDOC for processing and payment.

Criteria for evaluation of proposals and selection of consultant shall be based on, but not limited to the following considerations. Proposals will be scored based on Table 1 guidelines.

- Proposal content and format is professional and responsive.
- Proposal demonstrates a clear understanding of the required scope of work.
- The work plan is thorough, sound, and demonstrates a clear path to complete the project on time and within budget.





- The overall project approach is well thought out (e.g. promotes efficiency, seamlessly ties into 2025 UWMP efforts, applicable for future studies). The demand forecasting methodology is robust, transparent, and defensible (e.g. addresses climate change and demand hardening).
- Firm and project team's experience, particularly the qualifications of the designated project manager, subject matter experts, and key staff, demonstrate ability to effectively deliver all aspects of the project.
- Fee will be considered after the qualifications of all firms have been evaluated.

**Table 1: Proposal Evaluation and Scoring Criteria**

Proposal Component	%
Cover Letter (Executive Summary)	5
Experience, Qualifications, and Record of Performance	25
Overall Project Approach, Project Management Approach, and Project Schedule	30
Demand Forecasting Approach and Methodology and Assumptions	35
Willingness to Accept Standard Agreement Terms	5
<b>Total</b>	<b>100</b>

Based upon this information, the review panel will recommend a firm to MWDOC's Board of Directors for award of the professional services agreement. An interview may or may not be requested depending on the review of the proposals and their scores. The firm that is awarded this work will not be precluded from the 2025 UWMP work.

## 7. Proposal Submittal

Proposals (including accompanying materials) will become the property of MWDOC. Proposals will be held in confidence to the extent permitted by law. After award of a contract or after rejection of all proposals, the proposals will be public records subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.)

MWDOC reserves the right to request additional information from prospective consultants prior to final selection and to consider information about a firm other than that submitted in the proposal.

Interested firms may submit questions in writing. All questions will be documented and answers/clarifications provided in an addendum to the RFP. Questions will be accepted until **Monday October 28, 2024 at 5:00 pm** and should be submitted to Sarina Sriboonlue, Principal Engineer at [ssriboonlue@mwdoc.com](mailto:ssriboonlue@mwdoc.com) with the subject line: *Questions for MWDOC RFP ENG. 2024-01: 2025 Demand Forecast.*

Proposals will be accepted until **Monday November 11, 2024 at 5:00 pm**. The electronic copy should be emailed to Sarina Sriboonlue, Principal Engineer at [ssriboonlue@mwdoc.com](mailto:ssriboonlue@mwdoc.com) with the subject line: ***Proposal for MWDOC RFP ENG 2024-01: 2025 Demand Forecast.*** No printed proposals are required.



PLEASE NOTE –ALL SUBMITTALS SHALL BE **LESS THAN 35 MEGABYTES** TO ALLOW EMAILING. FAILURE TO MEET THIS REQUIREMENT WILL BE GROUNDS FOR REJECTION OF YOUR PROPOSAL.

This request 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 and to negotiate with any qualified applicant.



## Attachment A – List of Orange County Water Agencies

List of Orange County Water Agencies for Development of Water Demand Forecasts

1	MWDOC
2	Orange County Water District
<b>OCWD Groundwater Agencies</b>	
3	City of Buena Park
4	City of Fullerton (not part of MWDOC)
5	City of Garden Grove
6	City of La Palma
7	City of Orange
8	City of Seal Beach
9	City of Tustin
10	City of Westminster
11	Yorba Linda Water District
12	East Orange County Water District
13	Serrano Water District
<b>OCWD Groundwater Agencies with Recycled Water</b>	
14	City of Anaheim (not part of MWDOC)
15	City of Fountain Valley
16	City of Huntington Beach
17	City of Newport Beach
18	City of Santa Ana (not part of MWDOC)
19	Golden State Water Company
20	Irvine Ranch Water District
21	Mesa Water District
<b>South County Agencies with Recycled Water</b>	
22	City of San Clemente
23	El Toro Water District
24	Moulton Niguel Water District
25	Santa Margarita Water District
26	South Coast Water District
27	Trabuco Canyon Water District
<b>South County Agencies without Recycled Water</b>	
28	Emerald Bay Service District*
29	Laguna Beach County Water District
<b>Non- OCWD Groundwater Agencies</b>	
30	City of Brea
31	City of La Habra

\* EBSD's demand forecast will be part of LBCWD's demand forecast.



## Attachment B – Scope of Work

The Scope of Work to develop water demand forecasts for Orange County water agencies comprises five main tasks as described below. The Consultant may sub-divide the work in these tasks into sub-tasks based on their own judgment as appropriate.

### Task 1: Project Management

Project management includes day-to-day interface and communication between the Consultant, MWDOC, and Participating Agencies over the span of the Project. It includes pre-scheduled meetings, formal and informal project status updates, and spontaneous correspondence related to specific situations or issues to be resolved. MWDOC seeks a consultant team that is proactive, communicates effectively, and has the bandwidth to manage communications with 31 agencies over the course of the project.

Project administration, including accurate invoicing and timely progress reporting, is another crucial component of project management. MWDOC seeks a consultant team that is attentive to details and has a robust quality assurance (QA) and quality control (QC) process for accounting.

The Scope of Work under Task 1 may include but not limited to the following services:

- Communication – includes communications with retail water agency, and MWDOC for both internal and public communications on project issues and project status. MWDOC will provide a list of Participating Agency contacts at the start of the project.
- Meetings – includes the following meetings
  - Kickoff Meeting with MWDOC (x1)
  - All Hands Kickoff Meeting with all agencies to present methodology and explain data needs and data collection process (x1)
  - All Hands Progress Meetings (x2)
  - One-on-one meetings with individual agencies to understand data needs and review draft projections (x2 per agency)
  - Progress and Check-in Meetings with MWDOC (as needed)

MWDOC encourages Consultant to find creative ways to be efficient with meetings. MWDOC does not require meetings to be in-person unless requested by Participating Agencies. The consultant may assume all meetings to be virtual.

- Invoicing and progress reporting – includes invoicing and creation of monthly progress report to describe accomplishments for the month and activities planned for the next month. Invoices must include a budget tracker table that provides budget spent, budget remaining, percent complete **by task by agency** and for the overall project.

#### Deliverables for Task 1

- Meeting agenda (meeting minutes, where applicable)



- Meeting presentation (where applicable)
- Monthly invoice, budget tracker, and progress report

#### Proposal Content for Task 1

In addition to addressing the Scope of Work, please also provide the following in your proposal

- Describe the Consultant's project management overall philosophy and specific approach to successfully work with MWDOC and 30 agencies, including how the Consultant plans to manage the demands of multiple agencies under one project in a short time span.
- Describe anticipated challenges and the effective management approach the Consultant will employ to handle those challenges.
- Provide a sample budget tracker
- Provide QA/QC approach for the project

## **Task 2: Data Collection and Information Review**

Under this task, the Consultant will collect and review data and information for development of the demand model.

The Scope of Work under Task 2 may include but not limited to the following services:

- Data collection and management – MWDOC will provide monthly demand data by agency by source (treated imported, untreated imported, OC Basin Groundwater, Non-OC Basin Groundwater, surface water, and recycled water). Consultant may request other necessary data and information from MWDOC and Participating Agencies, such as agency billing information or Metropolitan's master meter information.
- Review of relevant information may include, but is not limited to the following:
  - 2018 OC Reliability Study
  - 2023 OC Reliability Study
  - 2021 Orange County Water Demand Forecast by agency
  - 2021 Orange County Water Demand Forecast Technical Memorandum
  - MWDOC and agencies 2020 UWMPs

MWDOC seeks a consultant that shows resourcefulness and innovative ways to transfer and store data efficiently and keep data organized. For example, Consultant may create a template for data collection in order to receive a uniform dataset from agencies.

#### Deliverables for Task 2

- Data request
- Data platform

### Proposal Content for Task 2

- Outline data and information Consultant plans to request from MWDOC, agencies, and other sources and provide an approach to efficiently collect them. Discuss how MWDOC staff can assist consultant with data collection from agencies.
- Describe other information Consultant plans to review from other sources beyond what MWDOC and Participating Agencies will provide.
- Describe a user-friendly data storage platform for MWDOC and agencies to easily transfer data and documents (mostly in MS Office and PDF) to consultant.

## **Task 3: Demand Forecast Model Development**

The Scope of Work under Task 3 may include but not limited to the following services:

- Develop a demand forecast model to project water demand by individual agency for a 25-year planning horizon (2025 to 2050) that accounts for key factors influencing water demand in Orange County.
- Develop a defensible baseline demand as the starting point for the forecasts.

### Deliverables for Task 3

- Demand Forecast Model

### Proposal Content for Task 3

- Describe demand forecast methodology and rationale for the proposed approach. Discuss how similar or different the Consultant's proposed approach is to MWDOC's previous approach.
- Describe key factors and assumptions impacting demand that the proposed model will consider.
- Describe how the following elements will be considered and incorporated into the proposed demand forecast model
  - Regional Housing Needs Assessment
  - Making Conservation a California Way of Life (SB 606 / AB 1668)
  - Demand hardening
  - Weather variability and climate change
  - Socio-economic trends
  - Historical water use trends
  - The California HOME Act (SB 9) impacts
  - Impacts of Metropolitan shortages and allocations
  - Other factors



MWD OC seeks a consultant with good understanding of key influencing factors unique to Southern California and good insights to nuances within different pockets of Orange County that can develop a demand forecasting model and approach that is robust and defensible.

## **Task 4: UWMP Scenario Development, Demand Forecast Model Application, and Data Analysis**

The Scope of Work under Task 4 may include but not limited to the following services:

- Apply the model to develop demand projections for individual agency by source for five-year increments for a 25-year planning horizon (2025 to 2050) to satisfy the 2025 UWMP requirements of projecting demands for normal year, single-dry year, and multiple-dry year hydrological conditions (i.e. five consecutive dry years).

### Deliverables for Task 4

- Demand forecasts for 2025 UWMP by individual agency, by category of agencies as shown in Attachment A, MWD OC total, OCWD total, Orange County total for each scenario.

### Proposal Content for Task 4

- Describe the scenario and assumptions based on key influencing factors impacting future demands. Describe risks and uncertainty associated with the scenario and assumptions.

## **Task 5: Technical Memorandum and Presentation Preparation**

- Prepare a concise Technical Memorandum (TM) that documents the project approach, demand forecasting methodology, and demand projection results discussion.
- Prepare a PowerPoint presentation that captures the essence of the Project approach and findings for MWD OC and agencies staff to present to their respective elected officials for information.

### Deliverables for Task 5

- Demand Forecast TM
- Demand Forecast PowerPoint Presentation

### Proposal Content for Task 5

- Provide an outline for the Demand Forecast TM and PowerPoint presentation.
- Optional: MWD OC and retail agencies may choose to have the consultant present project findings to its elected officials. Please provide an optional scope and cost for consultant to give Board presentations (cost and hours per presentation).



## Optional Tasks

The consultant's proposal shall at minimum meet the Scope of Work described above, which is the general extent of the services needed by MWD OC and agencies. If you feel additional services may provide value, please add separately as optional tasks. Examples of optional tasks include:

- Develop a range of scenarios to apply the model to beyond the UWMP requirements.
- Discuss future applications of the proposed model as it relates to 1) applicability for finer-detail level forecasting e.g. for infrastructure planning, and 2) applicability for a future OC Reliability Study.
- Discuss your proposed approach to allow for agency modification of demand model beyond the base model. Additionally, describe what variables/factors you would propose to include for agencies to modify their individual models beyond the base model.





## Attachment C – Schedule of Events

Activities	Anticipated Dates
1. Issue RFP	October 7, 2024
2. Closing date for submittal of questions on RFP	October 28, 2024
3. Proposals Due	November 11, 2024
4. Consultant interviews (if necessary)	November 21-22, 2024
5. Final review and selection of consultant by Review Panel	November 27, 2024
6. Recommendation to MWD OC's P&O or A&F Committee	December 11, 2024
7. MWD OC Board Consideration of Authorization	December 18, 2024
8. Complete Agreement between MWD OC and Consultant	January 10, 2025
9. Draft Demand Projections	July 31, 2025
10. Final Demand Projections	September 30, 2025
11. Project Completion	October 31, 2025



## **Attachment D – Past Reports and Studies Relevant to Demand Forecast Development**

[MWDOC 2020 Urban Water Management Plan](#)

[2016, 2018, 2023 Orange County Reliability Studies](#)

[Other Reports and Studies](#)



## **Attachment E – Standard MWDOC Professional Services Agreement**

## STANDARD AGREEMENT FOR CONSULTANT SERVICES

This **AGREEMENT** for consulting services dated [DATE], 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 [CONSULTANT] hereinafter referred to as "**CONSULTANT**" for [SCOPE], 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, and in coordination with "**PARTICIPATING AGENCIES**", as more specifically defined by the List of Participating Agencies, attached as **Exhibit "C"**<sup>2</sup>. 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** will determine whether **SERVICES** implicate prevailing wage and if so, pay the applicable prevailing wage rate for all work and comply with all other requirements of the prevailing wage law.

**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.

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<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.

<sup>2</sup> The **PARTIES** acknowledge that the list of **PARTICIPATING AGENCIES** in contract with **DISTRICT** for **CONSULTANT's SERVICES** as set forth in **Exhibit "C"** is subject to modification.

### 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 expending and 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  
Harvey De La Torre  
General Manager  
18700 Ward Street, P.O. Box 20895  
Fountain Valley, CA 92708

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**D. Billing and Payment**

**CONSULTANT's** fees shall be billed by the 25<sup>th</sup> day of the month for the previous month's activities. Invoices received by the 25<sup>th</sup> day of the month will be paid by **DISTRICT** by the end of the following month. Invoices shall reference the Purchase Order number from **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**

**DISTRICT** may terminate this **AGREEMENT** at any time upon thirty (30) days written notice to **CONSULTANT**, 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 for services performed and due under this **AGREEMENT** on 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**; and; (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** in accordance with applicable law. 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**, its Directors, officers, agents, employees, attorneys, consultants or authorized volunteers, and the **PARTICIPATING AGENCIES**. **CONSULTANT's** insurance coverage shall be primary insurance as respects **DISTRICT**, its Directors, officers, agents, employees, attorneys, consultants and authorized volunteers, and the **PARTICIPATING AGENCIES**, 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**, its Directors, officers, agents, employees, attorneys, consultants or volunteers, and the **PARTICIPATING AGENCIES**, 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, and the **PARTICIPATING AGENCIES** 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 Directors, officers, agents, employees, attorneys, consultants and authorized volunteers, the **PARTICIPATING AGENCIES**, and each of them from and against all third party actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, including reasonable legal fees and costs, arising out of, resulting from, or on account of **CONSULTANT's** or its officials, officers, employees, subcontractors, consultants, or agents' performance of **SERVICES** under this agreement, including but not limited to:

- a. 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**.
- b. 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.

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**, its Directors, officers, employees, attorneys, consultants or authorized volunteers, nor to any **PARTICIPATING AGENCY** in contract with **DISTRICT** for **CONSULTANT's SERVICES**, for defense or indemnity.

**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, attorneys, consultants, 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, attorneys, consultants, or authorized volunteers, in any and all such suits, actions, or other legal proceedings.

**CONSULTANT** shall immediately reimburse **DISTRICT** or its Directors, officers, employees, attorneys, consultants, 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**, the **PARTICIPATING AGENCIES**, or its Directors, officers, employees, attorneys, consultants, or authorized volunteers.

Notwithstanding anything to the contrary in this Agreement, **CONSULTANT** is not obligated to indemnify, hold harmless, or defend **DISTRICT** or a **PARTICIPATING AGENCY** against any claim (whether direct or indirect) if such claim or corresponding loss arises out of or result from, **DISTRICT's**: (1) sole or active negligence or more culpable act or omission (including recklessness or willful misconduct); (2) bad faith failure to comply with any of its obligations set forth in this Agreement; or (3) use of the deliverables in any manner that does not materially conform with the usage instructions, or guidelines, or specifications.

## **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."**

## **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** and **PARTICIPATING AGENCIES** 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** and **PARTICIPATING AGENCIES**. **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 and the **PARTICIPATING AGENCY'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** and the **PARTICIPATING AGENCY**. 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** and **PARTICIPATING AGENCIES** pursuant to the **AGREEMENT** are instruments of service and shall become the property of **DISTRICT** and **PARTICIPATING AGENCIES** upon completion or termination of the Project. **CONSULTANT** hereby assigns all of its right, title and interest therein to **DISTRICT** and **PARTICIPATING AGENCIES**, including but not limited to any copyright interest. In addition, **DISTRICT** and **PARTICIPATING AGENCIES** reserve 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** and **PARTICIPATING AGENCIES** pursuant to this **AGREEMENT** and to authorize others to do so. Reuse of documents by **DISTRICT** or others on extensions or modifications of this project or on other

sites or use by others on this project, shall be at the user's sole risk, without liability to **CONSULTANT**.

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** and **PARTICIPATING AGENCIES** shall acquire no right or interest in such property.

**CONSULTANT** hereby assigns to **DISTRICT, PARTICIPATING AGENCIES** or its 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, PARTICIPATING AGENCIES**, or its designee reasonably requests to establish and perfect the rights assigned to **DISTRICT, PARTICIPATING AGENCIES** 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 ELECTRONIC SIGNATURES**

The Uniform Electronic Transactions Act, California Civil Code section 1633.1 et seq., authorizes **PARTIES** to conduct business electronically. In accordance with California Civil Code section 1633.5, **PARTIES** acknowledge, consent and agree that transactions subject to this **AGREEMENT** may be effectuated by electronic means through the use of electronic and/or digital signatures. For purposes of this section, an electronic signature means an electronic symbol or process logically associated with the intent to sign an electronic record pursuant to Civil Code section 1633(h). A digital signature, which is a type of electronic signature, means an electronic identifier, created by a computer, that is intended to have the same force and effect as the use of a manual signature under Government Code 16.5(d). An example of an electronic signature would be a JPG of a manual signature imposed onto this **AGREEMENT**, an

example of a digital signature would be the use of DocuSign or similar provider that requires an encrypted key that certifies the authenticity of the signature.

This consent to conduct transactions by electronic means through the use of electronic and/or digital signatures extends to the execution of this **AGREEMENT** or any related contract or other document necessary for the performance of this **AGREEMENT** including, without limitation, any related offers, proposals, bids, amendments, change orders, task orders and notices.

#### **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** as determined by a court of competent jurisdiction.

#### **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.

**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:**

\_\_\_\_\_

Date \_\_\_\_\_

**CONSULTANT ACCEPTANCE:**

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

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

**Internal Use Only:**

Program No. \_\_\_\_\_

**Line Item:** \_\_\_\_\_

**Funding Year:** \_\_\_\_\_

**Contract Amt.:** \_\_\_\_\_

**Purchase Order #** \_\_\_\_\_

## EXHIBIT "A"

<b>ETHICS POLICY</b>	<b>§7100-§7110</b>
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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.

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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.

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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.

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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**

During the course and scope of their employment employees are prohibited from engaging in campaign activities associated with MWDOC Director elections, MWDOC Director appointments, the appointment of MET Directors, or from attempting to influence changes to MWDOC Division boundaries, except where such activities are expressly required in the course of official duties. Employees are otherwise free to personally, 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 or during the course and scope of their duties for MWDOC. 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. These provisions are intended to protect employees against political assessments, coerced political activities, and to prevent political activities on the part of employees from interfering with MWDOC operations. Nothing in this section shall be



interpreted or applied in a manner to unlawfully curtail the constitutional right to political activity of MWDOC employees.

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Motion – 6/17/15

### **§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 any of the following: (1) the General Manager; (2) Human Resources; (3) the Board of Directors; or (4) any member of the management staff, 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. The Executive Committee may make a determination and present the issue to the full Board.

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Motion - 1/17/96; 6/17/15

### **§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 ETHICS, CONFLICT OF INTEREST AND ADMINISTRATIVE GUIDELINES**

Pursuant to the terms of Government Code Sections 53234 through 53235.2, each Director shall receive at least two hours of training in general ethics principles every two years. Pursuant to Government Code Section 53235(c), the curricula for ethics training must be approved by the Fair Political Practices Commission (FPPC) and the Attorney General. It is the general desire of the MWDOC Board to meet and 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 during the first quarter of the year immediately following an election (every two years).

Each Director shall retain the certificate of completion from any ethics course in which he/she participates and shall provide a copy of such report to MWDOC. Such records shall be retained for five years from the date they are received.

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M-12/21/05

**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 - \$ \_\_\_\_\_
3. 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 for the previous month's activities. Invoices received by the 25<sup>th</sup> day of the month will be paid by **DISTRICT** by the end of the following month. Invoices shall reference the Purchase Order number from **DISTRICT**.  
  
Consultant shall prepare a breakdown of percent complete by task by Participating Agency to submit with each monthly invoice.  
  
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: \_\_\_\_\_