



Monterey One Water

REQUEST FOR PROPOSALS

for

Program Management Services for The
Pure Water Monterey Project

PROPOSAL SUBMITTAL DUE
DATE

Sept. 27, 2017 AT 2:30 PM

TO YOHANA VARGAS
CONTRACTS
ADMINISTRATOR

Monterey One Water
5 HARRIS COURT, BLDG. D
MONTEREY, CA 93940

ONE WATER MONTEREY
REQUEST FOR PROPOSALS
**PROGRAM MANAGEMENT SERVICES FOR
THE PURE WATER MONTEREY PROJECT**

1. INTRODUCTION

Monterey One Water (M1W) is the regional wastewater agency for Northern Monterey County, California. The Regional Treatment Plant (RTP) is a 29.6 MGD facility providing wastewater treatment for homes and businesses in the Monterey Peninsula, Salinas, and North Monterey County area. M1W currently provides 12,000 acres in Monterey County with recycled water that is used for food crop irrigation. M1W(Agency) is committed to turning wastewater into safe water. In that regard the Agency is advancing the usage of different water sources for a clean, safe and sustainable source of water. The Agency along with the Monterey Peninsula Water Management District (MPWMD) is in the process of constructing the Pure Water Monterey (PWM) Groundwater Replenishment Projects (GWR). Additional information about the Agency or Pure Water Monterey can be found on the Agency web site www.montereyonewater.org, or the GWR website www.purewatermonterey.org.

M1W is seeking proposals from qualified Individual(s) or firms to provide Program Management Services for the Pure Water Monterey Project. The qualified individual(s) or firm will provide program management services and support to Agency, MPWMD, and Marina Coast Water District (MCWD) project managers and their construction managers for each of four discrete but interdependent projects that together form a completed project. Effectively, the Scope of Services is to design the Program Management Plan and the framework to run program support and then to implement the various elements of the PMP and provide regular status reports to Agency management and the Board of Directors.

This is a request for firms to submit electronic proposals. Agency staff will evaluate the submitted written proposals.

2. SUBMISSION OF PROPOSALS

The Request for Proposal (RFP) Documents will only be available electronically, at no cost, through Procore at www.procore.com. To access and download the RFP Documents, firms must send an email to Yohana Vargas at Yohana@my1water.org to receive a direct link to the RFP Documents.

It is the responsibility of each prospective individual or firm to download and print all RFP Documents for review and to verify the completeness of the documents before submitting a proposal. Any Addenda will be posted on Procore. It is the responsibility of each prospective individual(s) or firm to check Procore through the final date for proposal submission for any applicable addenda or updates. Monterey One Water does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the RFP Documents.

This is a request for Individual(s) or firms to submit electronic proposals. Agency staff will evaluate the submitted written proposals. Please submit two separate pdfs through Procore: one with the Technical proposal and one with the price proposal breakdown.

The Pure Water Monterey Project is a project funded by the following sources in addition to Agency and MPWMD funds:

- Clean Water State Revolving Fund (SRF) and Proposition 1 (Prop 1) Recycled Water Grant Program
- Proposition 1 Storm Water Grant

Proposals must comply with all requirements associated with these funding sources.

Per CA Government Code 1090, no firm involved in design of any of the four projects will be eligible for this work.

MANDATORY PRE-PROPOSAL MEETING

A mandatory pre-proposal meeting for this project is scheduled for 10:00 AM, Thursday, September 14, 2017. Individual(s) or Firms wishing to be considered are required to have a representative from their organization in attendance for this meeting.

Location:

Monterey One Water
5 Harris Court, Building D
MONTEREY, CA 93940

QUESTIONS

Questions regarding this project must be received in writing by letter or email on or before Monday, September 18, 2017 at 4:00 pm. No questions will be answered by telephone. Faxed letters are acceptable. When submitting questions, please clearly indicate they relate to the Program Management Services proposal.

Address written questions to:

YOHANA VARGAS
5 HARRIS COURT, BUILDING
D MONTEREY, CA 93940

yohana@my1water.org

FAX (831) 883-0516

DUE DATE AND TIME

M1W will receive proposals by electronic submission only for the Pure Water Monterey Project – Program Management no later than 2:30 P.M., September 27, 2017. Any proposals sent by another means will not be accepted. Proposals shall remain valid for 100 days after the opening date.

PUBLIC WORKS CONTRACTOR REGISTRATION

If the scope of services to be provided pursuant to this RFP includes a public works project as defined by Labor Code Section 1720, et seq. and 1770, et seq., then pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the proposer and its applicable subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

3. QUALIFICATIONS AND EXPERIENCE

The proposed Program Manager shall possess the following minimum qualifications and experience:

1. Registered Professional Engineer in the State of California with a minimum of 15 years of Project Management and Program-related experience.
2. Successful experience in delivering recycled water programs in the last 10 years.
3. Experience in regulatory permitting, funding, agency coordination, stakeholder outreach, planning, engineering design, and construction management related to recycled water projects, including at least one project involving Advance Water Treatment Facilities and potable direct or indirect reuse.

An understanding of the development of California's regulations for indirect potable reuse and the Monterey Pure Water Program, and its project participants and facilities, is desirable.

4. OVERALL PROJECT DESCRIPTION

The Pure Water Monterey Groundwater Replenishment Project is a water supply project that will serve northern Monterey County. The project will provide purified recycled water for recharge of a groundwater basin that serves as drinking water supply, and recycled water to augment the existing Castroville Seawater Intrusion Project's crop irrigation supply.

The project is jointly sponsored by M1W and the Monterey Peninsula Water Management District (MPWMD), and also includes participation by the City of Salinas, the Marina Coast Water District, and the Monterey County Water Resources Agency.

The project includes the collection of a variety of new source waters and conveyance of that water to the Regional Wastewater Treatment Plant (Regional Plant) for treatment and recycling. The water will then be used for two purposes: replenishment of the Seaside Groundwater Basin with purified recycled water to replace some of CalAm's existing drinking water supplies; and provision of additional recycled water supply for agricultural irrigation in the northern Salinas Valley.

As detailed in Appendix A, Pure Water Monterey consists of four discrete but interdependent projects, each of which has a Project Manager and Construction Manager. In addition to those managers, Pure Water Monterey also has a dedicated Contracts Administrator with organizational and financial management for the portions of the project contracted for by M1W

5. SCOPE OF SERVICES

Under these services, the Program Manager, shall design a Program Management Plan (PMP) and the framework to run program support and then to implement the various elements of the PMP by providing skilled managerial, technical, administrative, financial, and professional assistance to accomplish the successful timely and on-budget completion of all four projects.

Under these services, the Program Manager, will interact with M1W and its partner agencies and consultant teams, including engineering project managers, construction managers, and contract managers, in a timely manner to support the on-budget and on-schedule completion and start-up of Monterey Pure Water, including its four primary project components. The four project components include the Blanco Drain and Reclamation Ditch Improvements, the Advance Water Purification Facility, the Conveyance Pipeline and Storage Reservoir, and the Groundwater Injection Well facilities. Groundwater injection and subsequent withdrawal of the purified water from the Seaside Basin will replace surface water that CalAm is currently diverting from the Carmel River. This project must deliver purified water for injection no later than May, 2019.

M1W is looking for a consultant to provide the expertise and resources required to provide Program Management support services to drive the schedule, control budgets and coordinate remaining planning, design, and construction and start-up activities. The overall program management team is anticipated to be comprised of M1W staff, design and construction management consultants and the proposer.

The following tasks of work are intended to frame the required Scope of Services. If the consultant identifies additional services that may provide added value to M1W and Pure Water Monterey, they may be included.

Development of a Program Management Plan

A Program Management Plan will be prepared that includes the following elements:

- a. Roles and Responsibilities – Develop a Roles and Responsibilities and Communications Plan – Appendix A describes each of the four projects and introduces the Project Managers and Construction Managers. The Program Manager will define the responsibilities of those team members and a protocol by which communications will occur both among the team and with the Program Manager and develop a functional organizational structure, including key staff and consultant roles, responsibilities, duties and tasks that will facilitate and define decision making authority of the various team members.
- b. Program Controls – Review existing project controls and establish procedures for managing documents, budgets, schedules, change management and reporting.
 - i. Schedule control - define a baseline critical path schedule and procedure for schedule monitoring that assures frequent review of work that should be completed and a look ahead to work in the immediate future that is to be done to assure that all work on all projects is completed on time.
 - ii. Regulatory and environmental compliance control – Establish a structure by which the Program Manager will work with the environmental consultant, Denise Duffy and Associates and Project Managers to assure compliance with mitigation monitoring required by environmental documents and to do so in a way that does not delay project schedules.
 - iii. Financial Control – In cooperation with the Contracts Administrator, establish and maintain a system that assures budget control, accounting, and reporting.
 1. Change Orders – Establish a system by which the Program Manager will work with Project Managers and Contracts Administrator to Identify changes in scope of work for approval for consulting services and construction.
 2. Progress payments – Establish a system by which the Program Manager will review invoices for consultants and contractors after their review by Project/Construction Managers and Contract Administrator to provide standard invoice summary and approval process;
 - iv. Project conflicts controls between projects – Establish a system by which the Project Manager working with Project and Construction managers will foresee and manage any potential conflicts between projects, e.g. a pipeline project from the Source Water Project is being constructed on the site of the Purification Facility in a location that hinders the Purification Facility project
- c. Operations and Maintenance Staff Involvement - Develop a procedure that establishes the Program Manager as the Operations Liaison; involves Operations and Maintenance staff in regular review of construction progress; involves staff in the development of Operations Plans during construction (for events such as tie-ins and shutdowns); develop

Project Acceptance Protocol that engages Operations and Maintenance staff; involve Operations and Maintenance staff in the development of Standard Operating Procedures; involve Managers, Supervisors and Operations and maintenance in the coordination of training; assists Managers and Supervisors in the necessary certifications that will be required of Operations and Maintenance staff.

- d. Administration – Working with the Contracts Administrator, develop Filing Systems, Information and Document Management systems, Records Archives, and Photography.
- e. Status Reports – Either by delegation to Project Managers or through the efforts of the Program Manager, develop a protocol for monthly progress reports as an informational tool for senior management, a management tool for managers, and status reports to the Recycled Water Committee and the Board of Directors. The report will contain program progress by project, cost, cash flow, schedule, tasks, highlight of potential short/mid-term risks, and specifics on the design and construction progress.

Draft program management plan will be submitted within 45 days of contract award with review process by project team and finalized within 30 days.

6. SUBMISSION REQUIREMENTS

Individual(s) or Firms wishing to be considered for this Program Management position must agree to sign the Professional Services Agreement (Attachment 1) and must submit the following:

A. TECHNICAL PROPOSAL –

In general, M1W is anticipating a good description of the individual's or firm's approach to this Program Management Plan and its implementation, i.e. looking at the description of this overall project and the potential problems that could present themselves, how would you or your firm approach the work to assure timely and on-budget delivery.

1. Relevant experience of the firm and of the individual(s) who will be assigned to the project with emphasis on the Program Manager. Please include a 2-page resume of each individual who will participate on this assignment (resumes are not included in the page count) and provide a summary of your firm's qualifications and experience in recycled.
2. The Proposal shall describe aforementioned detailed approach to the work, and by whom specifically. Included in this description of the detailed approach to the work should be an assessment of the amount of time the proposer anticipates is needed, i.e. daily involvement, several days per week? And how most of the work will be accomplished, i.e. teleconference, in-person, team meetings.
3. The Proposal shall describe the level of services that you or your firm anticipate are needed and can be provided by your firm, and you or your firm's familiarity with the locality and regional challenges.
4. Please provide information on the qualifications of key staff members of all sub consultants proposed for your project team (if any). Include the scope of services each sub consultant will provide.
5. Please address your firm's ability to undertake the project for which you are requesting consideration, keeping in mind the other workload in your office.
6. Please include specifics regarding qualifications and experience in completing similar projects. Please provide at least three (3) references for similar projects, including names and contacts. Please include a list of previous clients and similar projects including contact names and telephone numbers.

B. FEE PROPOSAL

1. The fee proposal for the project shall be proposed using hourly rates and anticipated level of effort for each element of the management plan. M1W will then enter into negotiations with the selected individual or firm for the implementation of the management plan.

2. The fees shall include all expenses other than duplication of documents. The Agency will not pay an extra amount for out-of-pocket costs for, telephones, computers, accounting time and other incidental costs.
3. The fee proposal shall be provided as a separate appropriately named document (electronically through Procore).

7. PROCEDURES AND EVALUATION OF PROPOSALS

A. PROCEDURES

1. At the completion of the review process, proposers will be ranked based on the criteria described below and the Agency will select the highest ranked firm or, at Agency's option, the most highly qualified firms will form a "short list".
2. In the event that a "short list" is established to formally present proposals on site at M1W and respond to interviewer questions, interviews are tentatively scheduled for the afternoon of Wednesday, October 4, 2017. The interview panel will be the evaluation committee. The presentation and interview session will not exceed one hour per firm. No proposer shall be entitled to or otherwise guaranteed an interview with the Agency.
3. Following presentation/interviews, the evaluation committee will complete its ranking. At that time, price negotiations will commence with the highest ranked technical proposer. If these fees are mutually agreed to after negotiations, then that firm will be referred to the Board. If no agreement can be reached as to price, then the first ranked firm will be excused, and the second ranked firm will be asked to begin the negotiation process. This procedure will be followed until a firm is selected.
4. Following successful negotiations, the contract will be referred to the Agency's Board of Directors for approval.
5. The Agency reserves the right to reject any and all proposals and to reissue its request for proposals. The Agency reserves the right to cancel the project at any point and pay the Consultant only for costs incurred to that point and for work completed which is usable by the Agency as determined by the Agency.
6. The Agency reserves the right to award subsequent contracts for additional work to the selected Consultant (if a selection is made) or to another Consultant who has submitted a proposal for this solicitation.

B. EVALUATION CRITERIA BASED ON ALL PHASES

An evaluation committee of Agency staff personnel will review and evaluate the proposals against the following criteria:

1. Demonstrated success with performing Program Management services for projects of similar scope and complexity: (Up to 10 points). Has the proposer provided a list of similar projects with contact information?
2. Understanding of the Agency's Goals: (Up to 10 points) Based on the information provided by the Agency, does the proposer understand the project parameters and the need for, and purpose of, this project?

3. Staff: (Up to 20 points) Do the qualifications of key personnel to be assigned to the project coincide with project's requirements? Do assigned personnel and sub consultant personnel have requisite education, experience, professional qualifications, and availability?
4. Familiarity with Locality: (Up to 10 points) Does the individual(s) or firm have familiarity with the Agency and/or the local area and regional challenges required to successfully complete the project?
5. Specific Management Approach: (Up to 25 points) How does the proposer intend to achieve the Agency's budget and very specific time goals for the project? How will the individual(s) or firm apply its management techniques and resources?
6. Organization: (Up to 10 points) Are the qualifications of the firm's personnel and sub consultant personnel suitable for the project; and, does the firm's organizational structure show sufficient depth for its present workload?
7. Reputation: (Up to 5 points) Are the firm's references from past clients and associates favorable; and, does the firm show financial and operational stability?
8. Services Offered: (Up to 10 points) Does the firm offer the breadth and quality of services required for the project?

8. GENERAL INFORMATION

A. FORM OF CONTRACT – The successful proposer will be required to execute a contract (agreement) with the Monterey Regional Water Pollution Control Agency. The standard form of the Professional Services Agreement is enclosed (Attachment 1) complete with insurance and indemnity requirements. The successful consultant must be willing to accept the attached Professional Services Agreement without exception. Submission of a proposal confirms that the consultant, if selected, accepts the attached Professional Services Agreement with all terms and requirements contained therein.

B. Consultant shall maintain in effect throughout the term of the Agreement a policy or policies of insurance with the minimum limits of liability listed in the Professional Services Agreement (Attachment 1).

C. GENERAL PROVISIONS

1. Proposers are encouraged to review this RFP carefully in its entirety prior to preparation of its proposal. Agency reserves the right to verify all information submitted in a proposal.
2. Waiver of Irregularities. Agency reserves the right to waive any informalities or irregularities in this RFP process, or in any proposal.
3. Addenda. The Agency reserves the right to revise the RFP documents. Any changes to the requirements will be made by written addenda to this RFP. Failure to acknowledge all posted addenda may cause a proposal to be deemed non-responsive to this RFP and be rejected without further evaluation.
4. No Commitment to Award. Issuance of this RFP and receipt of proposals does not commit Agency to award a contract. Agency expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals

received in response to this RFP, to award all or a portion of the proposed scope of work, or to cancel all or part of this RFP.

5. Amendments to Proposals. No amendment, addendum or modification will be accepted after the deadline stated herein for receiving proposals. Proposer may modify or amend its proposal only if Agency receives the amendment prior to the deadline stated herein for receiving proposals.
6. Non-Responsive Proposals. A proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the proposal.
7. Late Proposals. Agency will not be responsible for proposals that are delinquent, lost, or incorrectly submitted (not submitted through Procore).
8. Costs for Preparing. Agency will not compensate any proposer for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of Agency. Agency may retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.
9. Alternative Proposals. Only one final proposal is to be submitted by each proposer. Multiple proposals will result in rejection of all proposals submitted by the proposer.
10. Public Documents. All proposals shall be available for public inspection at the conclusion of the selection process.
11. No Exceptions. Submission of a proposal constitutes acceptance by proposer of the conditions contained in this RFP and the Professional Services Agreement, should proposer be selected.

Attachment A: Projects, Project Managers, and Construction Managers
Attachment B: Professional Services Agreement

Attachment A

Projects, Project Managers, and Construction Managers

Pure Water Monterey consists of four discrete but interdependent projects, each of which has a staff project manager and a consulting construction manager. The brief project description and Project Manager/Construction Manager follows:

Source water diversion and conveyance by pipeline – Project Manager: Tom Kouretas for the Blanco Drain and Reclamation Ditch source waters; Construction Manager Covello). New diversion facilities will divert and new pipeline and pumping facilities will convey the new source waters through the existing municipal wastewater collection system and new facilities to the Regional Plant. This construction project has been awarded to Anderson Pacific and is currently under construction. The second part of this project that represents the next phase of Pure Water Monterey is the Proposition 1 Storm Water grant-funded portion that is in design by E2 and the Project Manager for this part of the Source Water Project is Alison Imamura.

Advanced Water Purification facilities at Regional Plant. Project Manager: Bob Holden and Construction Manager: MNS Engineers. A new advanced water treatment plant will be constructed at the Regional Plant site. The bid has been awarded to Anderson Pacific. This facility

will include a state-of-the-art treatment system that uses multiple membrane “barriers” to purify the water (including reverse osmosis), product water stabilization to prevent pipe corrosion due to water purity, a pump station, and a brine and wastewater mixing facility. There would also be modifications to the Salinas Valley Reclamation Plant to optimize and enhance the delivery of recycled water to growers.

Conveyance Product Water Pipeline. Project Manager: Mike Wegley, Engineering Manager at Marina Coast Water District and Construction Manager: MWH. This project consists of approximately 8 miles of new pipelines, a storage reservoir and appurtenant facilities which will be constructed to move the product water from the Regional Plant to the Seaside Groundwater Basin for injection. One of the unique aspects of this project is that while it is an integral part of the Pure Monterey Project, it was bid and will be managed, operated, maintained and owned not by Monterey One Water, but by Marina Coast Water District. Bids have been opened on this project and are awaiting funding paperwork from the State Water Resources Control Board before the Board will issue notice of award.

Injection well facilities. Project Manager: Maureen Hamilton, staff engineer on loan to Monterey One Water by the Monterey Peninsula Water Management Agency; the construction manager will be selected in the “Phase 2” of this project but during the “Phase 1” portion that is underway with one deep injection well, one deep monitoring well and one shallow monitoring well, we are receiving engineering services during construction from Kennedy Jenks. The completed injection facilities will include new wells (in the shallow and deep aquifers), back-flush facilities, pipelines, electricity/ power distribution facilities, and electrical/motor control buildings. The final design is 60% complete at this time and awaits information received from the currently-underway Phase 1 work before the final design can be completed.

Attachment B

PROFESSIONAL SERVICES CONTRACT FOR PROGRAM MANAGEMENT SERVICES FOR THE PURE WATER MONTEREY PROJECT

1. PARTIES: The parties to this Professional Services Contract (“Contract”) are the MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, a California joint powers agency, (the “Agency”) and- **XXX** (“Contractor”).

2. RECITALS:

(a) The Agency is a public agency duly organized and existing under the laws of the State of California, with the power to contract for the services to be provided under this Contract.

(b) The Agency requires certain professional design and related services in connection with the public work of improvement referred to as the Pure Water Monterey Project (the "Project").

(c) Contractor has agreed to provide these services by reason of its qualifications and experience on the terms and in the manner set forth herein.

(d) Contractor represents that it is fully licensed and qualified, with all professional skills necessary to perform the services described in this Contract and has special experience in the design of public works similar in size, scope and complexity to the Project.

(e) The Project and this Contract may be funded, in whole or in part, with Clean Water State Revolving Fund (SRF) funds made available through the California State Water Resources Control Board. In order to preserve the eligibility of this Contract for SRF funding, Contractor shall comply with the SRF requirements included in this Contract.

3. SCOPE OF SERVICES:

The Services are more particularly described in the scope of work set forth in Attachment A (“Scope of Work”). All Services shall be subject to, and performed in accordance with this Contract, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, ordinances, rules and regulations. All Services performed by Contractor shall be subject to the approval of the Agency. Contractor shall coordinate with the Agency’s staff, contractors and consultants in the performance of the Services, and shall be available to the Agency’s staff, contractors and consultants at all reasonable times.

4. PAYMENT:

(a) Payment for Services. The Agency shall pay for Services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

(b) Reimbursement of expenses.

Contractor will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of Services in accordance with the expense reimbursement schedule included in Attachment B.

(c) Maximum payment. The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed \$00.

(d) Invoices.

All invoices for Services will be submitted on a monthly basis to the Contract Manager. The Agency generally will process and pay bills within thirty (30) days from receipt of an undisputed invoice. Each bill shall include an invoice showing the following:

An itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. The amount paid to Contractor shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Attachment B. If reimbursement of expenses is authorized, Contractor shall submit monthly invoices for such expenses, including full documentation of each expense incurred.

(e) Audit of Records. Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Agency for establishing the basis of an invoice, for a minimum of four (4) years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow Agency representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

(f) The Agency may withhold payment, in whole or in part, to the extent such Services were not performed satisfactorily, delays in Contractor's performance, other defaults, or to the extent reasonably necessary to protect the Agency from or compensate the Agency for claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind allegedly arising from or related to the negligent performance of Services. The Agency will release any withheld funds upon Contractor satisfactorily remedying the issue that resulted in the withholding. The Agency will not pay late fees to Contractor on the compensation due Contractor under the terms of this Contract.

(g) Payment shall not constitute acceptance of any work or Services completed by Contractor. The making of final payment shall not constitute a waiver of any claims by the Agency for any reason whatsoever.

5. TIME FOR PERFORMANCE:

The term of this Contract shall begin on the date first set forth below, and shall expire upon completion of the Services or when terminated as provided herein. Contractor shall commence performance of the Services immediately upon receipt of a notice to proceed from the Agency. The Agency will have no obligation to pay for any Services rendered by Contractor in advance of receipt of the notice to proceed, and Contractor acknowledges that any such Services are at Contractor's own risk.

(a) Contractor shall perform the Services according to the schedule contained in Attachment C. If the schedule calls for the Services to be performed in phases or discrete increments, Contractor shall not proceed from one phase or increment to the next without written authorization from the Contract Manager. Contractor shall complete all Services by the completion date in Attachment C.

(b) Contractor shall not exceed or modify the approved schedule without the prior written approval of the Agency. If Contractor does not perform the Services in accordance with the approved schedule, or any milestones established therein, the Agency will suffer damages for which Contractor will be responsible.

(c) Extension of time for unforeseen circumstances. In the event that Contractor is unable to meet the completion date or schedule of Services, if any, due to circumstances beyond Contractor's reasonable control, such as war, riots, strikes, lockouts, work slow-down or stoppage, except strikes, lockouts, or work slow-down or stoppage of Contractor's employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Contractor shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

6. STANDARD OF PERFORMANCE: The Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions (hereinafter "Standard of Care"). Contractor shall be responsible for the professional quality, technical accuracy and coordination of all Services. Whenever the Scope of Work requires or permits approval by the Agency, it is understood to be approval solely for the purposes of conforming to the requirements of the Scope of Work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve Contractor of responsibility for complying with applicable federal, state and local laws and regulations, or the Standard of Care, industry standards, or from liability for damages caused by Contractor's negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Contract and all applicable federal, state and local laws. If Contractor performs any work knowing it to be contrary to any

applicable law and without giving written notice to the Agency, Contractor shall be solely responsible for all costs arising therefrom. If Contractor, or any of its designated subcontractor, is retained to perform Services requiring a license, certification, registration or other similar requirement under California law, Contractor and its designated subcontractors, as applicable, shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

In the event that the Contract Manager determines that any formally submitted work is not in accordance with the Standard of Care established under this Contract, the Contract Manager may require Contractor to revise and resubmit the work at no cost to the Agency.

7. OPPORTUNITY TO CURE; INSPECTION OF WORK: The Agency may provide Contractor an opportunity to cure, at Contractor's expense, any Contractor errors or omissions which may be disclosed during Project implementation. Should Contractor fail to make such correction in a timely manner, such correction may be made by the Agency, and the cost thereof charged to Contractor. Contractor shall allow the Contract Manager to inspect or review Contractor's work in progress at any reasonable time.

8. INDEPENDENT CONTRACTOR: Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of the Agency by virtue of this Contract or performance of any work under this Contract.

9. ASSIGNMENT: Contractor's Services are unique and personal. Contractor shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Contract without the express written consent of the Agency in each instance.

10. SUBCONTRACTORS: Contractor will perform the work personally or through Contractor's employees except for those tasks to be performed by the subcontractors designated on Attachment D. Contractor may add or delete a designated subcontractor with the Agency's prior written permission. Contractor is responsible to the Agency for the acts and omissions of Contractor's subcontractors and of the subcontractor's employees in performance of this Contract. Nothing contained in this Contract shall create any contractual relationship between any subcontractor of Contractor and the Agency. Contractor shall pay subcontractors within thirty (30) days of receipt of payment by Agency for work performed by a subcontractor and billed by Contractor, except to the extent Section 7108.5 of the California Business and Professions Code requires payment within a shorter period of time.

11. CONTRACTOR'S EMPLOYEES:

(a) Immigration Reform and Control Act of 1986. Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all of Contractor's agents, employees, subcontractors and Contractors that are included in this Contract.

(b) **Limitation of Agency Liability.** The payment made to Contractor pursuant to this Contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents and subcontractors are entitled for performance of any work under this Contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Agency. The Agency will not make any federal or state tax withholdings on behalf of Contractor. The Agency shall not be required to pay any workers' compensation insurance on behalf of Contractor.

(c) **Indemnification for Employee Payments.** Contractor agrees to defend and indemnify the Agency for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Agency may be required to make on behalf of Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of the Agency, for work done under this Contract. This is a continuing obligation that survives the termination of this Contract.

(d) **Labor Certification.** By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

(e) **Removal of Persons from Project.** Any employee or subcontractor who is determined by the Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or subcontractor who fails or refuses to perform the Services in a manner acceptable to the Agency, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

12. PREVAILING WAGE; DIR REGISTRATION:

(a) **Prevailing wage.** Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services, or any portion thereof, are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply, and to require its subcontractors to comply, with such Prevailing Wage Laws, if applicable. A copy of the prevailing wage rates is available for review at the Agency's office at 5 Harris Court, Monterey, California, 93940. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services which are subject to the Prevailing Wage Laws available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Agency, its elected officials, officers, employees and agents free and

harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

(b) DIR Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, Contractor and all applicable subcontractors must be registered with the Department of Industrial Relations. If applicable, Contractor shall maintain registration for the duration of this Contract and require the same of any applicable subcontractors. The Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements.

13. FAIR EMPLOYMENT PRACTICES:

(a) Contractor acknowledges it is the policy of the Agency to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Agency officers, employees and contractors shall not knowingly deny an Agency opportunity or benefit, discriminate against or harass, any Agency employee, applicant for employment, contractor, vendor, or recipient of Agency services on account of the person’s race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Agency officers, employees and contractors shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Agency services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Agency employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Agency.

(e) Civil Rights Act. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with

Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Agency's Small Contractor Outreach and Opportunities Program.

(f) Agency Discrimination/Harassment Policy. Contractor and its officers, employees, agents and subcontractors shall comply with the Agency's Discrimination/Harassment Prohibition Policy in performance of this Contract.

(g) Indemnification. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, Contractor shall also indemnify, defend and hold harmless the Agency, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment of Agency employees, including but not limited to sexual harassment, arising from the conduct of Contractor or any of Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of Contractor or its subcontractors, Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the Services or termination of this Contract.

14. WORKPLACE CONDUCT AND BEHAVIOR: Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the Agency's Substance-free Work Place Policy, Information and Communications Systems Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the Agency or using Agency facilities or equipment.

15. OWNERSHIP OF WORK PRODUCT: Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this Contract ("Work Product") are the property of the Agency. Contractor agrees that all copyrights which arise from creation of the Work Product pursuant to this Contract shall be vested in the Agency and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Agency. Agency acknowledges that its use of the Work Product is limited to the purposes contemplated by the Scope of Work and that Contractor makes no representation of the suitability of the Work Product for use in or application to circumstances not contemplated by the Scope of Work.

16. INFRINGEMENT INDEMNIFICATION: Contractor shall defend, indemnify and hold the Agency, its directors, officials, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Contract, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or other proprietary right of any person or entity, specifically related to use of the Work Product for the Project.

17. FORMAT OF DOCUMENTS: Documents submitted to the Agency in electronic format shall be formatted according to specifications provided by the Agency, or if not otherwise

specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Professional 2007 format as appropriate for the particular Work Product or, if directed by the Contract Manager in Adobe Acrobat pdf format.

18. CHANGES IN WORK: No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the Scope of Work. Whether a change or addition to the Scope of Work is proposed by Contractor or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this Contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this Contract.

19. CONFIDENTIALITY:

(a) Confidential Nature of Information. Contractor shall treat all information obtained from the Agency in the performance of this Contract as confidential and proprietary to the Agency. Contractor shall treat all records and Work Product prepared or maintained by Contractor in the performance of this Contract as confidential.

(b) Limitation on use and disclosure. Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor's Scope of Work. Contractor will not disclose any information prepared for the Agency, or obtained from the Agency or obtained as a consequence of the performance of work to any person other than the Agency, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this Contract unless such disclosure is specifically authorized in writing by the Agency.

(c) Security plan. If requested by the Contract Manager, Contractor shall prepare a security plan to assure that information obtained from the Agency or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Contractor shall advise the Agency of any request for disclosure of information or of any actual or potential disclosure of information.

(d) Survival. Contractor's obligations under this paragraph shall survive the termination of this Contract.

(e) Exclusion. The following information shall not be considered confidential information subject to the requirements of this Section 19: (i) information that was or becomes publicly known through no fault of Contractor; (ii) information that was rightfully known or becomes rightfully known to Contractor without confidential or proprietary restriction from a source other than the Agency, and unrelated to Contractor's work under this Agreement; (iii) information that is independently developed by Contractor unrelated to the performance of this Agreement; or

(iv) information that is approved by the Agency for disclosure without restriction in a written document which is signed by a duly authorized officer of the Agency.

(f) Legally Compelled Disclosure. If Contractor is legally compelled to disclose information subject to the confidentiality requirements of this Section 19, Contractor may do so provided, however, that prior to any such compelled disclosure, Contractor shall (i) assert the privileged and confidential nature of the information against the third party seeking disclosure and (ii) cooperate fully with Agency in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the information. In the event that such protection against disclosure is not obtained, Contractor will be entitled to disclose the information, but only as, and to the extent, necessary to legally comply with such compelled disclosure.

20. PROHIBITED INTEREST: No official or employee of the Agency who is authorized in such capacity on behalf of the Agency to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this Contract, shall become directly or indirectly interested in this Contract or in any part thereof. No officer or employee of the Agency who is authorized in such capacity and on behalf of the Agency to exercise any executive, supervisory, or similar functions in connection with the performance of this Contract shall become directly or indirectly interested personally in this Contract or any part thereof.

21. CONFLICT OF INTEREST:

(a) Local Conflict of Interest Code Compliance

The Agency has determined, based on the scope of the Services to be provided by Contractor under this Contract, that this Contract confers on Contractor or any of Contractor's employees the status of a "designated employee" or "Consultant" of the Agency for the purposes of the Agency's Local Conflict of Interest Code and the California Political Reform Act. Contractor will be subject to the same provisions as the Category 1 Designation in the Agency's Local Conflict of Interest Code.

(b) Disqualification. Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this Contract. Contractor will not have such interest during the term of this Contract. Contractor will immediately advise the Legal Counsel of the Agency if Contractor learns of a financial interest of Contractor's during the term of this Contract. If Contractor's participation in another Agency project would create an actual or potential conflict of interest, in the opinion of the Agency, the Agency may disqualify Contractor from participation in such other project during the term of this Contract.

22. INDEMNIFICATION:

(a) To the fullest extent permitted by law, the Contractor shall (1) immediately defend, and (2) indemnify the Agency, and its directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents, or subcontractors. Liabilities subject to the duties to

defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) The review, acceptance or approval of Contractor's work or Work Product by any indemnified party shall not affect, relieve or reduce Contractor's indemnification or defense obligations. This Section survives completion of the Services or the termination of this Contract. The provisions of this Section are not limited by and do not affect the provisions of this Contract relating to insurance.

(c) If either party initiates an action to enforce the legal obligations of this Article 22 of the Agreement, including, but not limited to the obligation to defend, the prevailing party in the action shall be entitled to attorneys' fees in accordance with Civil Code section 1717. By execution of the Agreement, both parties confirm that they are represented by counsel in the negotiation and execution of the Agreement and that they intend for this attorneys' fee provision only apply to this Article 22.

23. INSURANCE:

(a) Requirement. Contractor shall procure and maintain, and shall require its subcontractors to procure and maintain, during the period of performance of this Contract and for 12 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Agency so that any other coverage held by the Agency shall not contribute to any loss under Contractor's insurance.

General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$5,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, covering Code 1 ("any auto")) coverage in an amount not less than \$5,000,000 per accident for bodily injury including death, and property damage.

Professional liability: (errors and omissions) for damage alleged to be as a result of negligent acts, errors, or omissions of Contractor with coverage in an amount not less than \$2,000,000 per occurrence or claim and \$4,000,000 policy aggregate.

Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of \$1,000,000 per accident for bodily injury or disease.

A deductible or retention may be utilized, subject to approval by the Agency.

All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party including additional insureds or insurers, shall satisfy the self-insured retention limits.

(b) Endorsements. The insurance policies shall be endorsed as follows: For the commercial general liability insurance, the Monterey Regional Water Pollution Control Agency (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this Contract.

Contractor's insurance is primary to any other insurance available to the Agency with respect to claims arising out of the Contractor's services related to this Contract. Any insurance maintained by the Agency shall be excess of Contractor's insurance and shall not contribute with it. Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the Agency, and its directors, officers, employees and agents. Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after thirty (30) days' written notice has been given to the Agency, or after ten (10) days' written notice in the case of cancellation for non-payment of premium.

If Contractor maintains higher limits than the minimum shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Agency, which satisfies the following minimum requirements: An insurance carrier authorized to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to Agency.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any Services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Agency, or on equivalent ISO forms that contain provisions required by this Contract.

(e) Subcontractor Insurance. Contractor shall require subcontractors, prior to commencing any Services under this Contract, to obtain insurance in accordance with all requirements of this Section.

(f) Failure to Provide Insurance. If Contractor fails or refuses to procure or to maintain the insurance as required by this Contract or fails or refuses to furnish the Agency with required proof that the insurance has been procured and is in force and paid for, the Agency shall have the right, at the Agency's election and upon twenty (20) days' notice to Contractor to procure and maintain such insurance. The premiums paid by the Agency shall be treated as an amount due from Contractor with interest at the rate of ten percent (10%), to be paid on the first (1st) day of the month following the date on which the premiums were paid. The Agency shall have the right to offset any amounts the Agency pays hereunder with amounts due Contractor for the Services. The Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

24. ACCIDENT REPORTS: Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the Agency any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Agency's Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

25. COVENANT AGAINST CONTINGENT FEES: Contractor agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Contract. For breach or violation of this provision, the Agency shall have the right to terminate this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

26. SUSPENSION. The Agency may suspend this Contract and Contractor's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Contractor to perform any provision of this Contract. Contractor shall be paid for satisfactory Services performed through the date of suspension. In the event that the Services hereunder are delayed for a period in excess of six (6) months due to causes beyond Contractor's reasonable control, Contractor's compensation shall be subject to renegotiation, provided that the suspension was not attributable to deficiencies in Contractor's performance.

If the Agency suspends the Services, the Agency may require Contractor to resume such Services within fifteen (15) days after written notice from the Agency.

27. TERMINATION OR ABANDONMENT:

(a) Agency's Rights. The Agency has the right to terminate or abandon any portion or all of the work by giving ten (10) days' written notice. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to Agency all Work Product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Agency shall pay Contractor for Services satisfactorily performed in accordance with this Contract before the date of termination. If this Contract provides for payment of a lump sum for all Services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for Services performed shall be based on an amount mutually agreed to by the Agency and Contractor for the portion of work completed in conformance with this Contract before the date of termination. In addition, the Agency will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The Agency shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) Contractor's Rights. Contractor, if Contractor is not in default or breach, may terminate Contractor's obligation to provide further Services under this Contract upon thirty (30) days' written notice only in the event of a material default by the Agency, which default has not been cured within thirty (30) days following the written notice. In the event of termination, reimbursement will be for the reasonable services performed to the termination date.

28. SUCCESSORS OR ASSIGNS: All terms, conditions, and provisions of this Contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

29. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

(a) General Obligation. Contractor shall pay to the Agency the replacement cost of any equipment or repair cost of any facilities provided by the Agency for Contractor's use in performance of Services that is lost or damaged by Contractor or Contractor's officers, employees, agents or subcontractors.

(b) Keys. During the term of this Contract, Contractor may be issued keys to Agency facilities in order to perform the Scope of Work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Contractor will sign for each key and each key will be returned to the Project manager when access to that area is no longer authorized, or at the end of the Contract term, whichever is applicable. Should keys become lost or stolen, Contractor shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Agency, including the replacement of locks, lock cores, keys, and other materials necessary

to ensure the Agency security level is returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as \$40,000.

30. ELECTRONIC COMMUNICATIONS: During the course of this Contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor and the Agency acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor and the Agency view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Contractor agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

31. LAWS AND VENUE: This Contract and disputes arising out of or relating to this Contract or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to this Contract or the parties' relationship shall be brought in a state court situated in the County of Monterey, State of California. Any action of proceeding arising out of or relating to this Contract or the parties' relationship shall be brought in a federal court situated in the County of San Jose, State of California.

32. SRF REQUIREMENTS: To preserve eligibility of this Contract for SRF funds, Contractor shall comply with the additional SRF requirements attached to this Contract as Attachment E and incorporated herein by reference.

33. ADMINISTRATION:

(a) Contractor's principal place of business and agent for service of process. Contractor's principal place of business is _____. Contractor's agent for service of process is _____.

(b) Agency's Representative. The Agency's representative for administration of this Contract is the Agency's General Manager, or his designee, who is the designated Contract Manager. The Agency may change the Contract Manager at any time upon notice to Contractor.

(c) Contractor's Representative. Contractor's representative for administration of this Contract is _____, who is designated as the Project Manager. The Project Manager is authorized to act on behalf of Contractor with respect to the work and Services specified herein and to make

all decisions in connection herewith. Contractor may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) Key Personnel. In addition to Contractor's Representative, Contractor has represented to the Agency that certain additional key personnel, architects, engineers and subcontractors will perform the Services under this Contract. Should one or more of such personnel, architects, engineers or subcontractors become unavailable, Contractor may substitute others of at least equal competence upon written approval of the Agency. In the event that the Agency and Contractor cannot agree as to the substitution of key personnel, architects, engineers or subcontractors, the Agency shall be entitled to terminate this Contract for cause. The additional key personnel, architects, engineers and subcontractors for performance of this Contract are as set forth in Attachment F.

(e) Notices. Any notice or instrument required to be given or delivered by law or this Contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

Monterey Regional Water Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940

Attn: Yohana Vargas, Contracts Administrator

Contractor:

Attn:

Either party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

(f) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between Contractor and Contract Manager.

34. WAIVER: No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. The Agency's consent or waiver of one act or omission by Contractor shall not be deemed to constitute a consent or waiver of the Agency's rights with respect to any subsequent act or omission by Contractor. Any waiver by either party of any default must be in writing.

35. INTEGRATION AND MODIFICATION: This Contract represents the entire understanding of the Agency and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may not be modified, amended, or altered except in writing signed by the Agency and Contractor.

36. ADVICE OF COUNSEL: The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Contract, and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the parties hereto. This Contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Contract.

37. INDEPENDENT REVIEW: Each party hereto declares and represents that in entering this Contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

38. TIME: Time is of the essence in this Contract. Any reference to days means calendar days unless otherwise specifically stated.

39. ASSIGNMENT OF ANTI-TRUST CLAIMS: The Contractor offers and agrees to assign to the Agency all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to this Contract. This assignment shall become effective at the time the Agency tenders final payment to Contractor, without further acknowledgment by the parties. Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

40. TAXES: Contractor shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

41. NON-LIABILITY OF AGENCY OFFICIALS AND EMPLOYEES: No official or employee of the Agency shall be personally liable to Contractor in the event of any default or breach by the Agency or for any amount which may become due to Contractor or for any breach of the terms of this Contract.

42. INCORPORATION OF RECITALS AND EXHIBITS: The recitals set forth above and Attachments A through F are incorporated into this Contract by reference as though fully set forth herein.

43. SIGNATURES: The individuals executing this Contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

[Signatures on following page]

**SIGNATURE PAGE
TO
PROFESSIONAL SERVICES CONTRACT
FOR PROGRAM MANAGEMENT SERVICES
FOR THE
PURE WATER MONTEREY PROJECT**

IN WITNESS WHEREOF, the parties have executed this Contract on the following date.

DATED: _____, 2017

Monterey Regional Water Pollution Control Agency

By: _____

Paul A. Sciuto
General Manager

Consultant:

By: _____

Approved as to form:
ROBERT R. WELLINGTON
Legal Counsel
Monterey Regional Water Pollution Control Agency

By _____

ATTACHMENT A - SCOPE OF WORK

ATTACHMENT B - PAYMENT and FEE SCHEDULE

ATTACHMENT C - PERFORMANCE SCHEDULE

**ATTACHMENT D - CERTIFICATES OF INSURANCE And ADDITIONAL INSURED
ENDORSEMENTS**

ATTACHMENT E - SRF PROVISIONS

ATTACHMENT F - SRF TRAVEL REIMBURSEMENT RATES

ATTACHMENT G - LIST OF KEY PERSONNEL & SUBCONSULTANTS

ATTACHMENT E
SRF AND PROP 1
REQUIREMENTS

The SRF funding agreement, if and when executed, shall be on file at the offices of the Agency, and the Agency shall make a copy thereof available to Contractor upon request. Contractor shall comply with the SRF requirements contained in this Attachment to ensure eligibility of this Contract for SRF funding. Contractor shall agree to any changes to this Contract required for compliance with the SRF funding agreement.

A. SRF ENVIRONMENTAL REQUIREMENTS

In addition to all other environmental requirements applicable to the Project, Contractor shall comply with the following environmental requirements related to the SRF funds:

1. If archaeological features or materials are unearthed during any phase of Project activities, all work in the immediate vicinity of the find shall halt until Recipient has contacted the State and the significance of the resource has been evaluated. Any mitigation measures that may be deemed necessary must have the approval of the State, and shall be implemented, pursuant to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716, by a qualified archaeologist representing the Recipient prior to the resumption of construction activities.
2. If human remains are exposed by activity related to the Project, the Recipient must comply with California State Health and Safety Code section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to California Public Resources Code section 5097.98.

B. BOOKS AND RECORDS.

Contractor shall maintain separate books, records and other material relative to the Project. Contractor shall retain such books, records, and other material for a minimum of thirty-six (36) years after Project completion. Such books, records, and other material shall be subject, at all reasonable times (at a minimum during normal business hours), to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and shall allow interviews, at Agency's cost and expense, at rates agreed upon in writing by the Parties prior to Contractor incurring any such expense, during normal business hour of any employees who might reasonably have information related to such records. The provisions of this section shall survive the term of this Contract.

C. COMPLIANCE WITH STATE WATER BOARD POLICY

Contractor agrees that, to the extent applicable, it will comply with the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund" and all other SRF requirements set forth in the Contract Documents. The policy can be found at:
www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/dwsrf_policy_final.pdf.

D. TRAFFICKING IN PERSONS. Contractor, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Contract,

procure a commercial sex act during the term of this Contract, or use forced labor in the performance of this Contract. Contractor must include this provision in its contracts and subcontracts under this Contract. Contractor must inform the Agency immediately of any information regarding a violation of the foregoing. Agency/The Agency may unilaterally terminate this Contract if Contractor is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

ATTACHMENT F
SRF Travel
Reimbursement Rates
Effective January 1, 2017

Travel reimbursement shall not be made for meal and lodging expenses incurred within 50 miles of home or headquarters.

For purposes of this document only, the term “contractor” refers to contractors, consultants, grant recipients, subconsultants and subcontractors.

1. MEALS AND INCIDENTALS (IN-STATE/OUT-OF-STATE TRAVEL)

The following reimbursement rates are maximums, **not allowances**. Contractor’s may claim only their **actual expense** and **must submit itemized receipts** substantiating the amount claimed when invoicing the agency.

Breakfast	Actual expense up to \$7.00
Lunch	Actual expense up to \$11.00
Dinner	Actual expense up to \$23.00
Incidentals	Actual expense up to \$5.00

A. Trips of 24 hours or more:

For travel lasting 24 hours or more, contractor may claim meal expenses based on the following timeframes:

First day of travel

Trip begins at or before 6 am—Breakfast may be claimed

Trip begins at or before 11 am—Lunch may be claimed

Trip begins at or before 5 pm—Dinner may be claimed

Continuing after 24 hours

Trip ends at or after 8 am—Breakfast may be claimed

Trip ends at or after 2 pm—Lunch may be claimed

Trip ends at or after 7 pm—Dinner may be claimed

Incidental expenses may be claimed for each 24 hour period.

B. Trips of Less than 24 hours:

For travel lasting less than 24 hours, contractor may claim breakfast and/or dinner, based on the following timeframes:

Trip begins at or before 6 am and ends at or after 9am—Breakfast may be claimed

Trip begins at or before 4pm and ends at or after 7pm—Dinner may be claimed

Contractors may **not** claim lunch or incidentals on one-day trips. No meal expense may be claimed or reimbursed more than once in any given 24-hour period.

The term “incidental expenses” means fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. No other items may be claimed as an incidental.

Contractors may **not** claim meals provided by the State, meals included in hotel expenses or conference fees, meals included in transportation costs such as airline tickets, or meals that are otherwise provided. Snacks and continental breakfasts such as rolls, juice, and coffee are not considered to be meals.

2. LODGING REIMBURSEMENT-SHORT TERM TRAVEL

Contractors who incur overnight lodging expenses at a *commercial lodging establishment* catering to short-term travelers, such as a hotel, motel, bed and breakfast, etc., **must provide a receipt** to claim reimbursement. No reimbursement will be paid without a receipt. The receipt must be from the *commercial lodging establishment* not a third party vendor like Travelocity, Expedia, etc. The rate of reimbursement is as follows:

All Counties/Cities located in California (except as noted below):

- Actual lodging expense, supported by a receipt, up to \$90 per night, plus tax.

Napa, Riverside, and Sacramento Counties:

- Actual lodging expense, supported by a receipt, up to \$95 per night, plus tax.

Los Angeles, Orange, and Ventura Counties and Edwards AFB, excluding the city of Santa Monica:

- Actual lodging expense, supported by a receipt, up to \$120 per night, plus tax.

Alameda, Monterey, San Diego, San Mateo, Santa Clara Counties:

- Actual lodging expense, supported by a receipt, up to \$125 per night, plus tax.

San Francisco County and the City of Santa Monica:

- Actual lodging expense, supported by a receipt, up to \$150 per night, plus tax.

3. OUT OF STATE TRAVEL

Travel to any state outside California requires special approval. Approved out of state travel will be reimbursed based on in-state rates and policies as follows:

A. With a lodging receipt:

Lodging, meals and incidentals.

B. Without a lodging receipt:

Meals and incidentals. Lodging will not be reimbursed.

4. OUT OF COUNTRY TRAVEL

All travel to destinations outside the United States requires special approval. Approved out of country travel will be reimbursed as follows:

A. Lodging

Exhibit E-

Actual expense, supported by receipt

B. Meals and Incidentals

Actual expense *up to* U.S. State Department Foreign Per Diem Rates (meal/incidental rates, column B) in effect at the time travel for the specific foreign location, in accordance with breakdown in Appendix B, Federal Travel Regulation Chapter 301 Foreign Per Diem Rates and Appendix B: Daily Breakdown of the Per Diem Rates:

http://aoprals.state.gov/content.asp?content_id=184&menu_id=78

Please contact Yohana Vargas, Contracts Administrator for approval and rates.
Yohana@my1water.org

5. MILEAGE REIMBURSEMENT RATES

Mileage reimbursement covers: gasoline, the cost of maintenance (oil, lube, routine maintenance), insurance (liability, damage, comprehensive and collision coverage), licensing and registration, depreciation and all other costs associated with operation of the vehicle.

Personal Vehicle – 53.5 cents per mile

Private Aircraft - 50 cents per mile (taxable)

Commuting Expenses are Not reimbursable.

Expenses arising from travel between home or garage and headquarters shall not be allowed. When a trip is commenced or terminated at claimant's home, the distance traveled shall be computed from either his/her headquarters or home, whichever shall result in the lesser distance.

Travel to an Airport, Train Station, or Other Common Carrier

A contractor may claim mileage to and from a common carrier's terminal, as long as the contractor doesn't claim any parking expense. In this case, the total mileage is twice the distance to the terminal. If the reimbursement is taxable, taxes will be withheld.

6. METHOD OF TRAVEL

Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the contractor's time.

If a contractor chooses to use a method of transportation that is not the least costly or not the typical method of getting from one location to the other, the contractor shall be reimbursed only the amount that would have been reimbursed had the contractor traveled using the least costly method. In such cases a cost-comparison must be performed to determine the least costly rate.

Rental Vehicles: Contractors may rent a vehicle when no private automobile is available and automobile travel is essential, for example, when:

- two or more employees are traveling together;

Exhibit E-

- the trip includes intermediate stops not feasible for public transportation;
- the schedule of public carriers does not fit the itinerary;
- transportation is not available at the destination;
- an employee must carry specialized tools, books, etc.

State will not reimburse for mileage incurred in a rental vehicle. Contractors must submit receipts in order to claim reimbursement for the cost of renting a vehicle.

Commercial Air Travel: Contractor must travel by the least costly class and take advantage of discounts whenever possible. Contractors must submit receipts in order to claim reimbursement for the cost of commercial airline tickets.

7. PARKING REIMBURSEMENT

Contractors may be reimbursed for certain parking charges. These charges are:

1. For day parking while on trips away from the headquarters office, including trips within the headquarters city.
2. For overnight public parking while on trips away from the headquarters city and city of residence. Claims are not allowed if expense-free overnight parking is conveniently available.
3. Contractors parking at airports must use the less expensive peripheral parking, or adequately justify excessive parking charges.

Attach a receipt to claims exceeding 10 dollars for one continuous period. Regardless of the cost, the Agreement Manager may require submission of receipts for parking costs claimed.

Exhibit E-