

**Professional Services Agreement
Project Number: n/a**



RINCON DEL DIABLO MUNICIPAL WATER DISTRICT
1920 NORTH IRIS LANE
ESCONDIDO, CA 92026-1399

Engineering Department
REQUEST FOR PROPOSALS

FOR:

ON-CALL INSPECTION SUPPORT SERVICES

October 2022

RINCON DEL DIABLO MUNICIPAL WATER DISTRICT REQUEST FOR PROPOSAL

1. INTRODUCTION

1.1 GENERAL

Rincon del Diablo Municipal Water District (“RDDMWD”) is requesting proposals (“Proposals”) from qualified consultants (“Respondents”) for:

ON-CALL INSPECTION SUPPORT SERVICES

The purpose of the Proposal is to demonstrate the qualifications, competence and capacity of Respondent to perform the work or provide the services described in this RFP. The Proposal should demonstrate the qualifications of the Respondent and of the particular staff to be assigned to this project.

2. DISTRICT OVERVIEW

The Rincon del Diablo Municipal Water District (District) is located in the northerly inland portion of the County of San Diego (County). The District’s service area encompasses approximately 42 square miles that overlaps portions of the cities of Escondido, San Marcos, San Diego, and various unincorporated areas of the County. Through its two improvement districts (ID 1 and ID A), the District maintains and operates approximately 132 miles of water main, six pump stations, and ten reservoirs serving approximately 9,000 water service connections and a population of 30,000 residents.

3. SCOPE OF REQUIRED SERVICES

3.1 SUMMARY OF SERVICES

The scope of services to be provided generally includes the following:

Construction Inspection for Development and Capital Improvement Projects that may include: earthwork, grading, water and sewer pipeline construction including trenching, backfill and compaction, water valves, blow-offs, fire hydrants, air/vacuum valves, manholes, sewer air release valves, water service line and sewer lateral construction, connections/tie-ins (verifying size and type), pavement and concrete removal and replacement, water pump station construction including footings and foundations, slabs, above and below ground piping, masonry, wood frame construction, roof trusses, roofing, HVAC, electrical, fiber, welded steel reservoir construction, footings and foundations, sewer lift stations, wet wells, submersible pumps, structural concrete construction, recycled water pipelines, valves, backflow prevention and other general water and sewer facility and appurtenance types of construction.

A detailed Scope of Services is attached hereto as Attachment “A”. While the full scope of work shall be negotiated in a Professional Services Agreement, the Respondent will be expected to fulfill, at a minimum, the services and technical requirements described in the attached Scope of Services.

3.2 Public Works Contractor Registration

If the scope of services to be provided pursuant to paragraph 2.1 above include 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 Respondent and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

4. PROJECT SCHEDULE

The initial term is anticipated to be from January 1, 2023 to December 31, 2025. RDDMWD will have the option, at its sole discretion, to extend the agreement and negotiate a revised price, if any, for up to two (2) additional one-year terms. If the parties are unable to reach an agreement, RDDMWD, at its sole discretion, will not move forward with the renewal option and shall re-bid the work.

Respondents to this RFP must be able and willing to commit the necessary resources to complete the project within this timeframe.

5. PROJECT LOCATION

The project will be on a task by task basis located within district boundaries. See attached Exhibit A – District Boundary Map.

6. PRE-PROPOSAL MEETING

RDDMWD will conduct a mandatory pre-proposal meeting at the District office, located at 1920 N. Iris Lane, Escondido, CA 92926, on November 3, 2022 at 10:00 AM.

7. PROPOSAL REQUIREMENTS

7.1 Proposal Format

Respondent's Proposal shall be clear, accurate, and comprehensive. Excessive or irrelevant materials will not be favorably received. The Proposal shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Respondent.

Proposals shall be organized, and numbered in the order presented below:

(a) Cover Letter. Identify Respondent's legal name, background, and contact person, including corporate office and local office address, city, state, zip code, telephone number, fax number, web site address, and e-mail address. Summarize key elements of the proposal. The letter must stipulate that the cost proposal will remain valid for a period of at least 180 days.

(b) Understanding of Project and Project Approach. A detailed description of Respondent's understanding of and approach to the project. Provide a detailed scope of services which reflects the Scope of Services described in this RFP.

(c) Personnel. Identify the names and specific qualifications, experience, and appropriate licenses held, if applicable, of the primary staff to be assigned to the project. Include a resume for all primary staff. Include any subconsultants which Respondent proposes to use for any portion of the services.

(d) List of Representative Projects. List of representative projects undertaken by Respondent in the last 5 years demonstrating experience in each category of the project.

(e) References. Provide three (3) references regarding the Respondent's experience and performance performing similar services. Include the following information: (1) Organization contact name, phone number, e-mail address; and (2) Project size and description, if applicable, and description of services. Each reference must be from a different organization.

(f) District Experience. Identify all previous and current contracts with the District. Include a contact name, description of services, and dates of services performed.

(g) Cost Proposal. Include a cost proposal with one flat billing rate that includes administration, travel and overhead costs. A billing rate shall be provided for regular time, overtime, and double time on Prevailing and Non-Prevailing wages. It is anticipated that a not-to-exceed dollar limit will be negotiated with the successful Respondent.

(h) Conflict of Interest Disclaimer. Respondent must submit the Conflict of Interest Disclaimer statement disclosing interest, ownership or remuneration of any type that has been received or is anticipated from any manufacturer, supplier or distributor which may be recommended on the project. The Conflict of Interest Disclaimer is included in Attachment "2" Required Forms.

(i) Acknowledgment of Insurance Requirements. Respondent must submit the attached "Acknowledgment of Insurance Requirements" form acknowledging that it has reviewed the insurance requirements and will provide such insurance. The Acknowledgment of Insurance Requirements Form is included in Attachment "2" Required Forms. The applicable insurance requirements are described in section 3.6 of the Professional Services Agreement, attached hereto as Attachment "3".

(j) Public Works Contractor Registration Certification. Respondents must complete the Public Works Contractor Registration Certification, attached hereto as Attachment "2".

(k) Addendum Acknowledgement (if any). All Addenda issued by the District shall be acknowledged and included in the Proposal and made part of the Contract Documents. Failure to acknowledge and include all Addenda may be sufficient cause for rejecting a Proposal.

7.2 No Deviations from the RFP

In submitting a Proposal, Respondent is certifying that it takes no exceptions to this RFP including, but not limited to the Professional Services Agreement attached hereto as Attachment "3."

Respondent is directed to carefully review the proposed Professional Services Agreement and, in particular, the insurance and indemnification provisions therein.

8. SUBMITTAL INSTRUCTIONS

To be considered, Respondent must submit the Proposal via email as PDF to engineering@rinconwater.org, prior to 10:00 a.m. local time on October 4, 2022.

Hard copies will also be accepted as an alternative and shall be received by the district prior to 10:00 a.m. local time on October 4, 2022. Please provide 3 copies of your proposal to the following address:

Rincon del Diablo Municipal Water District
1920 North Iris Lane
Escondido, CA 92026
Attn: Shawnele Morelos

9. EVALUATION

9.1 Evaluation Criteria

A Selection Committee will evaluate and rank the proposals. Proposals will be evaluated according to the following criteria:

<u>Evaluation Criteria</u>	<u>%</u>
Relevant Qualifications/Experience	45
Understanding of Project and Project Approach	25
Scope of Work and Schedule	10
Cost	10
Overall Quality Of Proposal	10

Respondents should note that the lowest cost proposal is not the sole determining factor in the final selection.

Upon determination of the highest ranked firm, RDDMWD will endeavor to negotiate a mutually agreeable scope and fee with the selected firm. In the event that RDDMWD is unable to reach agreement, RDDMWD will proceed, at its sole discretion, to negotiate with the next firm selected by RDDMWD.

10. PROPOSAL SCHEDULE, REVIEW, AND SELECTION PROCESS

RFP Release **October 24, 2022**

Mandatory Pre-Proposal Meeting **November 8, 2022 at 10 am**

Deadline for Questions*	November 15, 2022 at 10 am
Proposals Due	November 22, 2022 at 10 am
Notice of Award	December 2022
Initiate Contract	January 1, 2023

11. GENERAL PROVISIONS

Respondent is encouraged to review this RFP carefully in its entirety prior to preparation of its Proposal. RDDMWD reserves the right to reject any or all Proposals or to select the Proposal most advantageous to RDDMWD. RDDMWD reserves the right to verify all information submitted in the Proposal.

11.1 Amendments to RFP. RDDMWD reserves the right to amend the RFP or issue to all Respondents a Notice of Amendment to answer questions for clarification.

11.2 No Commitment to Award. Issuance of this RFP and receipt of proposals does not commit RDDMWD to award a contract. RDDMWD 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 negotiate with more than one Respondent concurrently, or to cancel all or part of this RFP.

11.3 Amendments to Proposals. No amendment, addendum or modification will be accepted after the deadline stated herein for receiving Proposals. Respondent may modify or amend its Proposal only if RDDMWD receives the amendment prior to the deadline stated herein for receiving Proposals.

11.4 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.

11.5 Late Proposals. RDDMWD will not be responsible for Proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for by RDDMWD.

11.6 Costs for Preparing. RDDMWD will not compensate any Respondent for the cost of preparing any Proposal, and all materials submitted with a Proposal shall become the property of RDDMWD. RDDMWD will retain all Proposals submitted and may use any idea in a Proposal regardless of whether that Proposal is selected.

11.7 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 Respondent.

11.8 Public Documents. All Proposals and all evaluation and/or scoring sheets shall be available for public inspection at the conclusion of the selection process.

11.9 No Exceptions. Submission of a Proposal constitutes acceptance by Respondent of the conditions contained in this RFP and the Professional Services Agreement, should Respondent be selected.

*Questions can be submitted to Shawnele Morelos at smorelos@rinconwater.org.

The District does not plan to hold interviews.

**RINCON DEL DIABLO MUNICIPAL WATER DISTRICT
REQUEST FOR PROPOSALS**

**SCOPE OF SERVICES
ATTACHMENT A**

It is anticipated that one to two Inspectors will be required by the District for construction projects. Consultants may propose for one or all of the Inspectors, but each proposed Inspector must have the appropriate experience, licensing, certifications and knowledge for the role.

Projects for which Inspection will be needed include: earthwork, grading, water and sewer pipeline construction including trenching, backfill and compaction, water valves, blow-offs, fire hydrants, air/vacuum valves, man-holes, sewer air release valves, water service line and sewer lateral construction, connections/tie-ins to existing water mains (pipe size and type to be verified) pavement and concrete removal and replacement, water pump station construction including footings and foundations, slabs, above and below ground piping, masonry, wood frame construction, roof trusses, roofing, HVAC, electrical, welded steel construction, footings and foundations, sewer lift stations, wet wells, submersible pumps, structural concrete construction, recycled water pipelines, valves, backflow prevention and other general water and sewer facility and appurtenance types of construction.

Inspector(s) provided for specific projects shall be under the direction of the Engineering Technician, Operations Manager, and/or the Engineering Manager for both Development Services and CIP projects and shall perform Inspection Services related to the work for the project, and other requirements not limited to those described as follows:

The Inspector(s) shall have knowledge of the district's latest standard drawings, approved materials list, and specifications, construction equipment, materials, methods, and workmanship for residential, commercial, road construction, street improvement projects, and water/wastewater improvements, as well as the most current Manual on Uniform Traffic Control Devices California Supplement. The Inspector(s):

- A. Shall be able to understand and interpret Plans and Specifications.
- B. Shall ensure compliance with the Plans, Specifications, and other requirements, such as, but not limited to, the Contract, Traffic Control, Cal-OSHA Standards, Permits, Standard Plans, checking line, grade, size, elevation, and location of improvements.
- C. Shall be able to interact professionally with contractors, engineers, property owners, the public, can coordinate with other District personnel, promote quality customer service, and respond promptly and courteously to requests.
- D. Shall be familiar with stormwater best management practices and confirming the contractor complies with all requirements per the Storm Water Pollution Prevention Plan (SWPPP) as required.
- E. Shall be knowledgeable in recycled water requirements with the Department of Health Services (DHS).

- F. Shall be able to interact professionally with City, County and State Building officials who may come to the construction site. He/she shall be familiar with the various permits issued by each government agency as well as their special provisions and ensure that the project is built to include those special provisions.
- G. Shall be able to follow verbal and written instructions, communicate clearly and concisely, both orally and in writing.
- H. Shall be able to read and understand geotechnical reports and how they relate to the current project. He/she will ensure that geotechnical recommendations are incorporated into the construction of water or sewer facilities.
- I. Shall be familiar with the Greenbook (Standard Specifications for Public Works Construction), Caltrans Standard Specifications, District Standards, OSHA Construction Safety Orders, and the City and County Standards that apply to the work he/she is inspecting. The Inspector(s) and/or Material Testing Technician(s) shall have up to date copies of all standards and standard drawings easily accessible at all times. It is preferable that the Inspector(s) and/or Technician(s) have laptop computers or tablets in the field with them that contain copies of the project plans, specifications, standards, and encroachment permits for immediate reference during construction.
- J. Shall attend all pre-construction meetings, all progress meetings, and all project close-out meetings.
- K. Shall monitor the traffic control and other safety related items to make sure they are properly implemented and working as intended. He/she shall inform the Contractor of changes to be made to keep the project workers safe from conflict with local traffic.
- L. Shall keep daily diaries (log), fill out Incident (accident) Reports, and take clear, useful pictures of the project work getting completed. A Daily Inspection Report identifying work done by the Contractor will be submitted as part of the invoice at the end of each month, as well as requested by the district as required. It is preferred to file this Daily Inspection Report on a pre-written form electronically to the District.
- M. Shall complete mark-ups of the construction drawings each day to reflect the changes in construction that were not shown on the drawings. In addition, the daily mark-ups shall show depth of pipes as constructed, locations of valves tied to other above ground reference points and other construction related information necessary to prepare a complete set of "as-built" drawings and record drawings at the end of the project.
- N. Shall prepare a list of items for correction (punch list) and prepare red lined as-built plans.
- O. Shall establish effective communications with the Contractor.
- P. Shall have working knowledge of computers and be familiar with Outlook, Microsoft Word and Microsoft Excel.
- Q. Is required to have their own digital camera, and shall provide digital images of the project to Rincon del Diablo Municipal Water District in "jpg" format on a daily basis.

- R. Is required to have their own vehicle and a mobile phone for immediate contact by the District, show proof of valid California driver's license, and insurance. They will also have their own office supplies, as needed.
- S. Shall perform related duties as required.

Normal working hours are from 7:00 AM to 4:30 p.m. five days per week with a 1 hour lunch break. If the Inspector works outside of the said timeframe, it will not be considered overtime. Overtime will be paid if the Inspector works more than 8 hours per day or weekends on District projects.

On occasion, the District may have the need for inspection services requiring International Code Council (ICC) licensed inspectors in several specialty construction trades. Those inspections are expected to include, but may not be limited to; Structural Steel and Welding, Reinforced Concrete, Masonry and Fire Resistive Application. Consultants are encouraged provide an hourly based, rate schedule for Specialty Inspection licensed services as an additional (optional) task and fee.

The construction contract time will vary depending on the project, and will be negotiated separately. Typically, the time will be construction project time plus an additional fifteen (15) days. The additional fifteen days will be allocated to cover pre- and post- construction activities, contract time extensions due to weather, and other delays.

In submitting a proposal, Consultant acknowledges that their proposal is based on a comprehensive and complete review of the Scope of Work, which is an attachment to the Request for Proposal, along with the requirements of the Request for Proposal. Consultant proposal is not limited by RDDMWD's Scope of Work, but must provide additions, deletions, exceptions, and/or modifications or a Substitute SOW for review with the proposal. The agreed upon SOW will become part of the Professional Services Agreement.

STAFF ASSISTANCE

RDDMWD's staff member assigned to work with the Consultant on this project is Shawnele Morelos, Engineering Manager (760) 745-5522 ext. 506. RDDMWD reserves the right to modify staff assignments.

REFERENCE DOCUMENTS

- Exhibit 1 – District Boundaries Map

This is a discretionary professional services procurement, the District reserves the right to reject any or all responses and to waive irregularities contained therein and to accept any response deemed most advantageous to the Rincon del Diablo Municipal Water District.

**ATTACHMENT 2
REQUIRED FORMS**

CONFLICT OF INTEREST DISCLAIMER

The undersigned, _____ (*Print or Type Name*), declares that _____ (*Name of Firm*) [has/ does not have] interest, ownership, or receives/ anticipates receiving remuneration of any type from the manufacturer(s), supplier(s) or distributor(s) which may be recommended on the project, as listed below.

<u>Firm</u>	<u>Product</u>	<u>Remuneration</u>

Signature of Representative

Title

Date

ACKNOWLEDGMENT OF INSURANCE REQUIREMENTS
AND CERTIFICATION OF ABILITY TO
PROVIDE COVERAGES SPECIFIED

I, _____, the _____

(President, Secretary, Manager,
Owner or Representative)

of _____, certify that I have

(Name of Company or Corporation or Owner)

read and understand the Insurance Requirements set forth in the Professional Services Agreement for the **On-Call Inspection Services** and that our insurance company(ies)

[fill in name(s) of insurance company(ies)]

is/are able to provide the coverages specified.

Signature of President, Secretary,
Manager, Owner or Representative

Date

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

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. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information. No bid or 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.

Respondent hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder: _____

DIR Registration Number: _____

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project or contract.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in any contract with subcontractors and ensure that all subcontractors are registered at the time of the proposal submittal and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Signature: _____

Name and Title: _____

Dated: _____

**RINCON DEL DIABLO MUNICIPAL WATER DISTRICT
REQUEST FOR PROPOSALS**

**ATTACHMENT 3
PROFESSIONAL SERVICES AGREEMENT**

PROFESSIONAL SERVICES AGREEMENT
for
Professional Consulting/Engineering Services
between
Engineering, Inc.
And
Rincon del Diablo Municipal Water District

THIS AGREEMENT ("AGREEMENT") is made and entered into this ____ day of _____, 2021 in Escondido, California by and between Rincon del Diablo Municipal Water District, a public agency of the State of California ("DISTRICT") and Engineering, Inc. ("CONSULTANT").

RECITALS

WHEREAS, DISTRICT AND CONSULTANT desire to enter into an agreement for engineering or professional consulting services for XXX. ("PROJECT").

NOW THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. SCOPE OF WORK AND SCHEDULE

CONSULTANT will provide engineering or professional consulting services to the DISTRICT pursuant to a proposal dated XXX XX, 2021 and as described in the scope of work and schedule in such proposal attached hereto as Attachment "A" and incorporated herein by this reference ("WORK"). Optional services listed in Attachment "A" are not included in the WORK but may be added to this AGREEMENT at a later date based on a scope of services and fee that is mutually agreed by both parties.

2. PERIOD OF PERFORMANCE

CONSULTANT shall commence WORK upon receipt of a notice to proceed and shall proceed with the WORK according to the schedule shown in the WORK exclusive of DISTRICT or other required agency review periods.

3. KEY PERSONNEL

CONSULTANT may not reassign or replace Key Personnel (as defined herein) without the prior written consent of the DISTRICT, which consent may be withheld in the DISTRICT'S sole and absolute discretion. "Key Personnel" mean those job titles and the persons assigned to those positions in accordance with the provisions of this section. The DISTRICT may at any time in writing notify CONSULTANT that the DISTRICT will no longer accept performance of services under this AGREEMENT by one or more Key Personnel listed. Upon receipt of the foregoing notice CONSULTANT must

immediately (no later than ten (10) business days) suspend the key person or persons from performing services under this AGREEMENT and must replace him/her or them in accordance with the terms of this AGREEMENT. Key Personnel, if any, are identified below:

EXPERT Engineer

4. COMPENSATION AND PAYMENT

In consideration for the services rendered under this AGREEMENT, DISTRICT shall pay CONSULTANT in accordance with the provisions of Attachment A. DISTRICT shall pay CONSULTANT monthly, and process only one invoice per month, prepared by CONSULTANT representing mutually agreed quantities of work performed. The invoices, when presented to the DISTRICT, shall contain such details and supporting documentation substantiating the CONSULTANT'S right to payment as the DISTRICT may require. DISTRICT shall make payment to CONSULTANT within thirty (30) calendar days of receipt of the invoice by DISTRICT or the resolution of a billing dispute, if DISTRICT disputes an invoice. Invoices must reference Purchase Order Number. No payment shall constitute acceptance of any WORK completed by CONSULTANT.

The fees to be paid to CONSULTANT shall not exceed XX thousand dollars (**\$XX,000**) without the prior written authorization of DISTRICT.

5. INTERPRETATION

This AGREEMENT, together with the Exhibits attached thereto, and all documents, drawings, specifications and instruments specifically referred to herein and made a part hereof shall constitute the entire AGREEMENT between the parties, and no other proposals, conversations, bids, memoranda, or other matter shall vary, alter, or interpret the terms hereof. The captions in this AGREEMENT are for the convenience of the parties in identification of the several provisions and shall not constitute a part of this AGREEMENT nor be considered interpretative thereof.

Failure of either party to exercise any option, right or privilege under this AGREEMENT or to demand compliance as to any obligation or covenant of the other party shall not constitute a waiver of any such right, privilege or option, or of the performance thereof, unless waiver is expressly required in such event or is evidenced by a properly executed instrument.

6. STANDARD OF CARE

CONSULTANT agrees that all services performed hereunder shall be provided in a manner commensurate with competent professional standards and shall be performed by qualified and experienced personnel.

CONSULTANT further agrees to immediately inform the DISTRICT of any situation involving defective work, work not completed in accordance with the plans and specifications, dangerous conditions or any other matter which would impact the DISTRICT.

7. SAFETY

CONSULTANT shall execute and maintain his/her/its work so as to avoid injury or damage to any person or property. In carrying out his/her/its work, the CONSULTANT shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the WORK and the conditions under which the WORK is to be performed, and be in compliance with all applicable federal, state, and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act.

8. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term or provision of this AGREEMENT is held illegal or in conflict with any law of the State of California or jurisdiction over any of the parties hereto, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the AGREEMENT did not contain the particular part, term or provisions held to be invalid.

9. LAWS, REGULATIONS AND PERMITS

CONSULTANT shall give all notices required by law and all permits and licenses required by governmental authorities will be obtained by CONSULTANT at CONSULTANT's sole cost and expense to complete the WORK. CONSULTANT will comply with applicable local, state, and federal laws, rules, regulations, ordinances and statutes including, without limitation, Cal/OSHA requirements. The CONSULTANT shall be liable for all violations of the law in connection with WORK furnished by or on behalf of the CONSULTANT. If the CONSULTANT performs any WORK contrary to such laws, ordinances, rules, statutes and regulations, the CONSULTANT shall bear all costs arising therefrom.

10. INDEPENDENT CONTRACTOR

In the performance of the services under this AGREEMENT, CONSULTANT shall be an independent contractor, maintaining complete control of CONSULTANT's personnel and operations. As such, CONSULTANT shall pay all

salaries, wages, expenses, social security taxes, federal and state unemployment taxes and any similar taxes relating to the performance of this AGREEMENT. CONSULTANT, its employees and agents shall in no way be regarded nor shall they act as agents or employees of DISTRICT.

Engineering Inc's review of work provided by another consultant ("Other Consultant") under a separate contract with the District shall not relieve the Other Consultant from its responsibility for providing its services in accordance with applicable contractual requirements. *Engineering Inc* assumes no responsibility or liability for the work of the Other Consultant including any errors, omissions, or other deficiencies therein; and District will look solely to the Other Consultant if any such errors, omissions, or deficiencies are ultimately discovered.

11. CHANGES

DISTRICT, without invalidating this AGREEMENT, may order, in writing, changes within the general scope of the services required by this AGREEMENT by altering, adding to and/or deducting from the services to be performed. If any changes under this clause cause an increase or decrease in CONSULTANT's cost of, or the time required for, the performance of any part of the WORK under this AGREEMENT, an equitable adjustment shall be made by mutual agreement and the AGREEMENT modified in writing accordingly. All such changes in the Services shall be in writing, prior to the implementation of the WORK and shall be performed subject to the provisions of this AGREEMENT.

12. TERMINATION

DISTRICT may terminate this AGREEMENT, in whole or in part, with or without cause, at any time by written notice to CONSULTANT, provided that DISTRICT will not terminate for cause without providing CONSULTANT written notice of the breach and a reasonable opportunity to cure. Such termination shall be effective in the manner specified in the said notice, shall be without prejudice to any claims which DISTRICT may have against CONSULTANT. In the event DISTRICT renders such notice to CONSULTANT, CONSULTANT (and CONSULTANT's subcontractors) shall be entitled to compensation for services rendered prior to the effective date of the notice and for all further services set forth in the notice. DISTRICT shall be entitled to reimbursement for any compensation paid in excess of services rendered. CONSULTANT acknowledges DISTRICT'S right to terminate this AGREEMENT as provided in this Section, and hereby waives any claims for damages that might arise from DISTRICT's termination of this AGREEMENT. CONSULTANT shall deliver to DISTRICT all documents and all other required information and data prepared by CONSULTANT under this AGREEMENT and execute and deliver all documents, and take such other steps as are necessary, to vest fully in DISTRICT the rights and benefits of CONSULTANT arising from subcontracts issued in connection with this AGREEMENT, unless otherwise requested by DISTRICT in writing.

13. INDEMNIFICATION

CONSULTANT covenants and agrees that, during the term of this AGREEMENT, any injury suffered as a result of CONSULTANT's negligent performance of services shall be the sole responsibility of CONSULTANT and its successors and assigns, and DISTRICT shall not be liable to CONSULTANT, or any other person or persons whatsoever, for any such injury, loss or damage to persons or property unless caused by the negligence or willful misconduct of the DISTRICT or its Representatives (as that term is defined below). CONSULTANT shall defend, indemnify and hold DISTRICT, its officers, directors and Representatives, excluding contractors and subcontractors of DISTRICT ("District Indemnitees"), harmless from and against any and all claims, costs, liabilities, debts, demands, suits, actions, causes of action, proceedings, damages, judgments, liens, expenses or obligations of whatever kind or nature including reasonable attorneys' fees and charges and the costs of all other professional and all court or arbitration or other dispute resolution costs (collectively, "Costs") which may be made against the District Indemnitees to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of CONSULTANT or its Representatives. The foregoing indemnity shall not apply to the extent any such Costs are ultimately established by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the District Indemnitees, any contractors or subcontractors of DISTRICT, or any of them. Additionally, in no event shall the cost to defend charged to CONSULTANT exceed CONSULTANT's proportionate percentage of fault. If CONSULTANT fails to defend DISTRICT as required by this Section 13, DISTRICT shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental Costs of such defense, including fees and costs, to CONSULTANT and to recover the same from CONSULTANT. The term "Representatives" shall mean employees, representatives, agents, contractors, subcontractors or any other persons directly or indirectly employed by any one of the foregoing or reasonably under the control of any of the foregoing or for whose acts any of the foregoing may be liable.

14. PROHIBITION AGAINST TRANSFERS

All obligations and covenants herein contained shall be extended to be binding upon the successors and assigns the CONSULTANT and DISTRICT.

CONSULTANT shall not assign, subcontract, hypothecate, or transfer this AGREEMENT or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of DISTRICT, which consent may be withheld in DISTRICT'S sole and absolute discretion. Any attempt to do so without DISTRICT's prior written consent shall be null and void, and any assignee, subcontractor, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

15. INSURANCE

On or before the commencement of the term of this AGREEMENT, CONSULTANT shall furnish the DISTRICT with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance policies. Such certificates, which do not limit CONSULTANT's indemnification, shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially changed, except after thirty (30) days written notice has been received by the DISTRICT."

It is agreed that CONSULTANT shall maintain in force at all times during the performance of this AGREEMENT all appropriate policies of insurance, and that said policies of insurance shall be secured from a good and responsible company or companies, doing insurance business in the State of California.

CONSULTANT will file with the DISTRICT, before beginning professional services, certificates of insurance satisfactory to the DISTRICT evidencing:

1. Coverage for Professional Liability appropriate to the CONSULTANT's profession covering CONSULTANT's wrongful acts, negligent actions, errors or omissions in the amount of one million dollars (\$1,000,000) per claim and annual aggregate. The retroactive date (if any) is to be no later than the effective date of this AGREEMENT.
2. General Liability coverage of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the PROJECT/location or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
3. Automobile Liability coverage of one million dollars (\$1,000,000) for bodily injury and property damage each accident limit. This policy shall cover all owned, non-owned, and hired automobiles.
4. The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
 - a. The DISTRICT, its directors, officers, employees, and authorized volunteers are to be given additional insured status (via ISO endorsement CG2010, CG2033, or insurer's equivalent for General Liability coverage) as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; and premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired, or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the DISTRICT, its directors, officers, employees, or authorized volunteers.

- b. For any claims related to this PROJECT, the CONSULTANT's insurance shall be primary insurance as respects the DISTRICT, its directors, officers employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the DISTRICT, its directors, officers, employees, or authorized volunteers shall not contribute to it.
- c. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the DISTRICT, its directors, officers, employees, or authorized volunteers.
- e. Each insurance policy required by this AGREEMENT shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the CONSULTANT, except after thirty (30) days (10 days from non-payment of premium) prior written notice by U.S. mail has been given to the District.
- f. The CONSULTANT and all sub-consultants shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through sub-consultants in carrying out the WORK contemplated under this AGREEMENT, in accordance with the Workers' Compensation and Insurance Act, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The CONSULTANT shall provide Employer's Liability Insurance with limits of no less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.
- g. In the event that the CONSULTANT employs other consultants (sub-consultants) as part of the services covered by this AGREEMENT, it shall be the CONSULTANT's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.
- h. Failure to Secure. If CONSULTANT at any time during the term hereof, should fail to secure or maintain the foregoing insurance, DISTRICT shall be permitted to obtain such insurance in CONSULTANT's name or as an agent of CONSULTANT and may withhold from any compensation owed to CONSULTANT the costs of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid.

- i. Additional Insured. Except for Professional Liability Insurance and Worker's Compensation, the DISTRICT shall be named as an Additional Insured, however, the naming of an additional insured on the General Liability Insurance Policy only shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured and an additional insured named herein shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Proceeds from any such policy or policies shall be payable to the DISTRICT primarily, and to the CONSULTANT secondarily, if necessary.

16. REPORTS

Each and every report, draft work-product, map, record and other document reproduced, prepared, or caused to be prepared by CONSULTANT pursuant to or in connection with this AGREEMENT shall be the exclusive property of the DISTRICT.

No report, information, or other data given to or prepared or assembled by the CONSULTANT pursuant to this AGREEMENT shall be made available to any individual or organization by the CONSULTANT without prior written approval by the DISTRICT.

CONSULTANT shall, at such time and in such form as the DISTRICT may require, furnish reports concerning the status of services required under this AGREEMENT.

CONSULTANT shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by DISTRICT.

CONSULTANT shall maintain adequate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of DISTRICT or its designee's at all proper times to such books and records, and gives the DISTRICT the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all WORK, data, documents, proceedings and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

17. OWNERSHIP OF DOCUMENTS

All documents including drawings, calculations, work sheets, survey notes and specifications prepared by CONSULTANT pursuant to this AGREEMENT are the

property of DISTRICT and shall be delivered to DISTRICT at the completion or termination of the PROJECT. Any modification or reuse of such documents for purposes other than those intended by this AGREEMENT shall be at DISTRICT's sole risk and without liability to CONSULTANT.

18. SEPARATE ENTITIES

Both parties hereto in the performance of this AGREEMENT will be acting in an independent capacity and not as agents, employees, partners, or joint ventures of one another.

Neither the DISTRICT nor its officers or employees shall have any control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth.

19. NOTICES

All notices, demands, requests, or approvals to be given under this AGREEMENT, shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from CONSULTANT to DISTRICT shall be addressed to DISTRICT at:

Rincon del Diablo Municipal Water District
1920 North Iris Lane
Escondido, California 92026
Attention: Clint Baze
Phone: (760) 745-5522

All notices, demands, requests, or approvals from DISTRICT to CONSULTANT shall be addressed to CONSULTANT at:

Consultant

20. COST OF LITIGATION

If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this AGREEMENT, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such an amount as the court may adjudge to be reasonable attorneys' fees.

21. GENERAL PROVISIONS

(a) This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California.

(b) If any disputes should arise between the parties concerning the WORK to be done under this AGREEMENT, the payments to be made, or the manner of accomplishment of the WORK, CONSULTANT shall nevertheless proceed to perform the WORK as directed by DISTRICT pending settlement of the dispute.

(c) CONSULTANT shall cooperate in the performance of WORK with DISTRICT and all other agents.

(d) Time shall be of the essence as to all dates and times of performance contained in this AGREEMENT.

(e) Each party represents and warrants to the other party that all necessary action has been taken by such party to authorize the undersigned to execute this AGREEMENT and to bind it to the performance of its obligations hereunder.

(f) The parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in San Diego County, California, and the parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

(g) DISTRICT and CONSULTANT have evaluated the risks and rewards associated with this AGREEMENT, including CONSULTANT's fee relative to the risks assumed, and agree to allocate certain of the risks so, to the fullest extent permitted by law and notwithstanding anything to the contrary in this AGREEMENT, the total aggregate liability of CONSULTANT (and its related corporations, subconsultants, and employees) to DISTRICT and third parties granted reliance shall be limited to the insurance CONSULTANT is required to carry under this Agreement, not exceeding the applicable policy limit identified in Sections 15(1), 15(2), and 15(3) of this Agreement, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or this AGREEMENT regardless of the cause(s) or the theory of liability, including negligence, indemnity, or other recovery.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed the day and year first above written.

RINCON DEL DIABLO MUNICIPAL WATER DISTRICT

By _____
Clint Baze
General Manager

Date _____

Engineering, Inc.

By _____
Consultant
Vice President

_____ Date