

EXHIBIT A



**RAINBOW MUNICIPAL WATER DISTRICT
3707 S. HIGHWAY 395
FALLBROOK CA 92028
(760) 728-1178**

PROFESSIONAL SERVICES AGREEMENT

PROJECT: TITLE
Project No. 000000, Contract No. 21-00

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of Month, 2021 by and between the **RAINBOW MUNICIPAL WATER DISTRICT**, a municipal water district, hereinafter designated as "**DISTRICT**", and _____, a **California corporation [or other type of organization]**, hereinafter designated as "**CONSULTANT**"

RECITALS

- A.** DISTRICT desires to obtain Professional Consulting Services from an independent contractor for the above-named Project.
- B.** CONSULTANT has submitted a proposal to provide professional services for DISTRICT in accordance with the terms set forth in this Agreement.
- C.** DISTRICT desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to DISTRICT as an independent contractor.
- D.** CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.

- 1.1** The professional services to be performed by CONSULTANT shall consist of the following: **Engineering services to _____**. The scope of services is more particularly defined in Exhibit "A", attached and made a part hereof. Any additional engineering services will be requested in writing as set forth in Section 19.
- 1.2** In performing the services set forth in Exhibit "A", CONSULTANT shall work closely with DISTRICT'S General Manager or Authorized Representative and staff in performing services in accordance with this Agreement in order to receive clarification as to the result

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that DISTRICT expects to be accomplished by CONSULTANT. The General Manager or Authorized Representative, shall be DISTRICT'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement.

1.3 CONSULTANT represents that its employees have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of DISTRICT. This means CONSULTANT is able to fulfill the requirements of this Agreement. Failure to perform all services required under this Agreement constitutes a material breach of the Agreement.

2. TERM AND TIMING REQUIREMENTS.

2.1 This Agreement will become effective on the date stated above, and will continue in effect until the earlier of the completion of services provided for in this Agreement or until terminated as provided under Section 14 of this Agreement.

2.2 CONSULTANT'S performance of services under this Agreement shall be in accordance with the schedule outlined below unless otherwise modified in writing as set forth in Section 19. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by DISTRICT.

Task	Due Date
Notice to Proceed	Month, Day, Year
Progress Report	Month, Day, Year
Final Submittal	Month, Day, Year

2.3 CONSULTANT shall submit all requests for extensions of time for performance in writing to the General Manager or Authorized Representative no later than two (2) business days after the commencement of the cause of any unforeseeable delay beyond CONSULTANT'S control and in all cases prior the date on which performance is due if possible. The General Manager or Authorized Representative shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.

2.4 For all time periods not specifically set forth herein, CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, e-mail or mail.

3. STUDY CRITERIA AND STANDARDS.

3.1 All services shall be performed in accordance with applicable DISTRICT, county, state and federal Codes and criteria. In the performance of its professional services,

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CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANTS performing the same or similar work under similar conditions.

4. INDEPENDENT CONTRACTOR.

4.1 CONSULTANT'S relationship to DISTRICT shall be that of an independent contractor in performing all services hereunder. DISTRICT will not exercise any control or direction over the methods by which CONSULTANT shall perform its services and functions. DISTRICT'S sole interest and responsibility is to ensure that the services covered in this Agreement are performed in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of CONSULTANT or its employee(s) pursuant to this Agreement shall be construed to make CONSULTANT or its employee(s) the agent, employee or servant of DISTRICT. CONSULTANT and its employee(s) are not entitled to receive from DISTRICT vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

4.2 CONSULTANT shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment requirements with respect to CONSULTANT or its employee(s). CONSULTANT agrees to indemnify, defend and hold DISTRICT harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) DISTRICT suffers as a result of CONSULTANT'S failure comply with the foregoing.

4.3 CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT represents and warrants that CONSULTANT customarily engages in the independently established trade and business of the same nature as the work to be performed under this Agreement.

4.4 CONSULTANT shall have no authority, express or implied, to act on behalf of as an agent, or to bind DISTRICT to any obligation whatsoever, unless specifically authorized in writing by the General Manager or Authorized Representative. If CONSULTANT'S services relate to an existing or future DISTRICT construction contract, CONSULTANT shall not communicate directly with, nor in any way direct the actions of, any bidder for that construction contract without the prior written authorization by the General Manager or Authorized Representative.

5. WORKERS' COMPENSATION INSURANCE.

5.1 By CONSULTANT'S signature hereunder, CONSULTANT certifies that CONSULTANT is aware of the provisions of Section 3700 of the California Labor Code requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and CONSULTANT will comply with such provisions before commencing the performance of the services of this Agreement.

6. INDEMNIFICATION, HOLD HARMLESS AND DEFENSE.

6.1 All officers, agents, employees and subcontractors, and their agents, who are employed by CONSULTANT to perform services under this Agreement, shall be deemed officers,

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agents and employees of CONSULTANT. To the extent and in any manner permitted by law, CONSULTANT shall defend, indemnify, and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from any claims, demands, liability from loss, damage, or injury to property or persons, including wrongful death, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, including CONSULTANT'S officers, employees and agents, in connection with the services required by this Agreement, including without limitation, the payment of reasonable attorneys' fees and costs. In no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT'S proportionate percentage of fault, as determined by a court of law. The foregoing indemnity, hold harmless and defense obligation of CONSULTANT shall apply except to the extent the loss, damage or injury is caused by the sole negligence or willful misconduct of an indemnified party.

- 6.2 To the extent and in any matter permitted by law, CONSULTANT shall defend, indemnify and hold DISTRICT, its directors, officers, employees, authorized volunteers and agents, and each of them free and harmless from and against any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, related to or incident to a breach of any governmental law or regulations, compliance with which is the responsibility of CONSULTANT, except any violation of law due to the DISTRICT'S negligence or willful misconduct.
- 6.3 CONSULTANT shall defend, at CONSULTANT'S own cost, expense and risk, any and all such aforesaid claims, suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT or DISTRICT'S directors, officers, employees, authorized volunteers and agents, and each of them. DISTRICT shall be consulted regarding and approve of the selection of defense counsel.
- 6.4 CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, authorized volunteers and agents, and each of them, in any and all such aforesaid claims, suits, action or other legal proceeding. CONSULTANT shall not agree without DISTRICT'S prior written consent, to any settlement which would require DISTRICT to pay any money or perform some affirmative act, including in the case of intellectual property infringement any payment of money or performance of some affirmative act to continue using CONSULTANT Products.
- 6.5 CONSULTANT'S indemnification, hold harmless and defense obligation shall survive the termination or expiration of this Agreement.

7. LAWS, REGULATIONS AND PERMITS.

- 7.1 CONSULTANT shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of the services required by this Agreement. CONSULTANT shall be liable for, and bear all costs resulting from, any violations of the law in connection with services furnished by CONSULTANT, except any violation of the law due to the DISTRICT'S negligence or willful misconduct.
- 7.2 CONSULTANT shall comply with all of the following requirements with respect to any services as a Building/Construction Inspector, Field Soils and Material Tester, or Land Surveyor, as those trades are defined by the California Department of Industrial Relations ("DIR").

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- a) CONSULTANT agrees to comply with and require its subcontractors to comply with the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.*, and California Code of Regulations, title 8, section 16000 *et seq.* (collectively, “Prevailing Wage Laws”) and any additional applicable California Labor Code provisions related to such work including, without limitation, payroll recordkeeping requirements. CONSULTANT and its subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the DIR for all services described in this Section 7.2 of the Agreement and as required by law. The general prevailing wage determinations can be found on the DIR website at: [www://dir.ca.gov/dslr](http://www.dir.ca.gov/dslr). Copies of the prevailing rate of per diem wages may be accessed at the DISTRICT’S administrative office and shall be made available upon request. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services described in this Section 7.2 of the Agreement available to interested parties upon request, and shall post and maintain copies at CONSULTANT’S principal place of business and at all sites where services are performed. Penalties for violation of Prevailing Wage Laws may be assessed in accordance with such laws. For example, CONSULTANT shall forfeit, as a penalty to the DISTRICT, Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each workman paid less than stipulated prevailing rates for services performed under this Agreement by CONSULTANT, or any subcontractor under CONSULTANT, in violation of Prevailing Wage Laws.
- b) CONSULTANT and each of its subcontractors shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONSULTANT or subcontractor in connection with the services performed pursuant to this Agreement. Each payroll shall be certified, available for inspection, and copies thereof furnished as prescribed in California Labor Code sections 1771.4(a)(3)(A) and 1776, including any required redactions. CONSULTANT shall keep the DISTRICT informed as to the location of the records and shall be responsible for the compliance with these requirements by all subcontractors. CONSULTANT shall inform the DISTRICT of the location of the payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address. Penalties for noncompliance include a forfeiture of One Hundred Dollars (\$100) per calendar day, or portion thereof, for each worker until strict compliance is effectuated, which may be deducted from any moneys due to CONSULTANT.
- c) Eight (8) hours of work shall constitute a legal day’s work. CONSULTANT and any subcontractors shall forfeit, as a penalty to the DISTRICT, Twenty-Five Dollars (\$25) for each worker employed in the execution of services pursuant to this Agreement by CONSULTANT or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any calendar week in violation of the provisions of the California Labor Code, in particular, sections 1810 to 1815, thereof, inclusive, except services performed by employees of CONSULTANT and its subcontractors in excess of eight (8) hours per day at not less than the rates published by the California Department of Industrial Relations.

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- d) CONSULTANT'S attention is directed to the provisions of California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning employment of apprentices by CONSULTANT or any of its subcontractors. If applicable to the services performed under the Agreement, CONSULTANT shall comply with such apprenticeship requirements and submit apprentice information to the DISTRICT. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the DIR or the Division of Apprenticeship Standards. Knowing violations of section 1777.5 will result in forfeiture not to exceed One Hundred Dollars (\$100) or Three Hundred Dollars (\$300), depending on the circumstances, for each calendar day of non-compliance pursuant to section 1777.7.
- e) CONSULTANT shall require any subcontractors performing services described in this Section 7.2 of the Agreement to comply with all the above.
- f) CONSULTANT must be, and must require, all subcontractors performing services described in this Section 7.2 to be, registered with and have paid the annual fee to the DIR prior to execution of this Agreement pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project, or perform services described in this Section 7.2, unless registered with the DIR pursuant to Labor Code Section 1725.5. The performance of services described in this Section 7.2 is subject to compliance monitoring and enforcement by the DIR

8. **SAFETY.**

In carrying out CONSULTANT'S services, CONSULTANT shall at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the services and the conditions under which the services are to be performed, and be in compliance with all federal, state and local statutory and regulatory requirements including State of California, Division of Industrial Safety (Cal/OSHA) regulations, and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act (as applicable). Safety precautions as applicable shall include instructions in accident prevention for all employees such as safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching & shoring, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries.

9. **INSURANCE.**

9.1 **INSURANCE COVERAGE AND LIMITS.**

CONSULTANT shall provide and maintain at all times during the performance of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors. Claims made policies shall not satisfy these insurance requirements unless CONSULTANT notifies DISTRICT and obtains DISTRICT'S prior written consent to the use of such claims made policies.

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Coverage – CONSULTANT shall maintain coverage at least as broad as the following:

- a) Coverage for Professional Liability appropriate to CONSULTANT'S profession covering CONSULTANT'S wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.
- b) Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- c) Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).
- d) Workers' Compensation insurance as required by the State of California and Employers Liability insurance.

Limits - CONSULTANT shall maintain limits no less than the following:

- a) Professional Errors and Omissions Liability - One million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate.

Professional Errors and Omissions Liability is required if CONSULTANT provides or engages in any type of professional services including, but not limited to engineers, architects and construction management.

- b) General Liability - 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 (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.
- c) Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- d) Workers' Compensation insurance with statutory limits as required by California law and Employer's Liability insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

9.2 REQUIRED PROVISIONS. The insurance policies are to contain, or be endorsed to contain the following provisions:

- a) DISTRICT, its directors, officers, or employees are to be covered as insureds on the CGL and auto policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by on or behalf of CONSULTANT; and with respect to liability arising out of services or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such services

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or operations. General liability coverage can be provided in the form of an endorsement to CONSULTANT'S insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers. The Project Name shall also be included.

- b) For any claims related to the services provided hereunder, CONSULTANT'S insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, and authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, or employees shall not contribute to it.
- c) Each insurance policy specified above are to state or be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice (ten (10) days for non-payment of premium) by U.S. mail has been provided to DISTRICT.
- d) In the event any change is made in the insurance carrier, scope of coverage or retroactive date of professional liability coverage required under this Agreement (if applicable), CONSULTANT shall notify DISTRICT prior to any changes.

9.3 PROFESSIONAL WARRANTY. CONSULTANT represents and warrants that: (a) the Professional Services will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements, and (b) the Deliverables will substantially conform to the description and specifications set forth in Exhibit "A" for the specified period after delivery or if none stated, a period of XX days after the date of delivery ("Warranty Period"). To the extent any Professional Services or Deliverables do not substantially conform to the foregoing warranties, CONSULTANT shall promptly re-perform the Professional Services and/or resubmit the Deliverables. If after receiving notice of non-conformity CONSULTANT determines that the Professional Services cannot be performed or the Deliverables cannot reasonably be delivered pursuant to the specifications, within the Warranty Period, DISTRICT may elect to remedy or receive such Professional Services or Deliverable through another contractor and CONSULTANT shall reimburse DISTRICT within 30 days of request by DISTRICT. This warranty will apply only if: (a) no modification, alteration or addition has been made to the Deliverable(s) other than with CONSULTANT'S written consent; and (b) receives written notification of the breach during the applicable Warranty Period.

CONSULTANT warrants that any drawings and specifications, reports or other documents submitted by Contractor to Agency shall be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations, and laws.

9.4 WAIVER OF SUBROGATION. CONSULTANT hereby agrees to waive rights of subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by

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virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of DISTRICT for all services performed by CONSULTANT, its employees, agents and subcontractors.

9.5 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductible or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retention.

9.6 ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise acceptable to DISTRICT.

9.7 EVIDENCES OF INSURANCE. Prior to execution of this Agreement, CONSULTANT shall furnish DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by DISTRICT before services commence. However, failure to obtain the required documents prior the services beginning shall not waive CONSULTANT'S obligation to provide them.

CONSULTANT shall, upon demand of DISTRICT at any time, deliver to DISTRICT complete, certified copies or all required insurance policies, including endorsements, required by this Agreement.

9.8 SUBCONTRACTORS. In the event that CONSULTANT employs subcontractors as part of the services covered by this Agreement, it shall be the CONSULTANT'S responsibility to require and verify that each subcontractor meets the minimum insurance requirements specified in this Agreement.

10. NO CONFLICT OF INTEREST.

If CONSULTANT is providing services related to a DISTRICT project, CONSULTANT shall not be financially interested in any other contract necessary for the undertaking of the project. For the limited purposes of interpreting this section, CONSULTANT shall be deemed a "district officer or employee", and this section shall be interpreted in accordance with California Government Code Section 1090. In the event that CONSULTANT becomes financially interested in any other contract necessary for the undertaking of the project, this Agreement shall be null and void and DISTRICT shall be relieved of any responsibility whatsoever to provide compensation under the terms and conditions of any such contract for those services performed by CONSULTANT.

11. OWNERSHIP OF DOCUMENTS.

All documents, drawings, reports, and specifications, including details, computations, code, scripts, workflows, and other documents, prepared or provided by CONSULTANT under this Agreement shall be the property of DISTRICT. DISTRICT agrees to hold CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the documents and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computations, and other documents, prepared or provided by CONSULTANT. CONSULTANT may retain a copy of

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all material produced under this Agreement for the purpose of documenting their participation in this Project.

12. CONFIDENTIAL INFORMATION.

Any written, printed, graphic, or electronically or magnetically recorded information furnished by DISTRICT for CONSULTANT'S use are the sole property of DISTRICT. CONSULTANT and its employee(s) shall keep this information in the strictest confidence and will not disclose it by any means to any person except with DISTRICT'S prior written approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONSULTANT'S employees, agents, and subcontractors. On termination or expiration of this Agreement, CONSULTANT shall promptly return any such confidential information in its possession to DISTRICT.

13. COMPENSATION.

13.1 For services performed by CONSULTANT in accordance with this Agreement, DISTRICT shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. This is a Time-and-Materials contract. Overtime work must be authorized by the DISTRICT. No hourly rate changes shall be made during the term of this Agreement. **CONSULTANT'S compensation for all services performed in accordance with this Agreement shall not exceed the total contract price of \$_____.** No services shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the General Manager or Authorized Representative. CONSULTANT shall obtain approval from the General Manager or Authorized Representative prior to performing any services that result in incidental expenses to the DISTRICT.

13.2 CONSULTANT shall maintain accounting records including the following information:

- a) Names and titles of employees or agents, types of services performed, and times and dates of all services performed in connection with Agreement that is billed on an hourly basis.
- b) All incidental expenses including reproductions, computer printing, postage, mileage billed at current Internal Revenue Service ("IRS") Rate, and subsistence.

13.3 CONSULTANT'S accounting records shall be made available to DISTRICT Accounting Manager, for verification of billings, within a reasonable time of the Accounting Manager's request for inspection.

13.4 CONSULTANT shall submit monthly invoices to DISTRICT. DISTRICT will make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the General Manager or Authorized Representative. ***Each application for partial payment shall be accompanied with a Progress Report summarizing the status of the services performed.***

13.5 DISTRICT reserves the right to withhold payments for services to cover potential or nonconforming services. Additionally, the DISTRICT may elect not to make a particular payment if any of the following exists:

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- a) CONSULTANT with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to DISTRICT.
- b) CONSULTANT took an action without receiving DISTRICT'S prior approval as required under this Agreement.
- c) CONSULTANT is in default of a term or condition of this Agreement.

13.6 CONSULTANT shall ensure that any report generated under this Agreement shall comply with Government Code Section 7550.

14. TERMINATION OF AGREEMENT.

14.1 TERMINATION FOR CAUSE. If DISTRICT ("demanding party") has a good faith belief that CONSULTANT is not complying with the terms of this Agreement or is deemed non-responsive or non-responsible, DISTRICT will give written notice of the default (with reasonable specificity) to CONSULTANT and demand the default to be cured within ten (10) calendar days of the notice. Responsive is defined as conforming with material requirements and responsible is defined as possessing the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract.

If CONSULTANT fails to cure the default within ten (10) calendar days of the notice, or if more than ten (10) calendar days are reasonably required to cure the default, and CONSULTANT fails to give adequate assurance and due performance within ten (10) calendar days of the notice, DISTRICT may terminate this Agreement upon written notice to CONSULTANT. In the event of a material breach of any representation or term of this Agreement by CONSULTANT that is not curable or results in a threat to health or safety, DISTRICT may immediately terminate this Agreement by providing written notice and without a cure period.

Upon termination, DISTRICT will pay CONSULTANT for any services completed up to and including the date of termination of this Agreement, in accordance with the compensation Section 13. DISTRICT will be required to compensate CONSULTANT only for services performed in accordance with the Agreement up to and including the date of termination. DISTRICT shall not pay for loss profit or overhead/extended overhead fees and at its sole discretion may deduct fees for any non-conforming or non-complying work.

14.2 TERMINATION FOR CONVENIENCE. DISTRICT will have the express right to terminate this Agreement at any time without cause by giving seven (7) consecutive days advanced written notice to CONSULTANT. This Agreement shall be automatically terminated without further action of any party upon expiration of the seven (7) day period.

Promptly upon receipt of any termination notice from the DISTRICT, CONSULTANT shall cease all further work and services, except as otherwise expressly directed by the DISTRICT in the written termination notice. In the event the DISTRICT exercises its termination right, CONSULTANT shall be paid only for work and services performed and approved by the DISTRICT to the date this Agreement terminates. The DISTRICT will have the express right to withhold any payment otherwise due CONSULTANT to correct

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any labor or materials determined to be defective by the DISTRICT at the time of termination.

All plans, maps, drawings, reports, designs, or other writings of any type or nature prepared by CONSULTANT as a result of this Agreement shall become and remain the sole property of the DISTRICT. All such writings shall be provided to the DISTRICT not later than seven (7) consecutive days after termination of this Contract for any reason. All labor, supplies, work and materials provided by CONSULTANT in conjunction with this Agreement will become and remain the sole property of the DISTRICT.

15. ASSIGNMENT AND DELEGATION.

15.1 This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated or subcontracted, without the express written consent of DISTRICT. Any attempt to assign or delegate this Agreement without the express written consent of DISTRICT shall be void and of no force or effect. Consent by DISTRICT to one assignment shall not be deemed to be consent to any subsequent assignment.

15.2 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. AUDIT DISCLOSURE.

Pursuant to Government Code section 8546.7, if the Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of DISTRICT, for a period of three (3) years after final payment under the Agreement. CONSULTANT shall cooperate with any such examination or audit at no cost to DISTRICT.

17. ENTIRE AGREEMENT.

This Agreement, and the attached Exhibit "A", comprise the entire integrated understanding between DISTRICT and CONSULTANT concerning the services to be performed pursuant to this Agreement and supersedes all prior negotiations, representations, or agreements whether express or implied, oral or written. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms herein. In the event of any conflict between the provisions of the Agreement and the Exhibit(s), the terms of the Agreement shall prevail.

18. INTERPRETATION OF THE AGREEMENT.

18.1 The interpretation, validity, and enforcement (including, without limitation, provisions concerning limitations of actions) of the Agreement shall be governed by and construed under the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule requiring construction against the draftsman. The Agreement does not limit any other rights or remedies available to DISTRICT.

18.2 CONSULTANT shall be responsible for complying with all applicable local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

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18.3 Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

18.4 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake of otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Agreement shall forthwith by physically amended to make such insertion.

19. AGREEMENT MODIFICATION.

This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

20. DISPUTE RESOLUTION.

Upon the written demand of either party, any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, shall be first submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 *et seq.* if applicable, and prior the commencement of any legal action or other proceeding. Any mediation shall take place in the State of California, County of San Diego, and shall be concluded within sixty (60) days of the written demand, unless such time is extended by mutual written consent of the parties. Nothing herein waives or excuses compliance with the California Government Claims Act.

In the event mediation has not been successfully concluded within the time allowed, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). The use of arbitration shall allow full discovery by all parties associated with the dispute or claim. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court.

21. JURISDICTION, FORUM AND VENUE.

Except as otherwise required by Section 20 of this Agreement concerning dispute resolution, the proper jurisdiction, forum and venue for any claims, causes of action or other

EXHIBIT A

proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, northern district of the County of San Diego. DISTRICT and CONSULTANT agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. DISTRICT and CONSULTANT hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this Agreement whether on grounds of inconvenient forum or otherwise.

22. MAILING ADDRESSES.

Notices given pursuant to this Agreement shall be deemed communicated as of the earlier of the day of receipt or the fifth (5th) calendar day after deposit in the United States mail, postage prepaid, and addressed to the following:

DISTRICT: **Rainbow Municipal Water District**
 3707 Old Hwy 395
 Fallbrook, CA 92028
 Phone: (760) 728-1178

CONSULTANT: _____

Notices delivered personally will be deemed communicated as of actual receipt.

23. SIGNATURES.

Each party represents that the individual executing this Agreement on its behalf has the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of such party.

24. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

25. ATTORNEY'S FEES.

In the event of a dispute arising under terms of this Agreement, it is agreed that the prevailing party may be awarded reasonable attorneys' fees and actual costs.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed.

EXHIBIT A

EXHIBIT A

CONSULTANT _____

RAINBOW MUNICIPAL WATER DISTRICT _____

By _____
CONSULTANT

By _____
TOM KENNEDY, GENERAL MANAGER

PRINT NAME

Date: _____

Date: _____

Attest: **Executive Secretary**

Federal Employer ID #

**Approved as to Form:
Alfred Smith, General Counsel**

NOTARY ACKNOWLEDGEMENT OF CONSULTANT MUST ACCOMPANY THIS DOCUMENT