



Request for Proposals (RFP)

**Consultant Services for the 2020
Regional Urban Water Management Plan**

Return Proposal to:

**THREE VALLEYS MUNICIPAL WATER DISTRICT
1021 E. Miramar Avenue.
Claremont, CA 91711
Attn: Timothy Kellett, Chief Water Resources Officer
Telephone: (909) 621-5568
Fax: (909) 625-5470
Email: tkellett@tvmwd.com**

**Issue Date:
May 13, 2020**

**Deadline for Proposal Submittal:
Wednesday, June 3, 2020
3:00 P.M. PST**

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1. INTRODUCTION

Three Valleys Municipal Water District (District) is requesting proposals from qualified consultants for preparation of a 2020 Regional Urban Water Management Plan (RUWMP).

The District has partnered with five of its member agencies, City of Glendora, Golden State Water Company, City of Pomona, Rowland Water District, and Walnut Valley Water District to develop the 2020 RUWMP. The District will assume the role of lead agency and oversee the administrative functions for this project.

The RUWMP shall be completed in full compliance with the California Urban Water Management Planning Act (Act), as codified in Section 10610 *et.seq.*, of the California Water Code and the Department of Water Resources' (DWR) *2020 Urban Water Management Plan Guidebook for Water Suppliers* (DWR Guidebook). The RUWMP shall provide the District and its partnered agencies with analytical data and detailed recommendations in order to meet all the above-mentioned regulations and statutory requirements.

2. BACKGROUND

Three Valleys Municipal Water District is a special district formed by public election in 1950 and is the area's primary source of supplemental water covering the Pomona, Walnut, and East San Gabriel Valleys. The District is one of 26 member agencies of the Metropolitan Water District of Southern California (MWD) that is authorized to deliver wholesale water supplies from the Colorado River and Northern California. The region served by the District spans over 133 square miles and serves 13 retail water agencies that in turn serve a population of over 500,000 people. The mission of the District is to supplement and enhance local water supplies to meet our region's needs in a reliable and cost-effective manner.

The District is currently seeking a qualified Consultant to complete the 2020 RUWMP. The Act requires that every water supplier prepare and adopt an Urban Water Management Plan every five years for submittal to the DWR. The District and its partnered agencies want to create a document that will satisfy the requirements of the Act for all six agencies. The RUWMP must describe the adequacy and reliability of all water supplies for existing and future customers and is required for the District and its member agencies to be considered for future grant funding opportunities, loans, or to receive drought assistance from the State. The District is distributing this Request for Proposals (RFP) from qualified firms to complete the District's RUWMP and keep the District and partnered Member Agencies in compliance with the Act. **The 2020 RUWMP must be adopted and submitted to DWR before July 1, 2021.**

3. SCOPE OF SERVICES

The District is seeking a Consultant that will provide a complete 2020 RUWMP which will include the tasks below, plus any other tasks the consultant deems necessary:

Task 1 – Project Management and Coordination

The Consultant shall attend a project kick-off meeting with District staff and participating member agencies to discuss project parameters, scheduling constraints, and other relevant information regarding services required by the RFP to complete the 2020 RUWMP. An overall

project schedule shall be reviewed, revised, and updated by the Consultant. The Consultant shall schedule progress meetings with District staff and participating member agencies as necessary for the periodic review of project status.

The Consultant shall prepare a detailed schedule of the project for a completion date. It shall be the responsibility of the Consultant to review and become familiar with all pertinent data for completion of the RUWMP as well as any applicable laws regarding urban water management plans.

Task 2 – Data Analysis and Evaluation

The Consultant will provide data review and analysis, development of demand projections and analysis of demand management measures. The Consultant shall develop the RUWMP according to the DWR Guidebook. The RUWMP should also comply with and address all relevant updated statutes and mandates including submittal of the RUWMP to the DWR. Specific plan components can be found at www.water.ca.gov.

As key sections of the RUWMP are developed, namely the demand projection and water shortage contingency planning components, the Consultant shall be required to provide the District with updates and solicit input well in advance of developing the final draft RUWMP. The Consultant shall also assist the District with making the required public hearing notifications as specified by the Act.

Task 3 – Information and Data Collection

The Consultant shall collect information and data from the District and participating member agencies in order to provide Water Demand Projections for a 20-year period through 2040. As water demand projections are a core element of a RUWMP, collecting data for this task will be the initial priority. Necessary data for this task will come from the DWR Guidebook and may include:

- Demographic data (e.g. population, housing unit and employment projections, etc.);
- Historical and current water production data and consumption data;
- Historical and current water savings estimates from on-going conservation programs;
- Any other information the Consultant feels is necessary or beneficial for this task.

Task 4 – Water Demand Projection

Using the above information, the Consultant shall develop water demand projections for the District and participating member agencies in five-year increments from 2020 through 2040.

Task 5 – First Draft Report

The Consultant shall present the first draft report to the District by December 7, 2020. Once the District and participating member agencies have reviewed the first draft report, the Consultant shall make any necessary adjustments/revisions and finalize the draft report.

Task 6 – Second Draft Report

The Consultant shall identify any remaining data needs and draft any remaining required chapters of the RUWMP, any supporting sections (e.g. Table of Contents, List of Tables and Figures, Acronyms and Abbreviations, References, Appendices, etc.) as well as the optional section on climate change impacts to supply, and the checklist developed by DWR to assist DWR with its review.

The Consultant shall send an electronic copy of the final second draft to the District by March 1, 2021 for the Board to review and provide comments.

Task 7 – Final Report

In conjunction with District staff, the Consultant shall present the final draft to the District Board and public at a public hearing. After the close of the public hearing, the District Board will consider final adoption of the RUWMP.

Following adoption of the RUWMP by the District and participating member agencies, the Consultant shall submit the plan electronically as required/requested by the DWR. ***Please note that the 2020 RUWMP update must be adopted and submitted to the DWR by July 1, 2021, and the District would like the plan submitted as soon as possible.***

Task 8 – Deliverables

The Consultant shall provide the District with the following products and services as part of this project and any others the Consultant deems necessary to provide a complete RUWMP.

A. Draft RUWMP

- One (1) hard copy sent (or notification of plan’s availability on-line) to the District
- One (1) electronic version of the complete document in MS Word file format.

B. Final RUWMP

- Three (3) printed copies and one (1) electronic version of the complete document in both PDF and MS Word shall be provided to the District and participating member agencies.
- The Consultant shall provide expertise and be available to support staff and answer questions for up to two (2) District Board meetings, and one (1) Board or Council meeting for each participating member agency.
- The Consultant shall coordinate the RUWMP adoption, assuring notification requirements for the public hearing are met.
- The Consultant shall coordinate the posting notice and submittal of the Final RUWMP to the DWR.

4. Submittal Deadline and Proposal Contents

For ease of proposal submission, the District requests that the proposals be submitted electronically (email) to Timothy Kellett at tkellett@tvmwd.com on or before 3:00 p.m. on Wednesday, June 3, 2020. All proposal components must be received by the deadline. Late proposals will not be accepted. The official and determining time of proposal submission shall be according to the timestamp that indicates receipt of the proposal submission in Mr.

Kellett's email inbox. It is the proposer's sole responsibility to see that its proposal is received in proper time.

The proposal shall be concise, well-organized and demonstrate the Consultant's qualifications and experience relating to the proposed project. Proposals shall be **no more than 15 pages**, excluding resumes. At minimum, proposals shall include the following information:

A. Cover Letter

- The Consultant's legal name, address, telephone number, e-mail address, and the principal contact person;
- Any qualifying statements or comments regarding the Consultant's proposal, including proof of the Consultant's capabilities to meet the DWR Guidebook; and
- Statement indicating the validity of the proposal for a minimum period of 90 calendar days subsequent to the proposal due date.

B. Statement of Qualifications

- Provide a brief description of the Consultant's firm, including years in business, and the type of organization (partnership, corporation, etc.); and
- A listing of the proposed key project personnel including qualifications and experience. Emphasis should be given to highlighting work completed for comparable municipalities and water districts. Key project personnel are expected to be committed for the duration of the project. Replacement of key personnel will not be permitted without prior consultation and approval of the District.; and
- For each key project personnel, provide names, current telephone numbers and email addresses of at least three (3) references for existing and past municipal and water district clients. Include a brief description of each project associated with the reference, and the role of the respective key project personnel.

C. Project Understanding and Approach

- Description of the Consultants' understanding of the Scope of Services including coordination with District staff and the Consultant's proposed approach and management plan for providing the services;
- A timeline of the complete project including major milestones;
- Proposed staffing plan/organizational chart indicating anticipated work hours per week by classification both on and off-site. This should convey how the Consultant will provide public utility engineering and financial services in the most efficient, cost effective manner. Innovative staffing plans are encouraged based on best management practices and/or methods utilized successfully by the firm in other municipalities; and
- Other information that will assist the District in selecting the most qualified Consultant.

D. Objections to Professional Services Agreement

Objections shall be submitted in writing with justification clearly stated. Any Consultant with objections to the terms contained in the District's Professional Services Agreement (Exhibit A) must advise the District of such objections and requested modifications as part of its Technical proposal. Failure of a proposer to accept the terms of the District's Professional Services Agreement may result in the rejection of the proposal. It shall be the responsibility of the prospective Consultant to review all sections and exhibits of the

Professional Services Agreement, including insurance requirements. If no objections are received, the District will assume the proposer is able to and will enter into the Professional Services Agreement and fulfill the terms and requirements set therein. The District may recover any damages accruing to the District as a result of the successful Consultant's failure or refusal to execute the District's Professional Services Agreement.

E. Cost Proposal

The firm must submit a detailed cost proposal of all services and materials anticipated in completing the service/work. The cost submittal should indicate the number of anticipated hours by the Project Manager and key project personnel. The estimated level of hours for other staff can be summarized in general categories. The cost proposal should include the names, title, hourly rates, overhead factors along with any other details by which the overall project element costs have been derived. Finally, proposals shall include a detailed schedule the Consultant is proposing to complete the RUWMP.

5. Inquiries and Addenda

Inquiries concerning this RFP should be submitted electronically (email) to Timothy Kellett at tkellett@tvmwd.com no later than 4:00 p.m. on May 26, 2020. Inquiries after this date will be disregarded. Please include in the subject line of the email: "Inquiry Re: 2020 RUWMP Update Proposal". Responses to the inquiries will be distributed to all potential proposers by May 28, 2020.

The District will issue any changes to the RFP as addenda and distribute to potential proposers. A copy of the current RFP will be posted on the District's website at www.threevalleys.com.

6. Anticipated Schedule

RFP Event	Date/Time
RFP Issued	May 13, 2020
Deadline for Clarification/Questions	May 26, 2020 – 4:00 PM PST
Deadline for Proposal Submittal	June 3, 2020 – 3:00 PM PST
Selection Team Completes Proposal Evaluation	June 9, 2020
Contract Award	June 17, 2020
Contract Start	June 22, 2020
Submit RUMWP to DWR	July 1, 2021

7. Evaluation Procedure

The District is seeking the most responsive, and best qualified firm/consultant to collaborate with the District to prepare the 2020 RUWMP. District staff will convene a Selection Team to evaluate each proposal for completeness and content. Each proposal will be evaluated based upon the relevant qualifications and experience of the Consultant. Failure to submit a proposal that does not adhere to all the requirements of the RFP shall result in disqualification.

The proposal review will focus on the following criteria:

- A. **Organization** – Experience, organization, and technical skills of the firm to successfully accomplish the project’s Scope of Services and objectives. Does the firm’s organizational structure show sufficient depth/capacity for its present and additional workload?
- B. **Project Understanding/Approach** – The firm’s proposal adequately demonstrates an understanding and experience in preparing RUWMP’s which is documented in its proposal. In addition, the Consultant has experience in conducting data analysis and calculations required by the DWR Guidebook. This understanding can be demonstrated in various manners, including but not limited to the firm’s successful completion of RUWMP’s for other municipalities or water districts in accordance with the DWR Guidebook and identification of critical issues to the project and methods to address those issues to ensure timely and on budget completion of the project.
- C. **Experience** - Expertise, qualifications, background, and prior experience of the firm and key personnel in performing services for similar projects. Past performance on contracts with municipalities or water districts in terms of work and compliance with schedules will be evaluated based on reference checks.
- D. **Project Schedule** – The thoroughness of the project schedule; the firm’s ability to complete the project within the selected timeframe.

8. Terms and Conditions

A. Professional Services Agreement

The District will identify the firm that best meets the needs of the District and enter contract negotiations with that highest ranked firm. Should the District fail to reach an agreement with the top ranked firm, the District may enter negotiations with the next highest rated firm and so on. District staff will make recommendations to the Board for the award of the Professional Services Agreement to the firm the best furthers the District’s objectives.

The successful Consultant will be expected to execute the attached Professional Services Agreements (Exhibit A) by June 17, 2020.

B. Insurance Requirements

The successful Consultant shall secure all insurance required under the Professional Services Agreement, and provide any necessary documentation to the District, by June 17, 2020 if an award is made.

C. Acceptance or Rejection of Proposal

The District reserves the right to accept or reject any and all proposals. The District also reserves the right to waive any informality or irregularity in any proposal or in the bidding as deemed to be in its best interest. Additionally, the District may, for any reason, decide not to award an agreement as a result of this RFP or cancel the RFP process. The District shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The District reserves the right to negotiate project deliverables and associated costs.

D. Gratuities

No person will offer, give or agree to give any District employee, its representative, or participating member agency any gratuity, discount or offer of employment in connection with the award of contract by the District. No District employee or its representative will solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a District contract.

E. Equal Opportunity Clause

Contractors shall ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex or religion will be required. The District hereby ensures that minority business enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

F. Equal Opportunity Employment Compliance

Proposer certifies that it has sought out and considered minority business enterprises for those portions of the work to be subcontracted, and has fully documented such actions that said documentation is open to inspection, and that said action will remain in effect for the life of any contract awarded hereunder. Furthermore, Proposer certifies that all steps will be taken to meet all equal employment opportunity requirements of the contract documents. Proposer certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any agency, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

G. Legal Responsibilities

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws relating to proposals for contracts of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provision, and requirements set forth, contemplated, and referred to in the RFP, and other contract documents, and to full compliance therewith.

H. Proposal Preparation Costs

The District will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

I. Proposal Withdrawal

To withdraw a proposal, the Proposer must submit a written request electronically (email), signed by an authorized representative, to the RFP Coordinator identified in Section 4. After withdrawing a previously submitted proposal, the Proposer may submit another proposal at

any time up to the deadline for submitting proposals.

J. Proposal Errors

Proposers are liable for all errors or omissions contained in their proposals. Proposers will not be allowed to alter proposal documents after the deadline for submitting a proposal.

K. Incorrect Proposal Information

If the District determines that a Proposer has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the Proposer knew or should have known as materially incorrect, the proposal will be determined non-responsive, and the proposal will be rejected.

L. Discrepancies and Misunderstandings

Contractors and consultants must satisfy themselves by personal examination of the work site, specifications, and other contract documents and by any other means as they may believe necessary, as to the actual physical conditions, requirements and difficulties under which the work must be performed. No contractor or consultant will at any time after submission of a proposal make any claim or assertion that there was any misunderstanding or lack of information regarding the nature or amount of work necessary for the satisfactory completion of the job. Any errors, omissions, or discrepancies called to the attention of the District will be clarified by the District in writing to all proposers prior to the submission of proposals.

M. Proposer Interested in More than One Proposal

No person, firm, or corporation will be allowed to make or file, or be interested in more than one proposal for the same work unless alternate bids are specifically called for. No proposal will be accepted from a consultant who has not been licensed in accordance with the provisions of the State Business and Professional Code.

N. Non-Collusions Affidavit

Proposer declares that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of the District is personally interested, directly or indirectly, in this proposal; that this proposal is made without connection to any other individual, firm, or corporation making a bid for the same work and that this proposal is in all respects fair and without collusion or fraud.

Exhibits:

- A.** Three Valleys Municipal Water District Professional Services Agreement

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THREE VALLEYS MUNICIPAL WATER DISTRICT
AND**

THIS AGREEMENT is made this ___ day of _____, 20___, by and between the THREE VALLEYS MUNICIPAL WATER DISTRICT, a Municipal Water District organized and operating pursuant to California Water Code Section 71000 et seq. (hereinafter referred to as the “DISTRICT”), and _____, a _____ (hereinafter referred to as “CONSULTANT”).

RECITALS

WHEREAS, the DISTRICT desires to contract with CONSULTANT to provide services for _____ (hereinafter referred to as “Project”); and
WHEREAS, CONSULTANT is willing to contract with the DISTRICT to provide such services;
and
WHEREAS, CONSULTANT holds itself as duly licensed, qualified, and capable of performing said services; and
WHEREAS, this Agreement establishes the terms and conditions for the DISTRICT to retain CONSULTANT to provide the services described herein for the Project.

COVENANTS

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth herein, the parties hereto agree as follows:

**ARTICLE I
ENGAGEMENT OF CONSULTANT
AND AUTHORIZATION TO PROCEED**

1.1 **ENGAGEMENT:** The DISTRICT hereby engages CONSULTANT, and CONSULTANT hereby accepts the engagement, to perform certain services described in Section 2.1 of this Agreement.

1.2 **AUTHORIZATION TO PROCEED:** Authorization for CONSULTANT to proceed with all or a portion of the work described in Section 2.1 of this Agreement will be granted in writing by the DISTRICT as soon as both parties sign the Agreement and all applicable insurance and other security documents required pursuant to Section 6.3 of this Agreement are received and approved by the DISTRICT. CONSULTANT shall not proceed with said work until so authorized by the DISTRICT, and shall commence work immediately upon receipt of the Notice to Proceed.

1.3 **NO EMPLOYEE RELATIONSHIP:** CONSULTANT shall perform the services provided for herein as an independent contractor, and not as an employee of the DISTRICT. The DISTRICT shall have ultimate control over the work performed for the Project. CONSULTANT is not to

be considered an agent or employee of the DISTRICT for any purpose, and shall not be entitled to participate in any pension plans, insurance coverage, bonus, stock, or similar benefits that the DISTRICT provides for its employees. CONSULTANT shall indemnify the DISTRICT for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which the DISTRICT may be required to make on behalf of CONSULTANT or any employee of CONSULTANT for work performed under this Agreement.

ARTICLE II SERVICES OF CONSULTANT

2.1 **SCOPE OF SERVICES:** The scope of services to be performed by the CONSULTANT under this Agreement are described in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by this reference ("Scope of Work"), and shall, where not specifically addressed, include all related services ordinarily provided by the CONSULTANT under same or similar circumstances.

2.2 **PREVAILING WAGES:** In accordance with the provisions of the California Labor Code, CONSULTANT shall secure the payment of compensation to employees. To the extent required by the California Labor Code, CONSULTANT shall pay not less than the prevailing rate of per diem wages as determined by the Director, Department of Industrial Relations, State of California.

2.3 **HOURS AND WORKING CONDITIONS:** It is stipulated and agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein and will be complied with by CONSULTANT. CONSULTANT shall comply with all applicable provisions of the California Labor Code relating to working hours and the employment of apprentices on public works projects.

ARTICLE III RESPONSIBILITIES OF THE DISTRICT AND OF CONSULTANT

3.1 **DUTIES OF THE DISTRICT:** The DISTRICT, without cost to CONSULTANT, will provide all pertinent information necessary for CONSULTANT's performance of its obligations under this Agreement that is reasonably available to the DISTRICT unless otherwise specified in the Scope of Work, in which case the CONSULTANT is to acquire such information. The DISTRICT does not guarantee or ensure the accuracy of any reports, information, and/or data so provided.

3.2 **REPRESENTATIVE OF DISTRICT:** The DISTRICT will designate _____ as the person to act as the DISTRICT's representative with respect to the work to be performed under this Agreement. Such person will have complete authority to transmit instructions, receive information, and interpret and define the DISTRICT's policies and decisions pertinent to the work.

3.3 **DUTIES OF CONSULTANT:** CONSULTANT shall perform the Project work in such a manner as to fully comply with all applicable professional standards of care, including professional quality, technical accuracy, timely completion, and other services furnished and/or work undertaken by CONSULTANT pursuant to this Agreement. The CONSULTANT shall cause all work and deliverables to conform to all applicable federal, state, and local laws and regulations.

3.4 **APPROVAL OF WORK:** The DISTRICT's approval of work or materials furnished hereunder shall not in any way relieve CONSULTANT of responsibility for the technical adequacy of its

work. Neither the DISTRICT's review, approval or acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

ARTICLE IV PAYMENTS TO CONSULTANT

4.1 **PAYMENT:** The DISTRICT will pay CONSULTANT for work performed under this Agreement, which work can be verified by the DISTRICT, on the basis of the following: CONSULTANT shall exercise its good faith best efforts to facilitate a full and clear definition of the scope of all assigned work so that the amount set forth in Section 4.3 of this Agreement will cover all tasks necessary to complete the work. The amount set forth in Section 4.3 of this Agreement is the maximum compensation to which CONSULTANT may be entitled for the performance of services to complete the work for the Project, unless the Scope of Work or time to complete the work is changed by the DISTRICT in writing in advance of the work to be performed thereunder. Adjustments in the total payment amount shall only be allowed pursuant to Section 6.4 of this Agreement. In no event shall CONSULTANT be entitled to compensation greater than the amount set forth in Section 4.3 of this Agreement where changes in the Scope of Work or the time for performance are necessitated by the negligence of CONSULTANT or any subcontractor performing work on the Project.

4.2 **PAYMENT TO CONSULTANT:** Payment will be made by the DISTRICT within thirty (30) calendar days after receipt of an invoice from CONSULTANT, provided that all invoices are complete and product and services are determined to be of sufficient quality by the DISTRICT.

4.3 **ESTIMATED CHARGES:** The total estimated charges for all work under this Agreement are \$ _____ and such amount is the cost ceiling as described herein. The total estimated charges stated herein constitute the total amount agreed to.

4.4 **COST FOR REWORK:** CONSULTANT shall, at no cost to the DISTRICT, prepare any necessary rework occasioned by CONSULTANT's negligent act or omission or otherwise due substantially to CONSULTANT's fault.

ARTICLE V COMPLETION SCHEDULE

5.1 **TASK SCHEDULE:** The work is anticipated to be completed in accordance with the schedule agreed upon by DISTRICT and CONSULTANT at the time that a Notice to Proceed is issued by DISTRICT.

5.2 **TIME OF ESSENCE:** CONSULTANT shall perform all services required by this Agreement in a prompt, timely, and professional manner in accordance with the agreed upon schedule. Time is of the essence in this Agreement.

ARTICLE VI GENERAL PROVISIONS

6.1 **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:** CONSULTANT shall at all times observe all applicable provisions of Federal, State, and Local laws and regulations including, but not limited to, those related to Equal Opportunity Employment.

6.2 SUBCONTRACTORS AND OUTSIDE CONSULTANTS: No subcontract shall be awarded by CONSULTANT if not identified as a subcontractor in the Scope of Work unless prior written approval is obtained from the DISTRICT.

6.3 INSURANCE: CONSULTANT shall secure and maintain in full force and effect, until the satisfactory completion and acceptance of the Project by DISTRICT, such insurance as will protect it and the DISTRICT in such a manner and in such amounts as set forth below. The premiums for said insurance coverage shall be paid by the CONSULTANT. The failure to comply with these insurance requirements may constitute a material breach of this Agreement, at the sole discretion of the DISTRICT.

CONSULTANT shall procure and maintain during the performance of this Agreement policies of insurance as follows:

Workers' Compensation: CONSULTANT shall maintain Workers' Compensation insurance, as required by law in the State of California, and Employers' Liability Insurance (including disease coverage) in an amount not less than \$1,000,000.00 per occurrence. This insurance shall also waive all right to subrogation against the DISTRICT, its Board of Directors, officers, employees, representatives, and agents.

General Liability: CONSULTANT shall maintain general liability insurance including provisions for contractual liability, independent contractors, and broad form property damage coverage. This insurance shall be on a comprehensive, occurrence basis form with a standard cross liability clause and endorsement (ISO CG 2010 or equivalent). DISTRICT shall be named as an additional insured, and the limit for this insurance shall be not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage.

Automobile Liability: CONSULTANT shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance shall have an endorsement naming the DISTRICT as an additional insured and with a standard cross liability clause and endorsement (ISO CG 2010 or equivalent). The limit amount for this insurance shall be not less than \$1,000,000.00 per occurrence, combined single limit for bodily injury and property damage.

Professional Liability: CONSULTANT shall maintain professional liability insurance with coverage for wrongful acts, errors, or omissions committed by CONSULTANT in the course of work performed for the DISTRICT under this Agreement. This insurance shall include coverage for liability assumed under this Agreement when CONSULTANT's wrongful acts, errors, or omissions cause such liability. The limit for this insurance shall be not less than \$1,000,000.00 per claim.

6.4 CHANGES IN SCOPE OR TIME: If the DISTRICT requests a change in the Scope of Work or time of completion by either adding to or deleting from the original scope or time of completion, an equitable adjustment shall be made and this Agreement shall be modified accordingly.

6.5 INDEMNITY:

(a) CONSULTANT shall defend, indemnify and hold DISTRICT, including its directors, officers, employees and agents, harmless from and against any and all claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, with respect to or arising out of the work to be performed under this Agreement, including without limitation, any and all such claims, demands, causes of action, suits, debts, obligations, liabilities, losses, damages, costs, expenses, attorney's fees, awards, fines, settlements, judgments or losses of whatever nature, character, and description, arising by reason of death or bodily injury to one or more

persons, including the employees of CONSULTANT; injury to property of any kind, including loss of use; or economic damages of any kind, caused by, or arising out of, any alleged or actual act or omission, regardless of whether such act or omission is active or passive, by CONSULTANT, any of CONSULTANT's subcontractors or DISTRICT, including their respective directors, officers, employees, agents and assigns, excepting only such matters arising from the sole negligence or willful misconduct of the DISTRICT.

- (b) It is the intent of the parties to this Agreement that the defense, indemnity and hold harmless obligation of CONSULTANT under this Agreement shall be as broad and inclusive as may be allowed under California Civil Code §§ 2778 through 2784.5, or other similar state or federal law.

6.6 EXAMINATION OF RECORDS: All original drawings, specifications, reports, calculations, and other documents or electronic data developed by CONSULTANT for the Project shall be furnished to and become the property of the DISTRICT. CONSULTANT agrees that the DISTRICT will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all of the transactions relating to this Agreement.

6.7 ASSIGNMENT: Neither party shall assign or transfer its interest in this Agreement without written consent of the other party. All terms, conditions, and provisions of this Agreement shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

6.8 AUTHORITY: The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to sign this Agreement on behalf of and to so bind their respective legal entities.

6.9 TERMINATION:

- (a) If the engagement of CONSULTANT is not extended by the mutual written consent of the DISTRICT and CONSULTANT, then this Agreement shall expire on the latest date set forth in the schedule contained in the Scope of Work for completion of tasks for the Project.
- (b) Notwithstanding the above, the DISTRICT may terminate this Agreement or abandon any portion of the Project by giving ten (10) days written notice thereof to CONSULTANT. CONSULTANT may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days written notice only in the event of substantial failure by the DISTRICT to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT.
- (c) In the event of termination of this Agreement or abandonment of any portion of the Project, the DISTRICT shall be immediately given title to all original drawings and other documents developed for the Project, and the sole right and remedy of CONSULTANT shall be to receive payment for all amounts due and not previously paid to CONSULTANT for services completed or in progress in accordance with the Agreement prior to such date of termination. If termination occurs prior to completion of any task for which payment has not been made, the fee for services performed during such task shall be based on an amount mutually agreed to by the DISTRICT and CONSULTANT. Such payments available to the CONSULTANT under this paragraph shall not include costs related to lost profit

associated with the expected completion of the work or other such payments relating to the benefit of this Agreement.

7.0 ATTORNEYS' FEES: In the event that either the DISTRICT or CONSULTANT brings an action or proceeding for damages for an alleged breach of any provision of this Agreement, to interpret this Agreement or determine the rights of and duties of either party in relation thereto, the prevailing party shall be entitled to recover as part of such action or proceeding all litigation, arbitration, mediation and collection expenses, including witness fees, court costs, and reasonable attorneys' fees. Such fees shall be determined by the Court in such litigation or in a separate action brought for that purpose. Mediation will be attempted if both parties mutually agree before, during, or after any such action or proceeding has begun.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CONSULTANT

THREE VALLEYS MUNICIPAL WATER DISTRICT

By: _____

By: _____

Matthew H. Litchfield, P.E.
General Manager

(Print Name and Title)

Date

Date

EXHIBIT A

SCOPE OF WORK

DRAFT