

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT**

This Professional Service Agreement for Non-Construction Project ("Agreement"), is made and effective as of November 15, 2018, by and between the Monterey Peninsula Regional Park District, a special district sub-division of the State of California ("DISTRICT") and TRC Engineers, Inc., a corporation ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This Agreement shall commence on November 15, 2018 and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2019 unless sooner terminated pursuant to the provisions of this Agreement.

II. SERVICES

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

IV. DISTRICT MANAGEMENT

DISTRICT's Finance Manager shall represent DISTRICT in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. DISTRICT's General Manager or Board Member shall be authorized to act on DISTRICT's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

V. PAYMENT

A. The DISTRICT agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in

Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Thirty Seven Thousand Six Hundred Thirty Five dollars (\$37,635) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

- B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the DISTRICT General Manager or Board Member. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by DISTRICT General Manager or Board Member and CONSULTANT at the time DISTRICT's written authorization is given to CONSULTANT for the performance of said services. The DISTRICT General Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed Three Thousand Seven Hundred Sixty Four dollars (\$3,764). Any additional work in excess of this amount shall be approved by the Governing Board.
- C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the DISTRICT disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefore.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. The DISTRICT may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the DISTRICT suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- B. In the event this Agreement is terminated pursuant to this Section, the DISTRICT shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the DISTRICT. Upon termination of the Agreement pursuant to this Section, the CONSULTANT will submit an invoice to the DISTRICT pursuant to Section 5.

VII. DEFAULT OF CONSULTANT

- A. The CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, DISTRICT shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- B. If the DISTRICT General Manager or his/her designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the DISTRICT with a written plan for the cure of the default, the DISTRICT shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

VIII. OWNERSHIP OF DOCUMENTS

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by DISTRICT that relate to the performance of services under this Agreement. CONSULTANT shall maintain adequate records of 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 designees at reasonable times to such books and records; shall give DISTRICT the right to examine and audit said books and records; shall permit DISTRICT to make transcripts or copies therefrom as necessary; and shall 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.
- B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this

Agreement shall become the sole property of the DISTRICT and may be used, reused, or otherwise disposed of by the DISTRICT without the permission of the CONSULTANT provided, however, that if DISTRICT reuses or modifies any Deliverable for purposes not contemplated by this Agreement, then such use shall be without liability to CONSULTANT. With respect to computer files, CONSULTANT shall make available to the DISTRICT, at the CONSULTANT's office and upon reasonable written request by the DISTRICT, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to DISTRICT all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this Agreement.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless DISTRICT and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any DISTRICT or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this Agreement. CONSULTANT's duty to indemnify and hold harmless DISTRICT shall not extend to the DISTRICT's negligence.

B. Duty to defend

In the event the DISTRICT, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by DISTRICT, CONSULTANT shall defend the DISTRICT at CONSULTANT's cost in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by DISTRICT is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and DISTRICT, as to whether liability arises from the negligence of the DISTRICT or its officers, employees, or agents, CONSULTANT will be obligated to pay for DISTRICT's defense until such time as a final judgment has been entered adjudicating the DISTRICT as negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of

defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

- C. To the fullest extent permitted under applicable law, Neither Party shall be liable to the other for loss of profit, loss of business, loss of income, loss of reputation or any other consequential business damages that either Party may incur from any cause of action including negligence, strict liability, contract breach, and strict or implied breach of warranty.

X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.

XI. INDEPENDENT CONSULTANT

- A. CONSULTANT is and shall at all times remain as to the DISTRICT a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither DISTRICT nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the DISTRICT. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against DISTRICT, or bind DISTRICT in any manner.
- B. No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, DISTRICT shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for DISTRICT. DISTRICT shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The DISTRICT, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the DISTRICT in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the DISTRICT has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the DISTRICT to any and all remedies at law or in equity.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of DISTRICT, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- A. All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without DISTRICT's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the DISTRICT General Manager or unless requested by the DISTRICT Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the DISTRICT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives DISTRICT notice of such court order or subpoena.
- B. CONSULTANT shall promptly notify DISTRICT should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the DISTRICT, unless the DISTRICT is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the DISTRICT of such Discovery.

DISTRICT retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless DISTRICT is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with DISTRICT and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, DISTRICT's right to review any such response does not imply or mean the right by DISTRICT to control, direct, or rewrite said response.

XVI. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To DISTRICT: Monterey Peninsula Regional Park District
P.O. Box 223340
Carmel, CA 93922
Attention: Finance Manager

To CONSULTANT: TRC Engineers, Inc.
10680 White Rock Road, Suite 100
Rancho Cordova, CA 95670
Attention: Mark A. Imbriani, PE

XVII. ASSIGNMENT

- A. The CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the DISTRICT. Because of the personal nature of the services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the services described in this Agreement.

- B. Before retaining or contracting with any CONSULTANT for any services under this Agreement, CONSULTANT shall provide DISTRICT with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such sub-consultant which shall include and indemnity provision similar to the one provided herein and identifying DISTRICT as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-

consultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from DISTRICT for such insurance.

XVIII. LICENSES

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

XIX. GOVERNING LAW

The DISTRICT and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the DISTRICT.

XX. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. WORK SCHEDULED/TIME OF COMPLETION

DISTRICT and CONSULTANT agree that time is of the essence in this Agreement. DISTRICT and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this Agreement will damage and injure DISTRICT, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, DISTRICT and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages of Zero dollars (\$0.00) per day for each and every day such performance is late or delayed. DISTRICT and CONSULTANT agree that such sum is reasonable and fair. Furthermore, DISTRICT and CONSULTANT agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

XXII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of DISTRICT's Request for Proposal, Exhibit D hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit E hereto. In the event of conflict, the requirements of DISTRICT's Request for Proposals and this Agreement shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this Agreement or the relationship between CONSULTANT and/or DISTRICT, unless expressly agreed to in writing.

XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this Agreement on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

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

CONSULTANT:

TRC Engineers, Inc.
a, corporation

By: _____
Mark A. Imbriani, PE

Date: _____

DISTRICT:

MONTEREY PENINSULA REGIONAL PARK DISTRICT,
a, special district sub-division of the State of California

By: _____
Kelly Sorenson, President

Date: _____

Approved as to form:

EXHIBIT A

TASKS TO BE PERFORMED & PERFORMANCE SCHEDULE

Provide safety inspections and repair/rehabilitation recommendations on five (5) bridges consisting of:

- Four (4) pedestrian/ golf cart bridges
- One (1) vehicular/pedestrian bridge

The inspections may take place in a sequential basis with the two (2) western-most bridges as top priority for inspection and recommendations for possible repair as required for continued public use. Services for each, individual bridge includes:

Phase 1: Safety Inspection

- Perform a (minimum) one day field visit to observe the conditions of the bridge structures noting information that may be used to identify the age and/or manufacturer of the bridges and signs of structural distress such as rusted steel, rotting timber, exposed foundations, scour, concrete failure, etc.
- Coordinate with Monterey Peninsula Regional Parks District staff to determine proposed use of each bridge by pedestrians, equestrians, and maintenance vehicles
- Perform approximate load rating calculations of the main truss, floor beams, stringers, and decking using field measured member dimensions when possible to determine the adequacy for the District's proposed use. Where member dimensions cannot be directly measured, estimated dimensions can be used based upon conservative assumptions.
- Perform ADA assessment of pedestrian bridges
 - Inspect surface materials to determine if in good condition and check for hazards to reduce potential slipping, tripping and/or falls
- Prepare a brief memorandum for each bridge documenting the findings of the field observation, load rating calculations, assumptions and limitations to the load rating calculations and recommendations for further investigations.
 - Report any maintenance, repair, or replacement issues and recommendations to remediate the issues
 - Provide estimate (range) of repair costs
 - Present recommendations for next steps

PHASE 1: SAFETY INSPECTION & LOAD RATING

TASK 1 PROJECT MANAGEMENT & MEETING ATTENDANCE

This task includes preparing monthly invoices and progress reports summarizing the work completed for each task. Work also includes phone conversations with the District, direction of the work, review of major deliverables before submittal, supervision of subconsultants, and attendance at up to two (2) meetings with the District to discuss scope of work, schedule, and analysis findings.

Deliverables:

- **Progress Report(s)**
- **Meeting agendas**
- **Meeting notes, including action items**

TASK 2 DATA REVIEW & BRIDGE OBSERVATION

Review project data provided by the District. Attempt to obtain as-built plans and inspection reports from the County or others. Perform a visual site assessment of each bridge and note bridge condition for use in load rating analysis. Note the visual assessment will not include any specialized equipment (such as a snooper), nor any climbing or rappelling, nor any underwater inspection, unless such activities are budgeted.

Deliverables:

- **Field Observation Notes, including pertinent measurements**
- **Photos**

TASK 3 LOAD RATING ANALYSIS & SUMMARY SHEETS

This task includes performing load rating calculations and summarizing results in the Load Rating Summary Sheet. The load rating analysis will be a Caltrans-style analysis utilizing the LRFR and LFR methods approved by FHWA. The rating analysis will utilize the following specifications: Memos to Load Raters (M2LR), AASHTO Manual for Bridge Evaluation – 2nd Edition with 2014 Interim Revisions, AASHTO LRFD Bridge Design Specifications, 6th Edition with Amendments by Caltrans, and AASHTO Guide Specifications for Design of Pedestrian Bridges. The Load Rating Summary Sheet will provide the rating factor and max tonnage for all applicable live loads for each bridge, as well as a brief summary of the analysis performed.

Deliverables:

- **Load Rating Calculations for each bridge**
- **Load Rating Summary Sheet for each bridge stamped and signed by an engineer licensed to perform the work in California**

TASK 4 BRIDGE INSPECTION REPORT

This task includes preparation of a brief memorandum for each bridge which includes the findings from Task 2 and 3 above, as well as a summary of the ADA assessment, and recommendations for preventive maintenance and repair. Where repairs are suggested, planning estimates for the work will be provided. The memorandum will also include recommendations for further investigations, if necessary.

Deliverables:

- **Three (3) hard copies and one (1) digital copy of Bridge Inspection Report**

TASK 5 MATERIALS TESTING (OPTIONAL TASK)

This task includes performing concrete coring, concrete compression testing, ASR testing, and/or rebar scans to assist in determining the condition of the bridges for load rating analysis.

TASK 6 RAILING SAFETY ANALYSIS

This task includes analyzing the bridge railings, on two out of the four pedestrian/golf cart bridges, for applied loads to confirm they meet the requirements of AASHTO Bridge Design Specifications, Chapter 13 "Railings". TRC will provide the District with proposed modifications to the curbs, railings, or their attachments, if necessary:

Deliverables:

- **Railing calculations**
 - **Railing modification details, if required**
-

Estimated Schedule:

Task	Completion Date
NTP from District	November 2018
Bridge Inspections	November 2018
Preliminary Assessment	December 2018
Load Rating Analysis & Summary Sheets	January 2018
Bridge Inspection Report	February 2018

EXHIBIT B

PAYMENT SCHEDULE

Contractor shall invoice monthly. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the DISTRICT disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefore.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of DISTRICT, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to DISTRICT.

General Liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability pursuant to the latest edition of ISO form CG 00 01 that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile Liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional Liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

Workers' Compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Umbrella or Excess Liability insurance. (if needed to meet minimum requirements above) CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and

- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to DISTRICT as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement in favor of DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers for workers' compensation. Insurance certificates and endorsements must be approved by DISTRICT's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with DISTRICT at all times during the term of this contract. DISTRICT reserves the right to require complete, certified copies of redacted Declaration Pages and endorsements, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Excepting Professional Liability insurance, coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by DISTRICT shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DISTRICT before the DISTRICT's own insurance or self-insurance shall be called upon to protect it as a named insured.

DISTRICT's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, DISTRICT may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the DISTRICT's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against DISTRICT, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby

waives its own right of recovery against DISTRICT, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non-estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the DISTRICT to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the DISTRICT nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of cancellation. Consultant agrees to oblige its insurers to provide to DISTRICT with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that DISTRICT and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to DISTRICT for review.

DISTRICT's right to revise specifications. The DISTRICT reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the DISTRICT and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by DISTRICT. Self-insurance will not be considered to comply with these specifications unless approved by DISTRICT.

Timely notice of claims. CONSULTANT shall give DISTRICT prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT D
REQUEST FOR PROPOSAL

See attached RFP

EXHIBIT E

CONSULTANT'S PROPOSAL

See attached proposal