



Request for Proposals

2019 Public Relations
and Outreach for the
San Timoteo Creek Habitat
Monitoring Program and the
San Timoteo GSA

Proposal No. 190916

**Response Due and Public Bid Opening
Wednesday, October 9, 2019 at 2:00 p.m.**

Yucaipa Valley Water District
12770 Second Street
Yucaipa, California 92399

Yucaipa Valley Water District Contract Administrators and District Liaison:

Kathryn Hallberg, Implementation Manager
khallberg@yvwd.us - Phone (909) 790-3303

Yucaipa Valley Water District (the “District” or ‘District’) is accepting proposals for public relations and outreach services from qualified firms (“Proposers”) to assist with the preparation of various marketing products such as press releases, illustrations, videos, brochures, and informational documents.

This is not a commitment to procure this work, but a request for proposals and the costs to complete the work. The District will decide to proceed based on the proposal pricing submitted.

The final date for submitting a bid proposal is Wednesday, October 9, 2019 at 2:00 pm to Kathryn Hallberg, 12770 Second Street, Yucaipa, California 92399.

Your proposal envelope must be sealed and clearly marked “**Public Relations and Outreach Services Proposal 190916**”.

The District reserves the right to accept or to reject any and all bids proposals, to waive any irregularities and to make an award that is determined by the District to be in the best interest of the Yucaipa Valley Water District.

Proposals must comply with the proposal requirements provided herein. Proposals will be evaluated and ranked by District staff members. Proposers must be willing to sign an agreement with the terms and conditions.

All questions must be put in writing and sent via email and must be received by 5:00 p.m. on September 27, 2019. Should it be found by the District that the point in question is not clearly and fully set forth in the RFP, the District will issue a written addendum clarifying the matter, which will be posted on the District’s website and sent by email to individuals registered with the District Liaison provided on the title page of this document. Please note that the District will not be responsible for mailing any addenda. Proposers are encouraged to check the website regularly since each Proposer will be responsible for downloading the RFP and all addenda.

Interviews may be scheduled for proposers selected based on criteria in the RFP. The District reserves the right to postpone the interview date, or cancel an interview, at its sole discretion. Proposers shall be notified in advance of any such postponement or cancellation.

Scope of Services

The Yucaipa Valley Water District (“District”) is looking for a cost effective, creative approach for communicating with and engaging its customers. The District’s Implementation Managers will serve as the lead for public relations and outreach activities. The purpose of the consultant is to assist and augment public relations and outreach support.

The consultant retained shall support the objectives listed below:

- A. Create and maintain a positive public perception of the Yucaipa Valley Water District with its commitment to maintain the existing riparian habitat in San Timoteo Creek Habitat Monitoring Program.
- B. Provide outreach communications in support of the Yucaipa Valley Water District’s San Timoteo Creek Habitat Monitoring Program.

- C. Create education materials for communication services describing the climate, hydrology, species and vegetative communities present in San Timoteo Creek.
- D. Create educational materials for communication services detailing outside influences impacting the San Timoteo Creek riparian habitat.
- E. Engage the community on the benefits and goals of Yucaipa Valley Water District's strategic initiatives to help maintain the San Timoteo Creek for habitat support and monitoring.
- F. Build a stakeholders list and outreach material for the groundwater management efforts by the District in the San Timoteo area.

It is important to cover all facets of the San Timoteo Creek Habitat Monitoring Program. The approach should also include outreach and education, including but not limited to educational graphic booklets, video and photos, website, and other public relations mediums to the community on the San Timoteo Creek Habitat Monitoring Program and a better understanding of the Yucaipa Valley Water District.

Tasks to support objectives of the public relations and outreach program should include but are not limited to the following:

Communication Services

- Plan and implement a program to gain and enhance the District's presence involving:
 - Website refresh and upgrades;
 - Video clips;
 - Education booklets;
 - Historical information; and
- Develop news releases, media advisories, articles, website content and fact sheets for District events, initiatives, projects, and services.
- Develop and design graphic representations of the program facts that can be easily conveyed to the public.
- Provide Spanish translation services for targeted communications pieces

Consultants are encouraged to reply in any way they deem necessary to show a uniqueness of approach; knowledge of the Yucaipa Valley Water District's service area and customer base; and a complete understanding of the complex issues. Consultants are further encouraged to describe how they would assist the Yucaipa Valley Water District in educating the public on the San Timoteo Creek Habitat Monitoring Program.

Special Considerations:

1. Yucaipa Valley Water District owns all rights to generated, produced draft and final materials in native file formats, including intellectual property rights.
2. All products will be provided in electronic formats.
3. This is a contact ending in December 2020. The contract may be followed by two, one (1)

year extensions in accordance with approved budgets and specific task approvals by the Board of Directors.

Proposal Requirements

- A. Work Plan and Methodology - Describe the firm's approach to the project. The proposal should set forth a detailed work plan for completing tasks including a tentative schedule with milestones and product deliverables.
- B. Project Staffing - Identify the Project Manager and responsibilities of each project team member. Provide a resume of each team member including relevant experience in conducting assessments of agencies responsible for public communication and outreach, especially on the local government level.

In the event of proposed staff changes, the District will require that replacement staff meet the same level of qualifications and equivalent rates as the staff submitted. The Yucaipa Valley Water District reserves the right to approve or reject replacements.

- C. Related Experience - Describe recent and relevant experience of the firm in conducting communications assessments of water districts responsible for public communications, as well as other major relevant projects within the past three years. Provide a minimum of three references including the name of the client, description of work done, dates of the project, primary client contact including the address and telephone number, name of the firm's Project Manager and members of the project team. Finalists will be asked to provide samples of public communication and citizen involvement studies completed by the firm in the past three years.
- D. Proposed Cost - Provide the total cost for the project, including fees, reimbursables, and number of hours estimated to be spent on each major work task. The Yucaipa Valley Water District shall not, in any event, be liable for any pre-contractual expenses incurred by respondents in preparation of the proposals, and respondents shall not include any such expenses as part of their proposal. The Yucaipa Valley Water District shall also not be responsible for any associated fees with regard to insurance, licenses, or taxes.
- E. Written Agreement - Should the proposer desire to take exception to any term or condition set forth in the RFP, said exception must be clearly identified in the response to the RFP. Selected consultant must be willing to enter into a written agreement with the Yucaipa Valley Water District to provide all services specified in the RFP. Consultant must also be able to secure appropriate professional insurance as required by the District.

Evaluation Process and Criteria

- A. Each respondent shall meet the requirements as stated in this request for proposal. Total bottom-line costs must be stated in your document. No additional "add-on" charges after the proposal opening will be allowed.
- B. Award criteria will include, but is not limited to:
 - Qualifications, capabilities, and experience of the firm and individuals performing

the engagement.

- Step by step approach to the engagement and detailed schedule for completion.
 - Completeness and responsiveness of the proposal submitted.
 - Reference verification.
 - All costs pertaining to the engagement including travel and miscellaneous expenses.
- C. The Yucaipa Valley Water District may waive any informality, irregularity, or error in a proposal or in the process for obtaining proposals.
- D. The Yucaipa Valley Water District reserves the right to reject any proposal submitted which is not in substantial compliance with the requirements set forth in the Request for Proposals.
- E. The Yucaipa Valley Water District reserves the right to reject all proposals and cancel the proposal process.
- F. The proposal deemed most advantageous to the Yucaipa Valley Water District will be awarded the contract (even though it may not be the proposal with the lowest proposed fee). The District reserves the right to select portions of the proposal based on the fee quoted for each major task.
- G. Determination of acceptance shall be based on the judgment of the District staff.

General Information and Requirements

- A. **Receiving Office:** Sealed proposals will be accepted until **Wednesday, October 9, 2019 at 2:00 pm** by Kathryn Hallberg, Implementation Manager, 12770 Second Street, Yucaipa, California 92399. Bid proposal envelopes must be sealed and clearly marked "**Public Relations Proposal 190916**". Late proposals will not be accepted. Facsimile responses will not be accepted. If the proposal is sent by overnight carrier, proposal is to be within a sealed envelope inside the overnight letter pack.
- B. **Rejection of Proposals:** The District reserves the right to accept or reject any or all proposals received as a result of this request. The District shall not be obligated to award a contract solely on the basis of any response made to this Request for Proposal, nor does District intend to, nor will it be obligated to pay for the information solicited or obtained.
- C. **Incurred Consultant Costs:** District will not be liable for any costs incurred by Consultants or other respondents to this Request for Bid Proposals, prior to issuance of an agreement, contract, or other similar acquisition documents.
- D. **Qualification:** The selected Consultant shall have a proven record of performing

work of a similar nature to the project described for a minimum of three (3) years. The Consultant may be required to submit the names of three (3) references and include the name of the entity, contact person, telephone number and a brief description. Include an outline describing company's profile and ability to perform the work.

- E. **Other Provisions:** The Consultant shall list any other criteria or requirements to delineate responsibility for any additional items/tasks to be completed by either District or Consultant. These shall be in addition to those previously detailed or explained in this Request for Proposals.
- F. **Contract Terms:** If awarded the Contract, the undersigned agrees to start work on this project within fifteen (15) working days or as otherwise directed by the District Liaison (or designee) in accordance with these specifications.
- G. **Insurance:** The Consultant shall indemnify and hold harmless Yucaipa Valley Water District and all his officers, agents and employees' representatives all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property by or from the said Consultants or their employees or by or in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the work or by or on account of any act or omission, neglect, or misconduct of the said Consultant.

Insurance policies must name the Consultant as the insured, along with Yucaipa Valley Water District as additional insured, and must not be canceled or materially changed without at least 30 days prior notice from the Consultant to Yucaipa Valley Water District. The Consultant must submit certificates evidencing the insurance to Yucaipa Valley Water District at the time the Consultant executes the contract, and at least 15 days prior to the expiration dates of expiring policies.

Certificates of Insurance acceptable to Yucaipa Valley Water District shall be filed with Yucaipa Valley Water District prior to commencement of the work. The Consultant agrees that its insurance carriers waive subrogation against Yucaipa Valley Water District, its agents, or employees with respect to any loss covered by the Consultant's insurance.

- H. **Freedom of Information Act:** Information submitted in Consultant proposals becomes public information and as such is subject to public disclosure and review under the California Freedom of Information Act. Information contained in the Consultant's proposal which is company confidential must be clearly identified in the proposal itself.

- Exhibit A -

**Professional Services Agreement for
 2019 Public Relations and Outreach Services**

This Professional Services Agreement (“Agreement”) is entered into to be effective as of _____, 2019 (“Effective Date”) by and between the following parties (sometimes referred to herein individually as “Party” and collectively as “Parties”):

District	Consultant
Yucaipa Valley Water District 12770 Second Street Post Office Box 730 Yucaipa, California 92399 Attention: Joseph Zoba, General Manager	 Attention: _____
Telephone: (909) 797-5119 x2	Telephone: _____ Tax ID: _____

District Liaison	Consultant Liaison
Name Title	Name Title

NOW, THEREFORE, in consideration of the promises and mutual benefits, which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

1. **Scope of Work.** Consultant agrees to furnish necessary professional and technical services to accomplish those elements outlined in the Scope of Work attached hereto as "Attachment A", and by this reference made a part of this Agreement.
 - A. The Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all design, drawings, specifications, and other services furnished by the Consultant under this Agreement, including the work performed by its Subconsultants. Where approval by the District is indicated, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards and liability for damages caused by errors, omissions, noncompliance with industry standards, and/or negligence on the part of the Consultant or its Subconsultants.
 - B. Consultant is responsible for the quality of work prepared under this Agreement and shall ensure that all work is performed to the standards of best engineering practice for clarity, uniformity, and completeness. In the event that work is not performed to the satisfaction of the District and does not conform to the requirements of this Agreement or any applicable industry standards, the Consultant shall, without additional compensation, promptly correct or revise any errors or deficiencies in its designs, drawings, specifications, or other services within the timeframe specified by the District Liaison. The District may charge to

Consultant all costs, expenses and damages associated with any such corrections or revisions.

- C. All drawings, figures, and other work shall be produced by Consultants and Subconsultants using the District standard software or software approved in writing. Electronic files shall be subject to an acceptance period of fourteen (14) calendar days during which the District shall perform appropriate acceptance tests. Consultant shall correct any discrepancies or errors detected and reported within the acceptance period at no additional cost to the District.
 - D. All professional services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the District, its agents, and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the District. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the District, (b) subsequently becomes publicly known to the Consultant other than through disclosure by the District.
2. Compensation. Total compensation shall be paid to Consultant for services in accordance with the following provisions:
- A. Total Compensation.

Total compensation shall be in an amount not to exceed _____ (\$_____). Total compensation to Consultant including burdened labor (salaries plus benefits), overhead, profit, direct costs, and subconsultant(s) fees and costs shall not exceed the sum set forth in Attachment "B" - Fee Proposal.
 - B. Labor.

As a portion of the total compensation to be paid to Consultant, the District shall pay to Consultant a sum equal to the burdened salaries (salaries plus benefits) actually paid by Consultant charged on an hourly-rate basis to this project and paid to the personnel of Consultant. Upon request of the District, Consultant shall provide the District with certified payroll records of all employees' work that is charged to this project.
 - C. Direct Costs.

The District shall pay to Consultant and Sub-Consultants the actual costs of permits and associated fees, travel, and licenses for an amount not to exceed the sum set forth in Attachment "B" - Fee Proposal. The District shall also pay to Consultant actual costs for equipment rentals, leases, or purchases with prior written approval of the District. Upon request, Consultant shall provide to the District receipts and other documentary records to support Consultant's request for reimbursement of these amounts. All incidental expenses shall be included in overhead pursuant to Section 2.A. above.

D. Limitation of Costs.

If, at any time, Consultant estimates the cost of performing the services described in Consultant's Proposal will exceed the not-to-exceed amount of the Agreement, including approved additional compensation, Consultant shall notify the District immediately, and in writing. This written notice shall indicate the additional amount necessary to complete the services. Any cost incurred in excess of the approved not-to-exceed amount, without the express written consent of the District's authorized representative shall be at Consultant's own risk. This written notice shall be provided separately from, and in addition to any notification requirements contained in the Consultant's invoice and monthly progress report. Failure to notify the District that the services cannot be completed within the authorized not-to-exceed amount is a material breach of this Agreement.

E. Reallocation of Total Compensation.

The District, by its General Manager, shall have the right to approve a reallocation of the incremental amounts constituting the total compensation, provided that the total compensation is not increased.

3. Payment

A. Monthly Invoice.

Consultant shall include in its monthly invoice, a detailed breakdown of costs associated with the performance of any corrections or revisions of the work for that invoicing period. Consultant shall allocate costs in the same manner as it would for payment requests as described in this Section of the Agreement. Consultant shall warrant and certify the accuracy of these costs and understand that submitted costs are subject to Audit Provisions as provided herein.

B. If the District determines that the work under this Agreement or any specified project element hereunder, is incomplete and that the amount of payment is in excess of:

- i. The amount considered by the District's Liaison to be adequate for the protection of the District; or
- ii. The percentage of the work accomplished for each project element.

The District Liaison may, at the District's sole discretion, retain an amount equal to that which ensures that the total amount paid to that date does not exceed the percentage of the completed work for each project element or the project in its entirety.

4. California Department of Industrial Relations ("DIR") Registration and Record of Wages

A. To the extent Consultant's employees and/or subconsultants who will perform work for which Prevailing Wage Determinations have been issued by the DIR and as more specifically defined under Labor Code Section 1720 et seq, Consultant and subconsultants shall comply with the registration requirements of Labor Code

Section 1725.5. Pursuant to Labor Code Section 1771.4, the Work is subject to compliance monitoring and enforcement by the DIR.

- B. The Consultant and subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code Section 1776 and shall submit payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a) (3). Penalties for non-compliance with the requirements of Section 1776 may be deducted from progress payments per Section 1776.
- C. Pursuant to Labor Code Section 1776, the Consultant and subconsultants shall furnish a copy of all certified payroll records to District and/or general public upon request, provided the public request is made through District, the Division of Apprenticeship Standards, or the Division of Labor Enforcement of the Department of Industrial Relations.
- D. The Consultant and subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulation Section 16461(e).

5. Insurance

A. General

- i. Insurance shall be issued and underwritten by insurance companies acceptable to the District.
- ii. Insurers must have an "A-" Policyholder's Rating, or better, and Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best's Guide Rating. However, the District will accept State Compensation Insurance Fund, for the required policy of Worker's Compensation Insurance subject to the District's option to require a change in insurer in the event the State Fund financial rating is decreased below "B". Further, the District will require Consultant to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) days of written notice to Consultant, by the District or its agent.
- iii. Coverage shall be in effect prior to the commencement of any work under this Agreement.

B. General Liability

The Consultant shall maintain, during the life of this Agreement, including the period of warranty, Commercial General Liability Insurance written on an occurrence basis providing the following minimum limits of liability coverage:

- i. One Million Dollars (\$1,000,000) per occurrence with One Million Dollars (\$1,000,000) aggregate. Said insurance shall include coverage for the following hazards: broad form property damage, blanket contractual liability, independent Consultant liability, mobile equipment, owners and Consultant protective liability, and cross liability and severability of interest

clauses. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement(s).

C. Umbrella Excess Liability

The minimum limits of general liability and Automotive Liability Insurance required, as set forth herein, shall be provided for through either a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. Umbrella excess liability coverage shall be issued with limits of liability which, when combined with the primary insurance, will equal the minimum limits for general liability and automotive liability.

D. Automotive / Vehicle Liability Insurance

The Consultant shall maintain a policy of Automotive Liability Insurance on a comprehensive form covering all owned, non-owned, and hired automobiles, trucks, and other vehicles providing the following minimum limits of liability coverage: Combined single limit of One Million Dollars (\$1,000,000) or alternatively, One Million Dollars (\$1,000,000) per person for bodily injury and One Million Dollars (\$1,000,000) per accident for property damage. A statement on an insurance certificate will not be accepted in lieu of the actual additional insured endorsement.

E. Workers' Compensation Insurance

The Consultant shall provide such Workers' Compensation Insurance as required by the Labor Code of the State of California in the amount of the statutory limit, including Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence. Such Worker's Compensation Insurance shall be endorsed to provide for a waiver of subrogation in favor of the District. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements unless the insurance carrier is State of California Insurance Fund and the identifier "SCIF" and endorsement numbers 2570 and 2065 are referenced on the certificate of insurance. If an exposure to Jones Act liability may exist, the insurance required herein shall include coverage for Jones Act claims.

F. Cancellation Notice

Each insurance policy required herein shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior written notice. The policy shall not be cancelled until thirty (30) days after written notice is given to the District except for nonpayment of premium, which shall require not less than ten (10) days written notice to the District. Should there be changes in coverage or an increase in deductible or SIR amounts, the Consultant shall send to the District a certified letter which includes a description of the changes in coverage and/or any increase in deductible or SIR amounts. The certified letter must be received by the District as soon as practicable if the change would reduce coverage or increase deductibles or SIR amounts or otherwise reduce or limit the scope of insurance coverage provided to the District.

G. Subconsultants

The Consultant shall be responsible to establish insurance requirements for any Subconsultant hired by the Consultant. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subconsultant's operations and work.

H. Limits are Minimums

If the Consultant maintains higher limits than any minimums shown above, then District requires and shall be entitled to coverage for the higher limits maintained by Consultant.

6. Scope Changes.

In the event of a change in the Scope of Work, requested by District, the parties hereto shall execute an amendment to this Agreement setting forth with particularity all terms of the new Agreement, including but not limited to any additional Consultant's fees.

7. Project Team and Subconsultants.

Consultant shall provide to District, prior to execution of this Agreement, the names and full description of all Subconsultants and Consultant's project team members anticipated to be used on this project by Consultant. Consultant shall include a description of the scope of work to be done by each Subconsultant and each Consultant's project team member. Consultant shall include the respective compensation amounts for Consultant and each Subconsultant on a per-project-element basis, broken down as indicated in Section 2 - Compensation.

8. Legal Relationship Between Parties

The legal relationship between the parties hereto is that of an independent Consultant and nothing herein shall be deemed to make Consultant an employee of the District.

9. Notices

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be affected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid. Notices shall be mailed to the District and Consultant as provided above.

All communication regarding the Scope of Work, will be addressed to the Project Liaison. Direction from other District's staff must be approved in writing by the District's Liaison prior to action from the Consultant.

10. Termination

The District may terminate this Agreement at any time, without cause, upon giving thirty (30) days written notice to Consultant. In the event of such termination, Consultant shall be entitled to compensation for work performed on a prorated basis through and including the effective date of termination.

Consultant shall be permitted to terminate this Agreement upon thirty (30) days written notice only if Consultant is not compensated for billed amounts in accordance with the provisions of this Agreement, when the same are due.

Notice of termination shall be mailed to the District and/or Consultant in accordance with the Notices provisions contained herein.

11. Documents and Study Materials

The documents and study materials for this project shall become the property of the District upon the termination or completion of the work. Consultant agrees to furnish to the District copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement.

12. Compliance

Consultant certifies by the execution of this Agreement that it pays employees not less than the minimum wage as defined by law, and that it does not discriminate in its employment with regard to race, color, religion, sex or national origin; that it is in compliance with all federal, state and local directives and executive orders regarding non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

13. Agreement Execution Authorization

Both the District and Consultant do covenant that each individual executing this document by and on behalf of each party is a person duly authorized to execute agreements for that party.

14. Dispute Resolution

In the event of a dispute arising between the parties regarding performance or interpretation of this Agreement, the dispute shall be resolved by binding arbitration under the auspices of the Judicial Arbitration and Mediation Service ("JAMS"), or similar organization or entity conducting alternate dispute resolution services.

15. Attorney's Fees, Costs and Necessary Disbursements

If any action at law or in equity or if any proceeding in the form of an Alternative Dispute Resolution (ADR) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

16. Progress Reports

Monthly progress reports shall be submitted for review by the tenth day of the following month and must include as a minimum:

- Current activities,
- Future activities,
- Potential items that are not included in the Scope of Work,

- Concerns and possible delays,
- Percentage of completion, and
- Budget status.

17. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense and with legal counsel approved by the District, which approval shall not be unreasonably withheld), protect and hold harmless the District and all of District's officers, directors, employees, Consultants, and agents (collectively the "Indemnified Parties"), from and against any and all claims, damages, liabilities, causes of action, suits, arbitration awards, losses, judgments, fines, penalties, costs and expenses including without limitation, reasonable attorneys' fees, disbursements and court costs, and all other professional, expert or Consultants fees and costs and the District's general and administrative expenses (individually, a "Claim", or collectively, "Claims") which may arise from or are in any manner related, directly or indirectly, to any work performed, or any operations, activities, or services provided by Consultant in carrying out its obligations under this Agreement to the extent of the negligent, recklessness and/or willful misconduct of Consultant, its principals, officers, agents, employees, Consultant's suppliers, Consultants, subconsultants and/or anyone employed directly or indirectly by any of them. Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from:

- A. The sole or active negligence or willful misconduct of the Indemnified Parties; or
- B. A natural disaster or other act of God, such as an earthquake; or
- C. The independent action of a third party who is neither one of the Indemnified Parties nor the Consultant, nor its principal, officer, agent, employee, nor Consultant's supplier, Consultant, subconsultant nor anyone employed directly or indirectly by any of them.

The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

18. Force Majeure

Neither party shall have any claim or right against the other for any failure of performance where such failure of performance is caused by or is the result of causes beyond the reasonable control of the other party due to any occurrence commonly known as a "force majeure," including, but not limited to: acts of God; fire, flood, or other natural catastrophe; acts of any governmental body; labor dispute or shortage; national emergency; insurrection; riot; or war.

19. Independent Consultant.

- A. Status. The Parties hereby acknowledge that in rendering the Services provided hereunder, Consultant shall be deemed to be an independent Consultant and shall

not be deemed in any way an agent, partner or joint venturer of the District. Consultant acknowledges and agrees that, as an independent Consultant, it is solely responsible for the payment of any and all taxes and/or assessments imposed on account of payment to Consultant or the performance of Services by Consultant pursuant to this Agreement.

- B. Agency Restrictions. Consultant understands and agrees that Consultant shall not represent itself to third parties to be the agent, employee, partner or joint venturer of the District. Furthermore, Consultant shall not make any statements on behalf of or otherwise purporting to bind the District in any contract or otherwise related agreement. Consultant further agrees and acknowledges that Consultant does not have the authority to and shall not sign any contract on behalf of the District or any of its subsidiaries or affiliates. Consultant shall not obligate the District or any of its subsidiaries or affiliates to do any other act that would bind the District or any of its subsidiaries or affiliates in any manner.

20. Miscellaneous.

- A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof.
- B. No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.
- C. Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.
- D. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement
- E. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California. Venue for any suit, action or proceeding shall exist exclusively in the courts having jurisdiction over the County of San Bernardino.
- F. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- G. Waivers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

- H. Amendment. Except as expressly provided otherwise herein, this Agreement may not be amended without the express written consent of both Parties.
- I. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- J. Release of Information and Advertising. Consultant shall not, without the prior written consent of District, make any news release or other public disclosure regarding this Project.
- K. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation.
- L. Attorneys' Fees. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, reasonable expert witness fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

IN WITNESS WHEREOF, the Parties have executed is Agreement to be effective on the day and year first above written.

YUCAIPA VALLEY WATER DISTRICT

Dated: _____ By: _____
Chris Mann, Board President

CONSULTANT

Dated: _____ By: _____

Print Name: _____

Print Title: _____

Attachment A - Scope of Work

Attachment B - Fee Proposal

Attachment C - Schedule