Request for Qualifications

Environmental Attorney/Endangered Species Act Expert

In support of the Upper Santa Ana River Habitat Conservation Plan and State and Federal ESA Permitting

San Bernardino Valley Municipal Water District

The Filing Deadline is:
July 28, 2017, 5:00PM
BACKGROUND

The Santa Ana River (SAR) watershed is the largest coastal stream system in Southern California, and is home to dozens of water districts, local jurisdictions, and other stakeholders with a vested interest in the sustainable stewardship (water quality and biological resource protection) and management (storage, conveyance, treatment, flood protection, and recreation) of the watershed. Many of these entities have participated in integrated regional watershed management coordination efforts in the Upper SAR since the 1960s.

Development of the Upper Santa Ana River Habitat Conservation Plan (HCP) was initiated in 2013 under the leadership of the San Bernardino Valley Municipal Water District (Valley District) to seek incidental take coverage under the federal and state endangered species acts for 23 species, including the federally threatened Santa Ana sucker. The HCP participants include the 13 public agencies (Permittees), USFWS, and CDFW (referred to as the Wildlife Agencies) and various environmental organizations. The Permittees are listed in alphabetical order below:

- City of Rialto Public Works (Rialto)
- East Valley Water District (East Valley)
- Inland Empire Utilities Agency (IEUA)
- Metropolitan Water District of Southern California (Metropolitan)
- Orange County Water District (OCWD)
- Riverside Public Utilities (RPU)
- San Bernardino County Flood Control District (Flood Control)
- San Bernardino Municipal Water Department (Water Department)
- San Bernardino Valley Municipal Water District (Valley District)
- San Bernardino Valley Water Conservation District (Conservation District)
- Southern California Edison (SCE)
- West Valley Water District (West Valley)
- Western Municipal Water District of Riverside County (Western)

When public agencies jointly prepare and implement a programmatic HCP, they typically use a co-permittee structure. In this approach, all permittees are named on one permit issued to all agencies jointly. The Upper SAR HCP permit structure will likely follow this co-permittee approach. Both the Plan document and a Memorandum of Understanding
amongst the permittees will delineate the responsibilities of each of the water agencies for HCP implementation, including funding. This approach provides the greatest flexibility in implementation and ensures that all permittees share equally in the obligations and risks associated with the HCP. The group is also tentatively pursuing development of a Joint Powers Authority (JPA) to implement the HCP.

Valley District, on behalf of the HCP permittees, is requesting statements of qualifications from experienced environmental attorneys to provide services in support of the completion, permitting, and implementation of the HCP. Extensive information on the Upper SAR HCP can be found at www.upper SARhcp.com.

DESCRIPTION OF REQUESTED SERVICES

Valley District requests the preparation of Qualifications Package to be submitted as described below. The Qualifications Package should include specific project examples and supporting information related to the following key tasks.

- Serve as HCP permittee liaison with the USFWS solicitor and CDFW attorneys during permit negotiation and plan finalization process.
- Coordinate the internal legal review process with attorneys representing the 13 permittee agencies for our HCP document and the corresponding EIR/EIS.
- Advise the permittees on permit structure and implementation governance.
- Develop an HCP Permittees MOU/MOA to support completing the HCP, facilitate early implementation of HCP conservation actions, and describe cost sharing and other arrangements to implement the HCP.
- Assist in the creation of a JPA to implement the HCP, including drafting JPA formation documents.

RFQ SUBMITTAL SCHEDULE

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<thead>
<tr>
<th>Date</th>
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<tr>
<td>7/10/17</td>
<td>Release of Request for Qualifications</td>
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<tr>
<td>7/28/17 by 5:00pm</td>
<td>Deadline for Valley District Receipt of Qualifications</td>
</tr>
<tr>
<td>8/11/2017</td>
<td>Notice of Interviews (optional)</td>
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<td>Interviews (optional)</td>
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<tr>
<td>9/19/2017</td>
<td>Board of Directors Approval/Award Contract</td>
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SUBMITTAL OF QUALIFICATIONS REQUIREMENTS

1) PROPOSAL CONTENTS

a) Table of Contents

b) Body (may not exceed 8 pages in length with a minimum font size of 12 point)
   i) Understanding of Scope of Services. A clear statement of the scope of services to be provided.
   ii) Qualifications and Related Experience. The proposal should identify the Lead Counsel primarily responsible for providing legal services to the HCP permittees and other attorney and staff that would be assigned to the HCP legal matters. Please include multiple examples of related projects and the specific roles of the individual(s) included in this RFQ.
   iii) Client Reference List. Provide the name and contact information for three (3) professional references on projects included in the Related Experience, above.
   iv) Conflicts of Interest(s). This section should disclose any potential conflicts of interest that individual(s) may have in performing these services on behalf of the HCP Permittees.
   v) Any other information that may assist Valley District in making its determination in the selection process. Please include this section if further pertinent data and information is found necessary by the proposer to help Valley District make its selection and is not included elsewhere in the RFQ.
   vi) Fee schedule. Please state the hourly rate(s), together with cost reimbursement(s), you propose for rendering legal services to Valley District, including rates for Lead Counsel and all other attorneys and staff. Fee schedule shall be organized to follow the general tasks in the Description of Services.

c) Appendix. Resumes and Qualifications of Key Personnel. Please include the qualifications, training, certification of Lead Counsel and all other attorneys and staff who will perform the services outlined in this document. Please limit individual experience to similar projects.

Eight (8) hardcopies and a PDF version (may be submitted via email) of the proposal must be received by the filing deadline. Valley District accepts no responsibility for costs incurred by any individual or firm submitting a proposal pursuant to this RFQ. The price specified must remain firm and irrevocable for 60 days following the RFQ submission date. All proposals become property of Valley District and will not be returned.
Please submit your Qualification Package to:
Heather Dyer
Water Resources Project Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, CA 92408

All questions regarding this RFQ must be submitted in writing via email to the following email address: heatherd@sbvmwd.com. Answers may be sent via email to the entire distribution list for this RFP.

2) INTERVIEW

Interviews may be scheduled with select firms following initial review of the proposals and will take place on the date specified in the introduction. Interview must be attended by the actual team members that will work on the project including any sub-consultants. The interview will consist of an approximately 20-minute presentation by the legal team followed by a 20-minute question and answer period.

3) EVALUATION PROCESS AND CRITERIA

Evaluation of proposals shall be based upon a competitive selection process. Review and evaluation of the submitted proposals will be based upon the following criteria:

a) Project approach (10%)
b) Experience on similar projects and/or projects of similar complexity and size (40%)
c) Demonstrated ability to perform the tasks outlined in this RFQ (40%)
d) Interview (10%)
e) Fee (not an overriding consideration)

Valley District reserves the right to issue additional RFQs, to modify or to abandon this project before award of contract, and to reject any or all proposals.

4) CONTRACT

A sample copy of Valley District’s proposed Consulting Services Agreement is attached for your information. The selected consultant is expected to execute the agreement.
CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement ("Agreement") is entered into to be effective as of ________________, 2017 ("Effective Date"), by and between the San Bernardino Valley Municipal Water District, a water district organized and existing under the California Municipal Water District Law of 1911 ("District"), and ________________ ("Consultant"). District and Consultant may be collectively referred to as the "Parties" and individually as a "Party." Consultant agrees to furnish certain professional legal and consulting services to District, upon the following terms:

JOB NAME:

JOB NUMBER:

1. Term. The term ("Term") of this Agreement shall commence on the Effective Date and shall automatically terminate upon earlier of ________________, 20____, or the successful completion of Services, unless earlier terminated.

2. Consulting Services and Responsibilities. During the term of this Agreement, Consultant shall provide legal and consulting services to the District, which shall include those services and activities specifically identified in the Consultant's proposal for the Project, or such other services requested by District, each of which is attached to this Agreement as Exhibit "A" and by this reference incorporated herein ("Services"). All Services provided under this Agreement shall be performed in a manner consistent with current industry standards by individuals who possess the proper skill and knowledge necessary to effectively complete the Services. The performance of all Services and obligations hereunder shall be made in accordance with all federal, state, and local laws, rules, regulations, or ordinances applicable to the Services or obligations.

3. Additional Services. In the event additional services, which are not specifically included in Exhibit "A", are desired or needed, Consultant shall identify and describe such additional services, including costs, schedule for completion and seek the written approval of District ("Task Order"). The compensation paid to Consultant for such Task Order shall be mutually agreed upon in writing by the Parties prior to the performance of the Task Order. Consultant shall be solely responsible for the costs and expenses associated with any Task Order, including Task Order already performed, that have not been specifically agreed upon in writing by Consultant and District. As used in this Agreement, the term "Services" shall include Task Orders.

4. Qualifications. Consultant represents and warrants to District that it has the qualifications, experience, licenses, and facilities necessary to properly perform the Services in a competent and professional manner.

5. Licenses. Consultant shall, in accordance with applicable laws and ordinances, obtain and maintain at its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required permit or license may result in immediate termination of this Agreement.

6. Standard of Care. Consultant shall perform all Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and competence ordinarily exercised by members of the profession currently practicing under similar conditions.
7. **Compensation and Expenses.**

7.1 **Compensation.** As compensation for the Services to be rendered by Consultant, District shall pay Consultant an amount based on the time and materials incurred by Consultant, inclusive of sub-consultants and miscellaneous expenses ("Compensation"), which amount shall not exceed ______________________ ($__________________) ("Maximum Fee"), as set forth on the compensation schedule attached as Exhibit “B” hereto and incorporated herein by this reference. To the extent different payment terms are set forth in a Task Order that conflict with the general payment terms set forth in Exhibit “B”, the terms in the Task Order shall control. Consultant acknowledges and agrees that in no event shall Consultant receive or have a claim of any kind for any payment in excess of the Maximum Fee for any work, including Task Orders, performed under this Agreement, unless such amount exceeding the Maximum Fee is specifically approved in writing by District.

7.2 **Invoices.** Each month Services are rendered, Consultant shall deliver an invoice to District, for work actually performed, which shall include, at a minimum: (i) the project name; (ii) District’s job number; (iii) Consultant’s point of contact for billing questions; (iv) basis of billing; (v) total contract value; (vi) total billing to date; (vii) amount remaining in contract; and (viii) estimated percentage of completion at time of billing. Attached to each invoice, Consultant shall also include a monthly summary of work actually performed during the billing period. Provided there is no dispute with the invoice, District shall pay Consultant within thirty (30) days of receiving the invoice. In the event District disputes an invoice, District shall provide a written explanation of the dispute to Consultant within thirty (30) days of receiving the invoice. District and Consultant shall cooperate to resolve any disputed amount. District shall not be penalized for any reasonable dispute and shall not be obligated to pay any amount in dispute until a dispute has been resolved.

7.3 **Expenses.** District shall pre-approve in writing each reasonable and necessary expense that Consultant intends to seek reimbursement for, which expenses are directly related to the performance of the Services. If pre-approved, such expenses for reasonable and necessary travel, lodging, or miscellaneous expenses incurred in the performance of this Agreement will be reimbursed to Consultant in accordance with District’s general reimbursement policy. Consultant shall submit an invoice of all incurred expenses accompanied by adequate supporting documentation or transaction receipts. Invoices that fail to include reasonable supporting documentation or receipts will not be honored and District will have no obligation of any kind to reimburse Consultant for such expenses.

8. **Project Data.** Consultant shall be exclusively responsible for obtaining from the appropriate sources, persons or third parties, all data and information necessary for the proper, timely and complete performance and satisfaction of the Services.

9. **Project Management.**

9.1 **Representative of Consultant.** ______________________ ("Consultant’s Representative") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant’s Representative without first notifying District in writing of Consultant’s intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Consultant’s Representative is unacceptable, Consultant shall submit alternate candidates until District determines the substitute Consultant Representative is acceptable.
9.2 **Representative of District.** ______________________________________ (“District’s Representative”) is hereby designated to represent District and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. District may substitute District’s Representative at any time upon written notice to Consultant.

10. **Work Product; Confidential Information.**

10.1 **Work Product.** Consultant shall provide to District, and such other consultants approved by District, all work product, works in progress or other deliverables developed from or associated with the Services or the Project (collectively, “Work Product”). Upon completion of the Services, Consultant shall provide one reproducible physical copy and one electronic copy of all final work products described in Exhibit “A”, in such forms acceptable to District. Consultant acknowledges that all work performed or prepared for District by Consultant hereunder, including without limitation all data, reports, models, working notes, drawings, designs, improvements, trademarks, patents, copyrights (whether or not registered or patentable) and specifications developed or prepared by Consultant in connection with, or related to such Services shall become the sole and exclusive property of District, unless specifically otherwise agreed upon in writing by District and Consultant. Consultant hereby unconditionally assigns, transfers and conveys to District all rights, interests and claims of any kind related thereto, including copyright. Consultant shall promptly disclose such work product to District and, at the District’s expense, perform all actions reasonably requested by District (whether during or after the Term) to establish and confirm such ownership (including, without limitation, executing any necessary assignments, consents, powers of attorney and other instruments).

10.2 **Confidential Information.** Consultant acknowledges that during the Term it may receive or have access to certain information, observations, and data (including, but not limited to, trade secrets, designs, ideas, products, research, software, and financial data) concerning the business or affairs of District (“Confidential Information”) which is, and shall remain the property of District. Consultant shall take all reasonably appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. Consultant agrees that it shall not disclose to any unauthorized person or use for its own purposes any Confidential Information without the prior written consent of District, unless and to the extent that the Confidential Information becomes generally known to and available for use by the public other than as a result of Consultant’s acts or omissions. Consultant shall deliver to District at the termination or expiration of the Term, or at any other time District may request, all memoranda, notes, plans, records, reports, computers and computer records, printouts and software and other documents and data (and copies thereof) embodying or relating to the Confidential Information, work product (as discussed in Section 10.1) or the business of District, which Consultant may then possess or have under its control. Neither party shall be liable for disclosure or use of Confidential Information which: (a) was known by the receiving party at the time of disclosure due to circumstances unrelated to this Agreement; (b) is generally available to the public without breach of this Agreement; (c) is disclosed with the prior written approval of the disclosing party; or (d) is required to be released by applicable law or court order (provided that Disclosing Party is given prompt written notice thereof and is allowed to exhaust all reasonable legal remedies to maintain the confidentiality of the information).

11. **Records.** All records, documents or other instruments evidencing all labor costs, payroll costs or other expenses incurred in connection with Consultant’s performance of the Services shall be kept in a manner consistent with industry standards and practices and made available to District upon written request. Retention of the records contemplated by this Section 11 shall be retained for a period
of no less than four (4) years from the date of final billing or termination of this Agreement, whichever shall first occur.

Consultant further agrees to maintain all design calculations and final work product on file in legible and readily accessible form. A copy of such material shall be available to District, at District’s sole cost and expense, and the originals of such materials and items, including any additions, amendments or modification thereto shall not be destroyed by Consultant unless District fails to object to such destruction upon Consultant providing District with sixty (60) days advance written notice, indicating that such material is scheduled to be destroyed.

12. **Independent Contractor.**

12.1 **Status.** The Parties hereby acknowledge that in rendering the Services provided hereunder, Consultant shall be deemed to be an independent contractor 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 contractor, 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.

12.2 **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.

13. **Further Assurances.** Consultant shall furnish District with any documents or records that the District reasonably believes necessary to properly and timely carry out the Consultant’s Services. District shall first tender written notice to Consultant regarding any documents or records that it reasonably believes necessary to properly carry out Consultant’s Services. Consultant shall then have ten (10) days from the receipt of such notice to provide the District with the requested documents or records.

14. **Termination.** At any time during the course of this Agreement, District may terminate this Agreement, in whole or in part, with or without cause, upon ten (10) days’ written notice to Consultant. Upon receipt of the termination notice, Consultant shall promptly discontinue Services except to the extent the notice directs otherwise. In the event District renders such written termination notice to Consultant, Consultant shall be entitled to compensation for all Services properly rendered prior to the effective date of the notice and all further Services set forth in the notice. District shall be entitled to reimbursement for any compensation paid in excess of Services properly rendered and shall be entitled to withhold compensation for defective Services or other damages caused by Consultant’s work. Consultant acknowledges District’s right to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might arise from District’s termination of this Agreement. Consultant shall deliver to District and transfer title (if necessary) to all completed Work Product, including work in progress, drafts, documents, plans, forms, maps, products, graphics, computer programs, and reports. District shall not be liable for any costs other than the charges or portions thereof
which are specified herein. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of Services.

15. **Indemnification.** Consultant shall indemnify, defend, and hold harmless District and its directors, officials, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns (collectively, “**Indemnitees**”), from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, judgments, fines, penalties, and deficiencies, including reasonable attorneys’ fees (collectively, “**Claims**”), arising out of or related to any goods, products, or services made, furnished, or otherwise provided, or alleged to be made, furnished, or otherwise provided, by Consultant or Consultant’s employees, agents, contractors, subcontractors, representatives, successors, suppliers, or anyone acting on behalf of Consultant in connection with the performance of Consultant’s Services; provided, however, that Consultant’s indemnification obligations hereunder shall not apply to any Claims arising solely out of the gross negligence or intentional acts of District. Consultant’s indemnification obligations shall not be affected by any insurance provisions or limitations of liability contained in this Agreement. Consultant’s indemnification obligations shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement.

The indemnification responsibility of Consultant, with respect to the Services shall exist and continue regardless of the extent to which District may have reviewed and approved the Services performed by Consultant, except that Consultant shall not be responsible for claims attributable to the Services in any case in which the claim is attributable to a decision made by District with respect to which Consultant and District have specifically agreed in writing that District shall be the responsible party.

16. **Liability and Insurance.**

16.1 **Liability.** Consultant shall assume responsibility and liability for any damage, loss, or injury of any kind or nature whatsoever to any person or property, to the extent such damage, loss, or injury was caused by or resulting from an error, omission, or negligent or willful act caused by Consultant or its partners, directors, officers, employees, agents, or representatives in connection with the performance of the Services under this Agreement.

16.2 **Policies of Insurance.** Consultant shall provide, pay for, and maintain in force at all times during the performance of the Services hereunder, the policies of insurance set forth below. Consultant shall provide original certificates of insurance and endorsements evidencing coverage on forms reasonably acceptable to District prior to commencing any Services under this Agreement and promptly upon request thereafter. The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy, substitute for, or otherwise limit Consultant’s indemnification obligations under this Agreement. Consultant acknowledges that the insurance coverage and the policy limits set forth in this Agreement constitute the minimum coverage and policy limits required.

16.2.1 Commercial General Liability Insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with a combined single limit of $1,000,000 per occurrence and $2,000,000 in the aggregate.

16.2.2 Automobile Liability Insurance for bodily injury or death and property damage, including coverage for owned, non-owned, leased, and hired auto, with a minimum $1,000,000 per person and $1,000,000 per occurrence.

16.2.3 Workers’ Compensation Insurance as required by applicable law.
16.2.4 Employers’ Liability Insurance with limits of at least $1,000,000 per occurrence.

16.2.5 Professional Liability Insurance, with policy limits of no less than $1,000,000 (combined single limit per claim and annual aggregate).

16.3 Policy Requirements. All insurance policies required pursuant to this Agreement shall:

16.3.1 For all liability policies, include an additional insured endorsement at least as broad as ISO CG 2010 07 04 and consistent therewith, naming “San Bernardino Valley Municipal Water District and its directors, officials, officers, employees, agents, affiliates, subsidiaries, predecessors, successors, and assigns” as additional insureds.

16.3.2 Be on an “occurrence” basis, not a claims-made basis. The foregoing policies must contain an aggregate limit not less than the occurrence limit. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

16.3.3 Be primary and non-contributory with any insurance programs carried by or available to District.

16.3.4 Waive all rights of subrogation and contribution against District and its insurers.

16.3.5 Provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days’ written notice of such revision, cancellation or reduction shall have been given to District. In the event any policies of insurance are revised, cancelled or reduced, Consultant shall prior to the revision, reduction or cancellation date, submit evidence of new insurance to District complying with this Agreement.

16.3.6 Be issued by insurance companies which are qualified to do business in the State of California and which have a current rating of A-VIII or better in Best’s Insurance Report.

16.4 Subconsultant Insurance. In the event Consultant subcontracts any portion of its performance, the agreement between Consultant and the subconsultant shall require the subconsultant to carry the same policies of insurance that Consultant is required to maintain pursuant to this Agreement.

17. Representations and Warranties. Each Party individually represents and warrants the following:

17.1 Each Party is duly organized, validly existing and in good standing under the laws of the state of formation or incorporation and has all requisite power and authority to conduct the business with which it conducts and proposes to conduct;

17.2 All action on the part of each Party necessary for the authorization, execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated herein, has been properly taken and obtained in compliance with applicable law;
17.3 Each Party has not entered into nor will either enter into any agreement (whether written or oral) in conflict with this Agreement or which would prevent a Party from performing its obligations under this Agreement; and

17.4 Each Party has the contacts and expertise, and will reasonably allocate its financial and time resources on a reasonable best efforts basis to enable it to perform its obligations hereunder.

18. Miscellaneous.

18.1 Compliance with Applicable Laws. Consultant shall, in the performance of this Agreement, comply with all federal, state and local laws and regulations and orders issued under any applicable law.

18.2 Setoffs and Counterclaims. All claims for moneys due or to become due to Consultant shall be subject to deduction by District for any setoff or counterclaim arising out of this or any other of District’s agreements with Consultant.

18.3 Disputes. If any disputes should arise between the Parties concerning the Services to be performed under this Agreement, the payments to be made, or the manner of accomplishment of the Services, District will have the option to suspend any and all Services being provided at the time the dispute arises, unless and until settlement of said dispute.

18.4 Assignment and Consultants. Consultant shall not assign or subcontract any portion of the Services to be performed under this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of District, which consent may be withheld in District’s sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void. Subject to the foregoing, this Agreement shall be binding upon the heirs, administrators, successors and permitted assigns of District and Consultant. Consultant’s use of approved subconsultants shall not relieve Consultant of its responsibilities and obligations set forth herein.

18.5 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.

18.6 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.

18.7 Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

18.8 Conflict of Interest. Consultant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

18.9 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.
18.10 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given two (2) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to District: San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Attn: ________________  
Telephone: (909) 387-9256

If to Consultant: _____________________________  
_______________________________  
Attn: _____________________________  
Telephone: _____________________________

18.11 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.

18.12 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.

18.13 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.

18.14 Amendment. Except as expressly provided otherwise herein, this Agreement may not be amended without the express written consent of both Parties.

18.15 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.

18.16 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.

18.17 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.

18.18 **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.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties hereby execute this Agreement on the date first written above.

DISTRICT:

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT,
a water district organized and existing under the California Municipal Water District Law of 1911

[Exhibit purposes only; not for execution]
By:_________________________________
Name: Douglas Headrick
Its: General Manager

CONSULTANT:

____________________________________,
a ______________________________

[Exhibit purposes only; not for execution]
By:_________________________________
Name: ______________________________
Its: ______________________________
EXHIBIT “B”

COMPENSATION SCHEDULE