

September 29, 2010

CONTRACTOR COMPANY NAME
STREET ADDRESS
CITY, STATE ZIP

SMUD PROFESSIONAL SERVICES CONTRACT NO. 45000XXXXX
Choose One or Blank

This Agreement by and between the Sacramento Municipal Utility District (hereinafter "SMUD"), and **CONTRACTOR COMPANY NAME** (hereinafter "Contractor"), sets forth the terms and conditions under which the Contractor will provide the services described herein. SMUD and the Contractor agree as follows:

1. SCOPE OF SERVICES

The Contractor agrees to perform Branding/Campaign Implementation. SMUD is interested only in the results to be achieved by Contractor hereunder. SMUD has no interest in the manner or method Contractor may employ to accomplish the results to be achieved by Contractor hereunder, which shall be left to the sole and exclusive direction and control of Contractor provided that such manner and method conforms with the standards for performance set forth in this Agreement and with all laws, rules and/or regulations applicable to the performance of such services.

Implement SMUD's rebranding effort developed and designed by Siegel+Gale and/or SMUD. Develop, design, produce and/or implement the coordination and delivery of the employee and customer/community communication elements identified and developed by Siegel+Gale and/or SMUD in the Branding/Strategic Platform and the Branding/Creative Platform.

- A. **Comprehensive Internal Employee Brand Launch Campaign.** – Oversee the development, design, production, coordination and/or implementation of a rebranding campaign that engages SMUD's diverse group of 2,200 employees and addresses all employee communications touch point elements identified in the Branding/Strategic Platform and Branding/Creative Platform developed by Siegel+Gale and/or SMUD. All campaign elements art will be developed based on the new brand strategy and creative strategy documents, guidelines, plans and design templates. The following is a list of likely items to be developed and/or produced by the Branding/Campaign Implementation Contractor:

- Employee Brand Launch Event
- Employee Brand Video

- Employee Intranet Web Site
- Employee Communications
- Employee Newsletter Article
- Employee Wall Mural
- Giveaways
- Internal SMUD Signage

B. Comprehensive External Customer/Community Brand Launch Campaign. – Oversee the development, design, production, coordination and/or implementation of a rebranding campaign that engages and includes SMUD’s diverse group of external customer and community segments and addresses all customer/community communications touch point elements identified in the Branding/Strategic Platform and Branding/Creative Platform developed by Siegel+Gale and/or SMUD. These external segments include: eight residential customer segments, small, middle and large commercial customer segments, multi-cultural community segments, hard-to-reach customer groups, English and non-English speaking customers, key opinion leaders, community organizations and regional partners. All campaign elements art will be developed based on the new brand strategy and creative strategy documents, guidelines, plans and design templates. The following is a list of likely items to be developed and/or produced by the Branding/Campaign Implementation Contractor:

- SMUD Vehicle Signage
- SMUD Uniforms
- SMUD.org Website
- Television Commercial
- Print Ads – Residential, Commercial, Trade
- Radio Commercial
- Web Display Ads – Residential, Commercial, Trade
- Outdoor Ads
- Social Media – Residential & Commercial
- External SMUD Signage
- Stationery
- Customer Service Residential Brochure

- Customer Service Commercial Brochure
- Community Open House
- Tradeshow/Event Displays

2. TERM OF AGREEMENT

The term of this Agreement shall be from _____, to _____, unless changed by mutual written agreement of the contracting parties.

3. CONTRACT MANAGEMENT

The Contractor shall report to and receive work assignments from SMUD's Contract Manager.

4. NOTICE TO PROCEED

- A. The Contractor shall not commence work hereunder until issued written Notice to Proceed from the Contract Manager which shall be issued at the earliest practical date after execution of the Contract documents and acceptance of any required bonds, certifications, affidavits and evidence of insurance. Contractor shall, upon receipt of Notice to Proceed commence, with diligence, performance of Contract work.
- B. If the scope of services set forth in Section 1 of this Agreement is of a recurring nature, the Contractor shall provide the Contract Manager with no less than twenty-four (24) hours advance notice of the commencement of any services provided hereunder.
- C. All material and aspects of services provided hereunder shall be subject to inspection, examination and testing by the Contract Manager, or his/her designee, at any time during the term of this Agreement. The Contractor shall provide and maintain proper facilities and safe access for such inspections or testing. Should tests prove the material or services in question are defective or inadequate, the cost of the tests shall be borne by and charged to the Contractor.
- D. The Contract Manager or his/her designee shall have the right to reject defective material and services provided hereunder. Rejected services shall be corrected and rejected material shall be replaced with proper material, to the satisfaction of the Contract Manager and without charge to SMUD. The Contractor shall promptly segregate and remove any rejected material. If the Contractor fails to proceed at once with the replacement of rejected material or the correction of defective services, SMUD may, at its sole discretion, replace such material or correct such services, the charges and cost thereof are to be borne and charged to the Contractor.

5. SUBCONTRACTS

Substitution of any subcontractor requires prior written approval from SMUD.

Contractor shall comply with the SEED participation commitments shown on Contractor's **DESIGNATION OF PRIME CONTRACTOR, SUBCONTRACTORS AND SUPPLIERS** form which is included as an Appendix to this Agreement and by this reference is made a part hereof.

6. PERSONNEL

All Contractor personnel assigned to this Agreement shall be approved by SMUD prior to their assignment to contract activities. The Contractor shall confirm that the technical qualifications of all personnel assigned to this Contract meet the applicable industry standards. The qualifications standards and procedures used to provide personnel to perform required services under this Agreement shall be made available for SMUD review upon request. The Contractor shall ensure that, to the extent within his control, the personnel approved will remain on the project for the full term of the assigned task.

7. PERFORMANCE STANDARDS

Services shall be performed in accordance with the terms of this Agreement, applicable laws and regulations, existing licenses, SMUD procedures and quality assurance standards, and industry technical guidelines. Work in progress, deliverables, and finished products will be reviewed by SMUD for completeness, compliance with required standards, and responsiveness to contract requirements.

The Contractor warrants that the services provided hereunder shall conform with the highest standard of care and practice appropriate to the nature of the technical and professional services rendered, that the personnel furnishing said services shall be qualified and competent to perform the services assigned to them, and that the recommendations, guidance, and performance of such personnel shall reflect their best professional knowledge and judgment, but makes no other warranty, express or implied. The Contractor shall be required to correct, at its own cost and expense, all deficiencies in the performance of the contract services which are detected within one year from the date of completion of the defective service.

8. CONTRACT PRICE AND COMMERCIAL TERMS

SMUD will compensate the Contractor as follows:

The total compensation due to Contractor under the terms of this Agreement shall not exceed \$1,000,000.00 for all work performed pursuant hereunder. Said compensation shall constitute SMUD's maximum financial obligation under this Agreement. Any expenditure in excess of this limit will be incurred at the Contractor's sole expense.

SMUD will compensate the Contractor at the rate(s) set forth in the Rate Schedule Appendix to this Agreement

LABOR HOUR BILLING RATES

- The labor-hour billing rate shall include the following:
- Direct payroll costs.
- Benefits and burdens (including insurance, payroll taxes, vacation, holidays, sick leave, etc.).
- All overhead costs.
- Profit.

Rates for Travel & Other Expenses

- A. SMUD approved travel away from Contractor's office shall be reimbursed at cost based on actual receipts for air travel, car rental/taxis, and hotels. SMUD shall also pay the U. S. General Services Administration per diem rate for the Sacramento Area to cover all meals and daily incidental expenses.
http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=15586&channelId=-24653&oid=16365&contentId=17943&pageTypeId=17113&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT
- B. Mileage in Contractor's company car or personal vehicle shall be reimbursed at a rate not to exceed IRS Published Standard mileage rates.
<http://www.irs.gov/newsroom/article/0,,id=200505.00.html>
- C. Material and subcontract cost shall be reimbursed at cost without markup
- D. Other direct and special costs, as approved in advance by SMUD, e.g. film, reproduction, telephone, computer usage, etc., shall be reimbursed at cost.

9. MANNER AND TIME OF PAYMENT

The Contractor shall submit monthly invoices to SMUD.

SMUD highly encourages the use of Electronic Invoicing. Invoices delivered electronically must be:

- In PDF file format and e-mailed to: smudinvoice@smud.org.
- Invoice and supporting documents must be included in a single PDF file.
- SMUD's contract or purchase order number must be clearly displayed on the electronic invoice.
- Multiple invoices may be transmitted in a single email; however, each invoice and its related supporting documents must be contained in a separate PDF file.

Mailed Invoices: Although not the preferred method, SMUD shall maintain for a limited time the ability to receive and pay against hard copy invoices.

If unable to submit electronically, mail invoices to Sacramento Municipal Utility District, Attention: Accounting Department, Mailstop B302, Post Office Box 15830, Sacramento, CA 95852 1830.

SMUD shall process all uncontested invoices within 30 Days following receipt thereof. The Contractor shall maintain books and accounts of personnel and other recoverable costs in accordance with generally accepted accounting principles and practices. [LINK TO PROMPT PAYMENT PROGRAM FORM](#)

10. ADMINISTRATIVE DATA

The following administrative data pertains to this Agreement:

Contract Manager: Amy Furlong (916) 732- 5113

Contract Administrator: Melvin Fong (916) 732- 6532

11. INSURANCE REQUIREMENTS

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the work is completed and accepted by SMUD, insurance coverage in accordance with requirements established in the [Insurance Requirements](#) Form which is included as an Appendix to this Agreement and by this reference is made a part hereof.

Insurance required above shall be primary as respects SMUD (SMUD), its directors, officers, representatives, agents and employees, respectively, (hereinafter referred to as "The Parties") and any other insurance effected or procured by SMUD shall be excess of and shall not contribute with the required insurance. These policies, with the exception of WC, EL and E&O coverages, shall name the Parties as additional insureds as respects work performed pursuant to or incidental to this Agreement (including coverage for products and completed operations hazards) except for active negligence of SMUD in public works construction contracts (Cal Ins Code §11580.04). ISO form CG 2010 11/85, or other form acceptable to SMUD, shall be used. CGL severability of interests (cross liability), and CGL and WC waiver of subrogation clauses shall be included. Pursuant to the terms of this Agreement, insurance effected or procured by Contractor shall not reduce or limit Contractor's obligation to indemnify and defend SMUD for claims made or suits brought which result from, or in connection with, the performance of this Agreement. These coverages, when written on an occurrence form, shall be maintained during the entire term of the Agreement. Coverages written on a claims-made form, and E&O, EIL, and additional insured endorsements providing products/completed operations coverage shall be maintained during the entire term of the Agreement and further until one year following completion and acceptance of all work under the Agreement. Insurers shall be rated A- / VII or better by A.M. Best, or shall be otherwise acceptable to SMUD. Insurers need not be Admitted by the State of California.

Before commencing work on this Agreement, Contractor's broker or agent shall provide copies of policies and endorsements upon request, and provide a certificate of insurance verifying that at least the minimum insurance coverages required above are in effect. Certificate must disclose

any self-insured retention of \$250,000 or more. Certificate must specify whether the liability coverages are written on an occurrence form or a claims-made form, and that the coverages will not be canceled or changed without thirty (30) days advance written notice to SMUD

12. INDEMNITY

Contractor shall indemnify, defend, and hold harmless SMUD, its directors, officers, agents, and employees against all claims, loss, damage, expense, and liability asserted or incurred by other parties, including, but not limited to, SMUD's employees and Contractor's employees, arising out of or in any way connected with the performance of this Agreement and excepting only such loss, damage, or liability as may be caused by the intentional acts or the sole negligence of SMUD.

13. APPLICABLE LAW

This Agreement shall be governed, construed and interpreted solely by and under the laws of the State of California without regard to conflict of laws provisions. In the event of litigation or disputes arising out of or in any way related to the performance of this Agreement, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Sacramento County, California and shall comply with all requirements necessary to give such Court jurisdiction.

14. ASSIGNMENT

The Contractor shall not assign this Agreement or any monies due or to become due to him hereunder without the written consent of SMUD.

15. CHANGES

SMUD may initiate changes to the general scope and the general and special conditions of this Agreement as circumstances dictate. Changes which affect price, performance, schedule, warranties, or other significant items will be equitably adjusted by mutual agreement prior to the implementation of the change. All changes to this Agreement shall be in writing and signed by the duly authorized representative of the parties hereto.

16. FORCE MAJEURE

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party.

17. TERMINATION

SMUD may terminate Contractor's services under this Agreement by giving the Contractor ten (10) days prior written notice of such termination. In the event of such termination, SMUD shall pay to the Contractor all personnel costs and recoverable costs incurred in the performance of such services, plus all reasonable costs incurred as a result of such termination. However, the Contractor agrees to waive any claim for damage, including loss of anticipated profit, resulting from contract termination.

18. DISCHARGE AND CANCELLATION OF TASKS AND SERVICES

SMUD may, at its sole discretion, discharge Contractor from performing any particular task or service to be provided or performed under the terms of this Agreement, in whole or in part, upon giving Contractor written notice of such discharge. SMUD may also, at its sole discretion, cancel any task or service, in whole or in part, that has been assigned to Contractor to be performed under the terms of this Agreement upon giving Contractor written notice of such cancellation. SMUD agrees to pay the Contractor all personnel costs and other similar recoverable costs incurred in the performance of such services prior to notice of discharge or cancellation as set forth herein. The Contractor agrees to waive all claims for damage including, but not limited to, incidental and consequential damages such as loss of anticipated profit resulting from such discharge, discontinuance and/or modification as provided herein.

19. ASSIGNED PERSONNEL

Notwithstanding any other provision of this Agreement to the contrary, SMUD reserves the right in its sole discretion, upon giving notice thereof to Contractor, to discontinue and terminate the services, in whole or in part, of any individual assigned to perform services under this Agreement by Contractor or its agents. Contractor shall have the right, subject to the terms and conditions of this Agreement, to provide suitable replacement personnel.

20. SECURITY

Access to SMUD facilities is controlled in accordance with specific site requirements. The Contractor's personnel must comply with SMUD's security requirements and guidelines.

21. AUDITS

SMUD shall have the right, during the Contractor's normal business hours for the duration of this Agreement and for a period of three (3) years thereafter, to conduct the following audits either on SMUD property or at the Contractor's offices, as SMUD may deem necessary:

- Audits of the Contractor's performance of services under this Agreement.

- Audits of books and accounts maintained to accumulate, record, and segregate personnel and other recoverable costs billed under this Agreement.

However, the Contractor will not be required to relocate records from their normal location.

Contractor shall include an audit provision providing SMUD with the audit rights set forth herein in all subcontracts entered into by Contractor hereunder.

Such audits shall be performed either by SMUD personnel or by an independent third party whom SMUD may employ for the purpose of making such audits. SMUD and the Contractor shall establish procedures for performing such audits and shall preserve the confidential and proprietary status of audited documents and information.

22. INDEPENDENT CONTRACTOR

It is understood that the Contractor is an Independent Contractor. Contractor's employees assigned to perform work under this Agreement are and shall at all times hereunder remain the employees of the Contractor and not employees of SMUD for any purpose. Contractor shall be fully and solely responsible for the management and compensation of said employees, including but not limited to the hiring, discipline and discharge of employees; establishment and assignment of appropriate wage rates, establishment and provision of employee benefits, (i.e., health, dental, retirement, vacation, paid holidays, sick leave, and etc.), direction and supervision of work performance and employee training. Contractor is responsible for any and all other obligations which an employer may have to its employees, including, but not limited to, payroll functions, withholding and payment of state and federal income tax, worker's compensation insurance, social security, unemployment compensation insurance and disability insurance costs. Under certain circumstances, SMUD may be required by law to file a form 1099 with the appropriate state and federal agencies.

No Contractor employee assigned to perform work hereunder shall have or possess any right, entitlement or benefit of employment applicable to SMUD employees, either generally or specifically, pursuant to the SMUD's established employment practices, policies and procedures, Civil Service Rules and/or any Memorandum of Understanding between SMUD and a recognized employee collective bargaining representative. No Contractor employee assigned to perform work hereunder shall be entitled to participate in any SMUD employee benefit plan or eligible to receive any employment benefit made available to SMUD employees.

Contractor agrees, at its sole cost and expense, to indemnify, defend, and hold harmless SMUD from and against any and all liability, cost, damage, loss or expense arising from any claim that Contractor and/or any of Contractor's employees are employees of SMUD for any purpose or to any extent and/or that Contractor did not fulfill any of its obligations as the employer of said employees, including, but not limited to, the payment of wages and overtime; the provision of employee benefits; the withholding and payment of federal, state and/or local payroll taxes as applicable; withholding and payments of social security taxes on behalf of Contractor's employees; payment of unemployment and disability insurance; payment for and provision of Worker's Compensation benefits; and etc.

23. FRANCHISE TAX

SMUD shall withhold an amount equal to seven percent (7%) from payments made pursuant to the terms and conditions of this Agreement as set forth herein, to all independent contractors who are not residents of the State of California and who have not received an exemption from this requirement from the California Franchise Tax Board. This requirement applies to all contractors performing personal services in California, for which SMUD pays in excess of fifteen hundred dollars (\$ 1,500.00) annually.

(Ref. Cal. Rev. & Tax. Code §§ 18662, 18668)

24. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor shall not discriminate against any employee or applicant for employment contrary to the provisions of applicable State and/or Federal antidiscrimination laws. Contractor shall ensure that this requirement is applied to applicants and employees in actions including, but not limited to employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

25. ASBESTOS NOTIFICATION

Numerous SMUD buildings were constructed with some asbestos-containing components. An asbestos information sheet is provided as the [Asbestos Notification](#) Appendix to this Agreement, which shall be provided to all of Contractor's employees and to any subcontractor performing work within such SMUD buildings.

26. HAZARDOUS MATERIALS

- A. The Contractor and all subcontractors retained by Contractor to perform any services hereunder shall, prior to the commencement of any work hereunder, procure and provide the Contract Manager with:
- i. Material Safety Data Sheets ("MSDS") for all hazardous substances as defined by California Code of Regulations, Title 8, Section 5194 which may or will be brought to the work site;
 - ii. The location where the hazardous materials will be stored and/or used in conjunction with the performance of any work hereunder; and
 - iii. A description of the labeling system used on Contractor's or any subcontractor's containers used for the handling, storage and/or transport of such hazardous materials.
 - iv. Identify the transporter of any hazardous waste and hazardous waste disposal facility used in conjunction with the performance of any work hereunder. Said transporter and disposal facility shall be subject to prior approval by the Contract Manager.

- B. Contractor shall furnish the Contract Manager with the name and telephone number of the individual responsible for administering Contractor's or any subcontractor's hazardous materials communications program. Contractor and its subcontractors shall, upon request, provide the Contract Manager with written evidence of Contractor's or any subcontractor's employee training associated with the handling of hazardous materials.
- C. The Contractor and its subcontractors shall perform all work in accordance with all applicable federal, state and local laws, rules, regulations and ordinances pertaining to hazardous waste management.

27. SAFETY PROGRAM

The personal safety and health of the general public, SMUD employees, and Contractor employees is of paramount importance. Contractor shall, prior to commencing work under this Agreement, execute and submit a written certification on the form provided in the [Safety Compliance Certificate](#) Appendix to this Agreement, that the Contractor has:

- A. An effective Injury and Illness Prevention Program, which meets the requirements of all applicable laws and regulations, including but not limited to, California Labor Code Section 6401.7; (This section does not apply if Contractor does not perform any work under this Agreement within the State of California.) and
- B. Contractor agrees that it is fully responsible for the acts and omissions of its subcontractors and all persons either directly or indirectly employed by Contractor.

Such certification shall be made by the person with the authority and responsibility for implementing and administering Contractor's Injury and Illness Prevention Program.

The Contractor shall immediately notify the Contract Manager of any OSHA reportable accident occurring on/in SMUD premises, facilities or work sites.

28. COMPLIANCE WITH LAWS, PERMITS AND LICENSES

The Contractor, its subcontractors, and employees shall keep themselves fully informed of and in compliance with all laws, ordinances and regulations that may affect employees performing work, related to the materials used in the work, or in any way affecting the execution of any work performed hereunder. Contractor shall also keep itself informed of and in compliance with all orders and decrees of bodies or tribunals having any jurisdiction or authority over the job site or the work. All permits and licenses required and/or necessary for Contractor's performance hereunder shall be the responsibility of the Contractor. The Contractor shall pay all permit fees, license fees, and any other costs incurred to meet compliance with the terms thereof, and shall give all necessary notices incident to the due and lawful prosecution of work whether such permits or licenses are obtained by SMUD or by the Contractor. These costs include any incurred due to requirements imposed by any agency as a result of the Contractor's operations or Contractor's failure to otherwise meet the requirements of the permits or licenses. A copy of all

required permits and licenses obtained by the Contractor shall be provided to the Contract Manager immediately after issuance.

29. CONFIDENTIAL INFORMATION AND DATA SECURITY REQUIREMENTS

- A. The Parties shall execute the Non-Disclosure Agreement attached as an Appendix to this Agreement before exchanging any confidential information or data under this Contract, as such confidential information is defined in the attached Non-Disclosure Agreement (Confidential Information). Contractor shall require each individual who is assigned by the Contractor to perform a Task Release and who will have access to SMUD Confidential Information to acknowledge in writing the Non Disclosure Agreement and the individual's obligations thereunder as an agent, representative or employee of the Contractor, and the Contractor will provide each written acknowledgement to SMUD.
- B. SMUD shall have the right, upon seven (7) days notice and during the Contractor's normal business hours for the full duration of time that Contractor is in possession or control of any Confidential Information, to conduct an audit of the Contractor's compliance with the non-disclosure provisions of this Contract, provided that the audit shall be conducted by an employee of SMUD. All costs associated with an audit pursuant to this section shall be borne by SMUD.
- C. SMUD may require Contractor to certify the result of a background check for each person who will require access to SMUD systems. If required, the background check must cover, at a minimum: Criminal History, Motor Vehicle Report, Identity Check (SSN Verification), Education/Credential Verification, and Employment/Reference Verification.
- D. No SMUD data is to be downloaded, stored, copied, transferred or removed from SMUD systems to another Party's system or other non-party's system or medium without the written approval of the SMUD Information Security Officer.
- E. All SMUD information technology systems are monitored for acceptable use. Contractor, its agents, employees, assigns, providers and subcontractors, acknowledge that there is no expectation of any right to privacy in any such materials and data stored, processed, transmitted and /or maintained on SMUD property. Such material and data are subject to inspection and can be confiscated by SMUD at any time, with or without notice and with or without password protection.

30. OWNERSHIP OF WORK PRODUCTS

Unless otherwise specified in this agreement or statement of work issued under this agreement, all documents produced specifically for SMUD in the performance of this agreement shall be the property of SMUD. Documentation that Contractor provides with any Software shall remain the property of the Contractor. The Contractor shall not, without prior written authorization of SMUD, establish a claim to patent rights or copyright arising out of such data, information, software, process, programs, designs, drawings, manuals, reports, and other materials.

Unless otherwise agreed, to the extent such authorization is granted, SMUD reserves for itself and others acting on its behalf a royalty free, non-exclusive, irrevocable, world-wide license for

SMUD purposes to publish, distribute, translate, duplicate, exhibit, and perform any such material copyrighted or patented solely for the purposed authorized in this agreement.

Contractor agrees not to include in the products or services provided pursuant to this agreement any material or information patented or copyrighted by others without first providing SMUD notice and an opportunity to obtain a license, therefore, for the benefit of SMUD. If such royalty-free license is unavailable, Contractor shall obtain the written authorization of SMUD prior to including such material or information in the products or services provided hereunder.

31. INCORPORATION

All appendices, exhibits and attachments referenced above are hereby incorporated herein by this reference.

32. ENTIRE AGREEMENT

This Agreement, together with any and all appendices, exhibits and/or attachments attached hereto and any amendments, modifications, change orders, addendum and/or any other documents attached hereto and incorporated herein constitutes the entire agreement between the parties hereto and no changes, alterations, or modifications hereof shall be effective unless made in writing and signed by duly authorized representatives of both parties to this Agreement.

ACCEPTED FOR
CONTRACTOR COMPANY NAME

ACCEPTED FOR THE
SACRAMENTO MUNICIPAL UTILITY
DISTRICT

By: _____ By: _____

Name: _____ Name: Michael J. Wirsch
(Type or Print)

Title: _____ Title: Manager, General Services

Date: _____ Date: _____

Attachments

Appendix [Rate Schedule](#)

Appendix [Designation of Prime Contractor, Subcontractor's, and Supplier's Form](#)

Appendix [Prompt Payment Program](#)

Appendix [Insurance Requirements Form](#)

Appendix [Asbestos Notification](#)

Appendix [Safety Compliance Certificate](#)

Appendix Confidentiality and Non-Disclosure Agreement

CONTRACT NUMBER 45000XXXXX

SEPTEMBER 29, 2010

RATE SCHEDULE

CONTRACT NUMBER 45000XXXXX
CONTRACTOR COMPANY NAME

SEPTEMBER 29, 2010

**DESIGNATION OF PRIME CONTRACTOR, SUBCONTRACTORS, AND
SUPPLIERS**

PROMPT PAYMENT PROGRAM

SMUD has a prompt payment program for small businesses which are certified by the State Department of General Services.

Under the program, SMUD will guarantee payment of invoices within 20 calendar days from the date of inspection and acceptance by SMUD or the date correct invoices are received, whichever is later.

If SMUD fails to meet the 20 calendar days payment guarantee, the small business will be paid interest on the unpaid invoice at prime plus 2% APR. Late interest payments, if applicable, will be made without an additional invoice from the small business.

To participate in this program, please indicate “prompt payment” below and provide evidence of certification with your bid.

Contractor is eligible for, and is requesting, a prompt payment program:

☐ YES ☐ NO

CONTRACTOR:

Company:	CONTRACTOR COMPANY NAME
Signed:	
Print Name:	

INSURANCE REQUIREMENTS

TYPE OF COVERAGE		MINIMUM COVERAGE LIMITS	
☒	Commercial General Liability (CGL)	Occurrence	Aggregate
☐	ISO form CG 0001 10 93, or other acceptable to SMUD. ☒ Additional Insured Endorsement ☐ Delete Railroad Exclusion ☐ Delete Exclusion J "Damage to Property"	Bodily Inj.(BI), Prop Damage (PD) Or Combined Single Limit (CSL) \$ 1 M \$ 1 M	\$ 1 M \$ 1 M
☒	Business Automobile Liability (BAL)	Individual	Accident
☐	Covering claims arising from ownership, operation, loading,unloading owned, hired, leased, non-owned, and /or borrowed private passenger and commercial vehicles. ☒ Additional Insured (Coverage noted on certificate)	Bodily Inj (BI), Prop Damage (PD) Or Combined Single Limit (CSL) \$ 1 M \$ 1 M	\$ 1 M \$ 1 M
☐	Environmental Impairment Liability (EIL) / Contractor's Pollution Liability (CPL)	Occurrence	Aggregate
☐	Covering claims arising from handling, abatement, and transport of pollutants including asbestos and lead paint ☐ Additional Insured (Coverage noted on certificate)	Bodily Injury, Property Damage N/A	N/A
☐	Aircraft Liability (Air)	Per Seat	
☐	Covering claims from passengers and other third parties ☐ Additional Insured (Cover noted on certificate)	Bodily Injury, Property Damage Or Combined Single Limit (CSL) N/A N/A	N/A N/A
☒	Profess'l Errors & Omissions Liability (E&O)	Each Claim	Aggregate
☐	Covering claims for financial, BI and PD losses.	Bodily Injury, Property Damage Or Combined Single Limit (CSL) \$ 1 M \$ 1 M	\$ 1 M \$ 1 M
☒	CA Statutory Workers' Compensation (WC)	Employee	Aggregate
☐	Including Employer's Liability (EL) and United States Longshoremen & Harborworkers, where applicable	Bodily Injury and Illness Or Combined Single Limit (CSL) \$ 1 M \$ 1 M	\$ 1 M \$ 1 M
☐	Crime and Employee Dishonesty Insurance (Not a Bond)	Each Claim	Aggregate
☐	Including fraud, theft, dishonesty and disappearance of Client (SMUD) funds	Financial Loss N/A	N/A
☐	Fiduciary	Each Claim	Aggregate
☐	For funds managed or held in trust	Financial Loss N/A	N/A
☐	Other	Each Claim	Aggregate
☐	☐ Property ☐ Cargo/Transit ☐ Add'l Insured ☐ Empl Practice ☐ Garage ☐ Loss Payee	N/A N/A	N/A N/A

Insurance required above shall be primary as respects the Sacramento Municipal Utility District (hereinafter "SMUD"), its directors, officers, representatives, agents and employees, respectively, (hereinafter referred to as "The Parties") and any other insurance effected or procured by SMUD shall be excess of and shall not contribute with the required insurance. These policies, with the exception of WC, EL and E&O coverages, shall name the Parties as additional insureds as respects work performed pursuant to or incidental to this Contract (including coverage for ongoing and products/completed operations hazards) except for active negligence of SMUD in public works construction contracts (Cal Ins Code §11580.04). ISO forms CG 2010 (ongoing operations) and CG 2037 (completed operations), or other forms acceptable to SMUD, shall be used. CGL severability of interests (cross liability), and CGL and WC waiver of subrogation clauses shall be included. Pursuant to the terms of this Contract, insurance effected or procured by Contractor shall not reduce or limit Contractor's obligation to indemnify and defend SMUD for claims made or suits brought which result from, or in connection with, the performance of this Contract. These coverages, when written on an occurrence form, shall be maintained during the entire term of the Contract. Coverages written on a claims-made form, and E&O, EIL, and additional insured endorsements providing products/completed operations coverage shall be maintained during the entire term of the Contract and further until one year following completion and acceptance of all work under the Contract. Insurers shall be rated A- / VII or better by A.M. Best, or shall be otherwise acceptable to SMUD. Insurers need not be Admitted by the State of California.

Before commencing work on this Contract, Contractor's broker or agent shall provide copies of policies and endorsements upon request, and provide a certificate of insurance verifying that at least the minimum insurance coverages required above are in effect. Certificate must disclose any self-insured retention of \$250,000 or more. Certificate must specify whether the liability coverages are written on an occurrence form or a claims-made form, and that the coverages will not be canceled or changed without thirty (30) days advance written notice to SMUD

SACRAMENTO MUNICIPAL UTILITY DISTRICT
P. O. BOX 15830, SACRAMENTO, CA 95852-1830
ATTENTION: **Melvin Fong**/MS B204

ASBESTOS NOTIFICATION

ASBESTOS NOTIFICATION - 2010

Sacramento Municipal Utility District (SMUD) is required to give notice to employees and contractors working at any District facility that has asbestos-containing construction materials, pursuant to the Asbestos Notification Law (California Health & Safety Code 25915 et seq., and in particular 25915.1). **Be aware that this list only includes material tested and found to contain asbestos material. Material not tested may contain asbestos. Asbestos inspection and testing is required prior to performing demolition, renovation, retrofit or remodeling in any facility constructed prior to 1981.**

LOCATION OF ASBESTOS

Headquarters Building:

- * Above the ceiling of the first floor (auditorium) and through out the remainder of the building as troweled-on fireproofing material on decking and structural members;
- * Floor tiles (various sizes; 9-inchx9-inch; 12-inch x12-inch), and mastics;
- * Mechanical/electrical equipment;
- * Throughout the building (behind the walls, in equipment rooms and auditorium ceiling) in tank and pipe insulation;
- * Insulation on electrical wire;
- * Materials inside door frames;
- * Caulking on HVAC ducts; and
- * HVAC and piping insulation.

Corporation Yard:

- * HVAC and piping insulation within the D/S Building;
- * Hot water piping insulation in Building F - Transportation Shop;
- * Floor tile and mastic Building F - Transportation Shop – Break Room;
- * Mastic under floor tile - second floor of Building I – Warehouse; and
- * Pre-Fab Shop linoleum on restroom floor.

Energy Management Center

- * Arc chutes on some circuit-breakers.

Substations:

- * Arc chutes on some breakers – potentially all sub-stations
- * Elverta and Hurley in floor tile and adhesive and presumed asbestos containing materials (PACM) in all sub-stations;
- * Elverta ceiling tile and mastic and PACM in all sub-stations;
- * Mid-city sub in pipe insulation and PACM in all sub-stations;
- * Hedge sub station floor tile and mastic and PACM in all sub-stations
- * Manholes, switchboards, control and protection panels - Wire insulation in all sub-stations;
- * Some bus bar filler material in all sub-stations;
- * North city - transite on roof and inside walls and PACM in all sub-stations;
- * Outer paint cover on oil filled pipe from North City to Station A.
- * 9-inch x 9-inch floor tile – potentially all sub-stations

Fresh Pond:

- * Floor tiles and mastic

Camp Far West

- * Pipe insulation on cooling water pipe;
- * Pipe insulation on mezzanine level behind battery room insulation

Union Valley

- * Pipe insulation
- * Bus bar bolt filler material
- * Fire-stop sealant on electrical cables
- * White material in PCB500

Loon Lake

- * Diesel generator exhaust piping
- * Insulation on HVAC duct
- * Black & White pipe wrap material
- * Firestop sealant on electrical cables

Jaybird

- * Wiring insulation
- * Pipe insulation
- * Fire-stop sealant on electrical cables

Fresh Pond (continued):White Rock

- * Fire-stop sealant on electrical cables
- * Arc chutes in breakers
- * Black pipe wrap material

Camino

- * Handle insulation
- * Bus bar bolt filler material
- * Firestop sealant on electrical cables
- * Breaker #310 arc chutes
- * Breaker #320 arc chutes

SEA Campground

- * Transite panels in restroom building

Jones Fork

- * Brake shoes

Ice House

- * Gray Roofing fish water valve house

Robbs Peak

- * Bus bar bolt filler material
- * Roof mastic (around equipment hatches)
- * Serpentine road rock at valve house.
- * Arc chutes/breakers
- * Firestop sealant on electrical cables

McClellan Gas Turbine

- * Turbine unit door gasket

Rancho Seco:

- * Some cable, wire covering & inside elect. panels throughout the facility
- * Fire-stop insulation throughout the Auxiliary/Turbine Buildings
- * I & C office area floor tile
- * Turbine Building siding
- * Miscellaneous gasket material throughout the plant mastic and roofing materials
- * In soil around the Quonset hut
- * Canal Station—electrical panel and wiring

SPECIAL NOTICE

Attention all employees assigned work at military bases (active or inactive) within the SMUD service area. Prior to performing any work, precautionary measures shall be taken to prevent possible exposure to asbestos fibers. The use of asbestos containing building materials (i.e., wall board, ceilings, floor tile, sprayed-on acoustical ceilings, mastics, roofing materials, insulation or other building materials) is presumed to contain asbestos until confirmed by an accredited NVLAP analytical laboratory. If you encounter building materials that need to be removed prior to performing your work, please contact Workforce Health and Safety Services at 916 732-5253 to have EH&S Specialist or Dave Payette obtain samples of the materials and have them analyzed properly.

POTENTIAL HEALTH RISKS OF ASBESTOS EXPOSURE:

Asbestos becomes a health hazard only when fibers are released into the air where they may be inhaled or ingested. Asbestos does not present a hazard if it is not disturbed, if it is properly covered, or if the fibers are bound, as in floor tiles or "transite" boards.

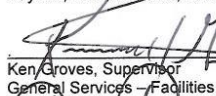
Certain risk factors are relevant to the development of asbestos-related diseases, such as: the number, concentration and size of the asbestos fibers inhaled or ingested; the duration of the exposure and the length of time since exposure and susceptibility to disease development. If not properly controlled, asbestos may cause scarring of lung tissue (called asbestosis), cancer of the chest cavity lining (called mesothelioma), or lung cancer. Studies show the relationship between asbestos exposure and disease development has involved groups of workers who were heavily exposed to asbestos in occupational activities; that an extremely low incidence of disease is expected in populations with low levels of exposure; and that asbestos concentrations in buildings with asbestos might not differ significantly from concentrations found in the outside air in many urban environments. Although exact risk assessment is difficult, experts are in agreement that exposure to airborne asbestos fibers should be minimized to the lowest feasible levels.

ASBESTOS MANAGEMENT PROGRAM:

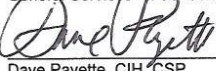
An Asbestos Operations and Maintenance Plan is in effect to insure proper warning labels and to periodically inspect and document the condition of the asbestos containing material and to make repairs, if necessary. Air samples taken in the Headquarters Building in 2006 indicated no asbestos above EPA clearance levels.

DO NOT DISTURB THE ASBESTOS:

Moving, drilling, boring, sanding or otherwise disturbing any asbestos-containing materials or PACM may present a health risk and, consequently, shall not be attempted by anyone who is not qualified, equipped to handle asbestos, or does not have a valid Asbestos Work Permit from Environmental, Health and Safety Services. Should you become aware that asbestos materials have been disturbed or if you have questions, please call Glenn Shuder, Supervisor of Facilities Management (916) 732-5565, or David Payette, Environmental, Health and Safety Services at (916) 732-6332.


Ken Groves, Supervisor
General Services - Facilities

Date 1-14-10


Dave Payette, CIH, CSP
District Asbestos Program Manager
Workforce Health & Safety Services

Date 01-14-10

SAFETY COMPLIANCE CERTIFICATE

I, _____ the undersigned,

(Print Company Representative Name)

of

(Print Company Representative Title)

CONTRACTOR COMPANY NAME

hereby certify the

(Print Company Name)

information contained herein and that undersigned is duly authorized to certify that:

- A. Contractor has an effective Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations, including, but not limited to, California Labor Code Section 6401.7. (This section does not apply if Contractor does not perform any work under this Agreement within the State of California.) and

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=06001-07000&file=6400-6413.5>

- B. Contractor agrees that it is fully responsible for the acts and omissions of its subcontractors and all persons either directly or indirectly employed by Contractor.

- C. The above-named person has the authority and responsibility for implementing and administering Contractor's Injury and Illness Prevention Program.

IN WITNESS WHEREOF, the undersigned has executed this Safety Compliance Certificate under the penalty of perjury of the laws of the State of California on:

Signed:
Print Name:
Date:

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement ("Agreement") is entered into as of this ____ day of _____, _____, by and between the Sacramento Municipal Utility District ("SMUD"), a political subdivision of the State of California, with its principal executive offices at 6201 S Street, Sacramento, CA 95817-1899, and _____ ("**<ENTER NAME HERE>**"), with its principal executive offices at _____; referred to collectively as "Parties" and individually as "Party."

In connection with Contract **<ENTER CONTRACT INFORMATION HERE>**, SMUD is furnishing **<ENTER NAME HERE>** with certain Confidential Information that is either non-public, confidential, and/or proprietary in nature. For the purposes of this Agreement, "Confidential Information" is all (a) information furnished by the disclosing Party and labeled as "confidential", "trade secret", or "proprietary information", and, if disclosed orally, summarized in written format within thirty (30) days of disclosure and identified as "confidential", "trade secret", or "proprietary information", or (b) information that receiving Party knows or has reason to know is confidential, trade secret or proprietary information of the disclosing Party, and (c) the data listed in Attachment A. The disclosing Party shall retain all ownership rights over its Confidential Information. In order to receive the Confidential Information, **<ENTER NAME HERE>** agrees to the following conditions:

1. The Confidential Information will be kept confidential and shall not, without SMUD's prior written consent, be disclosed by **<ENTER NAME HERE>**, its agents, representatives, or employees, in any manner whatsoever, in whole or in part, and shall not be used in any manner directly or indirectly by **<ENTER NAME HERE>**, its agents, representatives, or employees, other than in connection with providing services under Contract **<ENTER CONTRACT INFORMATION HERE>**. Moreover, **<ENTER NAME HERE>** agrees to reveal the Confidential Information only to **<ENTER NAME HERE>**'s agents, representatives, and employees who need to know the Confidential Information for the purpose of providing services under Contract **<ENTER CONTRACT INFORMATION HERE>**, who are informed by **<ENTER NAME HERE>** of the confidential nature of the Confidential Information, and who shall agree to act in accordance with the terms and conditions of this Agreement. **<ENTER NAME HERE>** shall be responsible for any breach of this Agreement by **<ENTER NAME HERE>** agents, representatives, or employees.
2. During the term of this Agreement, if any additional information is required to fulfill **<ENTER NAME HERE>**'s obligations in connection with Contract **<ENTER CONTRACT INFORMATION HERE>**, SMUD will update Attachment A to list the additional Confidential Information. All revisions to Attachment A shall be countersigned by SMUD and **<ENTER NAME HERE>** prior to SMUD sending the Confidential Information.
3. Without SMUD's prior written consent, except as required by law, **<ENTER NAME HERE>**, its agents, representatives, and employees will not disclose to any person the fact that the Confidential Information has been made available to **<ENTER NAME HERE>**.

4. <ENTER NAME HERE> will use commercially reasonable measures to maintain the security, privacy, confidentiality and integrity of SMUD Confidential Information while under its control. Within 30 days of termination of this Agreement pursuant to Section 11, unless directed to retain or return Confidential Information by SMUD, any and all Confidential Information in the possession or control of <ENTER NAME HERE>, its agents, employees, assigns, providers, and subcontractors shall be destroyed in accordance with this section. Confidential Information residing on any and all hardware shall be securely removed. Computer and servers must be electronically wiped (e.g. using a secure data deletion program for computers that writes random data in multiple passes) or the physical media must be destroyed. <ENTER NAME HERE>, its agents, employees, assigns, providers, and subcontractors shall securely delete or destroy, within 30 days of termination of this Agreement pursuant to Section 11, any and all tapes, CDs, cartridges and other electronic and/or physical storage and backup media and devices containing SMUD Confidential Information. All paper documents that contain Confidential Information, whether received from SMUD or reproduced by <ENTER NAME HERE>, its agents, employees, assigns, providers, and subcontractors must be shredded using at least a cross-cut shredder or pulverized.
5. <ENTER NAME HERE> must provide a letter of certification to the SMUD Project Manager substantially in the form of Attachment B to this Agreement and signed by an officer of the company attesting to the destruction/return of the SMUD Confidential Information in conformance with this Agreement.

SMUD Project Manager <ENTER NAME OF PROJECT MANAGER> Sacramento Municipal Utility District 101 S Street, MS# A404 Sacramento, CA 95817
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6. If there is a breach of security or privacy of SMUD Confidential Information, <ENTER NAME HERE> will notify the SMUD Information Security Officer by email and telephone without unnecessary delay using the contact information provided below. <ENTER NAME HERE> agrees to cooperate with SMUD in identifying the extent of which Confidential Information has been exposed and the measures necessary to limit further exposure of Confidential Information.

SMUD Information Security Officer Email: InformationSecurity@smud.org Telephone: 916-732-5200

7. The term Confidential Information shall not include such portions of the Confidential Information which (i) are or become generally available to the public other than as a result of a disclosure by <ENTER NAME HERE>, its agents, representatives, or employees, or (ii) become available to <ENTER NAME HERE> on a non-confidential basis from a source other than SMUD or SMUD's agents which is not prohibited from disclosing such

information to <ENTER NAME HERE> by a legal, contractual, or fiduciary obligation to SMUD, or (iii) <ENTER NAME HERE> knew prior to disclosure as evidenced by the Party's written records; or (iv) is disclosed under the order or requirement of a court, administrative agency, or other governmental body or is otherwise required by law to be disclosed, including without limitation, the California Public Records Act.

8. In the event that <ENTER NAME HERE> or anyone to whom <ENTER NAME HERE> transmits the Confidential Information pursuant to this Agreement becomes legally compelled to disclose any of the Confidential Information, <ENTER NAME HERE> will provide SMUD with prompt notice so that SMUD may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that SMUD waives compliance with the provisions of this Agreement, <ENTER NAME HERE> will furnish only that portion of the Confidential Information which <ENTER NAME HERE> is advised by opinion of counsel is legally required, and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.
9. <ENTER NAME HERE> acknowledges that remedies at law may be inadequate to protect against breach of this Agreement, and <ENTER NAME HERE> hereby in advance agrees to the granting of injunctive relief in SMUD's favor without proof of actual damages in addition to, and not in lieu of, all other remedies available to SMUD. <ENTER NAME HERE> further acknowledges that no failure or delay by SMUD in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof, or of any other grant, power, or privilege hereunder, so operate as a waiver.
10. This Agreement shall be governed by the laws of the State of California. It is agreed that in the event of any litigation arising hereunder, the Parties hereto shall submit to the jurisdiction of any court of competent jurisdiction within the State of California and will comply with all requirements necessary to give such Court jurisdiction, and that all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that service of process in any such litigation may be made in the manner provided for in Section 415.4 of the California Code of Civil Procedure or in any other manner provided for in said code for service upon a person outside the State of California.
11. This Agreement shall terminate on <ENTER DATE OF TERMINATION>, unless the termination date is modified by mutual written agreement of the Parties. All Confidential Information obtained under this Agreement shall then be destroyed pursuant to Sections 3 and 4 above. Notwithstanding such termination, the obligations of <ENTER NAME HERE>, its agents, employees, assigns, providers, and subcontractors to protect the confidentiality of the Confidential Information shall survive in perpetuity.
12. This Agreement represents the entire agreement of the Parties pertaining to the subject matter of this Agreement, and supersedes any and all prior oral discussions and/or written correspondence or agreements between the Parties with respect

thereto.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its respective, fully authorized representative as of the date first written above.

Sacramento Municipal Utility District

<ENTER NAME HERE>

By: _____

By _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A
Confidential Information

1. <LIST THE DATA ELEMENTS INDIVIDUALLY THAT WILL BE RELEASED IN THIS SECTION>

ATTACHMENT B
Letter of Certification

<ENTER COMPANY NAME>
<ENTER COMPANY ADDRESS>

<Date>

<SMUD Project Manager>
Sacramento Municipal Utility District
6201 S Street, <MS#>
Sacramento, CA 95817

RE: Letter of Certification: <Destruction>/ <Return> of SMUD Confidential
Information

Pursuant to the Non Disclosure Agreement between <ENTER COMPANY NAME> and
SMUD dated, <DATE>, all SMUD Confidential Information has been
<destroyed>/<returned> in accordance with the provisions of the Non Disclosure
Agreement.

<Signature of Officer of Company>
<Printed Name of Officer of Company>
<Telephone number of Officer of Company>