

HI-DESERT WATER DISTRICT



REQUEST FOR PROPOSAL for

ENGINEERING SERVICES FOR ASSESSMENT DISTRICT FORMATION DUE JANUARY 29, 2010 at 4:00 p.m.

Mission Statement: To provide a dependable water supply & wastewater treatment for the customers of the Hi-Desert Water District in a safe, efficient, and financially responsible manner."

TABLE OF CONTENTS

1.0	PROJECT PURPOSE & NEED.....	1
2.0	REQUEST FOR PROPOSAL INFORMATION & INSTRUCTIONS	2
3.0	TECHNICAL PROPOSAL CONTENT	5
4.0	PROPOSAL EVALUATION & AWARD.....	7
5.0	AVAILABLE REFERENCE INFORMATION	7
6.0	SCOPE OF SERVICES	7
11.0	HDWD sample contract.....	10

Table 1: Project Summary

Table 2: Engineering Consultant - Submittal Outline & Page Requirement

Table 3: Consultant Selection Criteria

1.0

PROJECT PURPOSE & NEED

The Hi-Desert Water District (HDWD) has undertaken a project to be the responsible agency for the provision of wastewater collection, wastewater treatment and water reclamation for its service district, which includes the Town of Yucca Valley and a portion of un-incorporated San Bernardino County, with a service district of approximately 57 square miles.

Phase One of the Water Reclamation project commenced in October 2007 and is estimated to continue until Summer 2012. Additional phases of the project may commence simultaneously thereafter.

The Hi-Desert Water District is soliciting Requests for Proposal for qualified Consultants to be engaged for the duties of Engineering Services for the following project:

Table 1: Project Summary

Owner	Hi-Desert Water District
Project Name	Wastewater Assessment District
Total Parcels	10,559 Approximately
Consultant Engagement Date	January 2010 – December 2010
Scope of Services	As defined in Section 6.0

2.0 REQUEST FOR PROPOSAL INFORMATION & INSTRUCTIONS

2.1 Request for Proposal Issuing Office

Hi-Desert Water District
Chief Financial Officer
55439 Twentynine Palms Highway
Yucca Valley, California 92284

A California Special District operating under the California Water Code.

2.2 Request for Proposal Scope

1. Provide a description of the firm's approach to the proposed assessment district
2. Provide a general outline of the critical issues that should be considered
3. Provide a task by task breakdown of the services offered
4. Provide a fee schedule for each of the tasks proposed
5. Provide an optimum timeline that would yield the best chances of success
6. Provide an hourly rate schedule for the staff available for these services
7. Provide optional tasks that might be considered along with their respective fees

The following tasks are anticipated:

Task 1: Kick-off Meeting
Task 2: Data Gathering
Task 3: Report Methodology
Task 4: Engineer's Report Preparation
Task 5: Prepare Mailing
Task 6: Attend Public Hearing and Tabulate Ballots
Task 7: Meetings
Task 8: Post Formation Meetings

OPTIONAL TASK

Task A: Public Outreach and Property Owner Workshops

2.3 Request for Proposal Amendments

The District may issue Proposal Addendums and Amendments, as necessary. These addendums and amendments shall be placed on the District's website. If an email notification of Addendum availability is desired, the bidder must request inclusion on the Engineering Services RFP list by emailing: Frank J. Luckino frankl@hdwd.com
Written confirmation of receipt and acknowledgement of the Addendums shall be included in Section 6 of the Technical Proposal – Addendum Acknowledgement

2.4

Request for Proposal submittal deadline

Deadline: The Proposal package must be received in the Procurement Office of the Hi-Desert Water District, 55439 Twenty-Nine Palms Highway, Yucca Valley, CA 92284 no later than 4:00 P.M. Pacific Daylight Time, Monday January 29, 2010.

Proposals received after the deadline will not be accepted and returned to the Offeror.

2.5 The Technical Proposal shall consist of two parts:

- a) One (1) copy unbound of the Technical Proposal
- b) Five (5) copies Bound of the Technical Proposal

2.6 Public Record

The submittal of this Technical Proposal is a public record.

2.7 Hi-Desert Water District (HDWD) Rights

- a) This Request for Proposal does not commit HDWD to award a contract, to pay any costs incurred in the preparation of a proposal in response to this request, or to procure or contract for any services. HDWD reserves the right to accept or to reject, in part or in its entirety, any proposal if such action is deemed by HDWD to be in the best interest of HDWD.
- b) The District reserves the right to accept or reject any and all proposals, or part thereof, or to waive any informalities or irregularities in proposals.
- c) The District reserves the right to withdraw or cancel this Request for Proposals (RFP) at any time without prior notice, and the District makes no representation that any contract will be awarded to any Offeror responding to this RFP.
- d) The District reserves the right to change or alter the schedule of events associated with the procurement process upon notice to the responder entities, as established by the List of Proposers holders
- e) The District shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses in its proposal.

2.8 Additional Request for Proposal Terms & Conditions

- a) Proposals received after the deadline will not be accepted and returned to Offerors unopened.
- b) Any contract entered into as a result of this proposal shall be considered to include the items of work detailed in the proposal unless specifically deleted at the request of the Hi-Desert Water District (HDWD).
- c) Any request for additional information or clarification should be submitted to Mr. Frank J. Luckino, Chief Financial Officer via FAX at 760.365.0599 or frankl@hdwd.com by January 7, 2010 at 5:00 PM. All questions and answers will be posted to the District's internet web site at www.hdwd.com.

An appeal is begun by the proposing entity, by delivering notice to the District of its appeal of the decision with respect to the rating, no later than ten business days after the notification of non-qualification.

Without a timely appeal, the proposing entity waives any and all right to challenge the decision of the District, whether by administration process, judicial process or any other legal process or proceedings.

3.0**TECHNICAL PROPOSAL CONTENT**

The proposal shall contain nine sections, as outlined below

Table 2: Engineering Consultant -Submittal Outline & Page Requirement

SECTION	DESCRIPTION
0	Cover Letter
TOC	Table of Contents
1	Firm(s) Description & Information
2	Relevant Project Experience
3	Proposed Team & Team Member profiles
4	Task Descriptions and Fees (Task 1 – Task 8)
5	2009 Team hourly rate and reimbursement schedule
6	Addendum Acknowledgements
App. A	Resume Appendix

Section 0:

The proposer may include an introductory cover letter at the beginning of the proposal, with a two page maximum.

TOC: Table of Contents

A listing of the proposal contents, sections and page numbers.

Section 1: Firm Description and Information

This section shall contain the firm information and description.

Section 2: Relevant Project Experience listing

This section shall contain the relevant project experience relating to prior services provided as Consulting Engineer for the formation of an assessment district. Project Experience shall be a minimum of three, and contain:

- Client or Agency Name
- Proposing Firm specific role in the project
- Project Name
- Project Description
- Firm Project Manager responsible
- Project Fee and size of Assessment
- Reference Name, Title, Address, Telephone and email address

Section 3: Proposed Team & Team member profiles

This section shall contain the following:

- Proposed Team including an organizational chart
- Principal in Charge
- Project Manager
- Technical Advisor
- Relevant team members

Short paragraph descriptions for each team member are acceptable. Resumes of team members may be included in Appendix A.

Section 4: Task Descriptions and Fees (Task 1 – Task 8)

This section shall contain a description of the tasks, fees and deliverables as outlined in Section 6 – Scope of Services of this Request for Proposals.

Section 5: 2010 Team hourly rate & reimbursement schedule

This section shall contain the Schedule of hourly rates for all proposed team members, updated for the year 2010.

Section 6: Receipt of Acknowledgement of Addendum(s)

Appendix A: Resume Appendix

This section may contain the Resumes of the assigned team members.

Billing shall be based on a percentage of work completed and shall not exceed the work completed. Maximum allowable billing by the Consultant upon completion of the Scope of Services shall be 100 percent of the total proposed fee.

4.0 PROPOSAL EVALUATION & AWARD

The consultant selection criteria and weights are as follows:

Table 3: Consultant Selection Criteria

Criteria	Weight (%)
Qualifications of personnel performing work.	20
Demonstrated ability in completing contracted work on time and within budget. Discuss the last three projects completed. If not on time and within budget, explain why.	20
Demonstrated experience preparing Assessment Districts. List three most recent projects.	20
Demonstrated understanding of the project, suggested project approach and required tasks to accomplish the work.	20
Demonstrated familiarity with local, county, state, federal and water industry regulations and procedures. Knowledge of water entities.	20
Total Weight	100%

5.0 AVAILABLE REFERENCE INFORMATION

For information regarding the project, the Hi-Desert Water District internet website provides reference information at www.hdwd.com.

This may be accessed via:

Projects /Wastewater Treatment and Water Reclamation Project Reference Documents

This list is not all encompassing, the onus is on the proposing team to identify, research and familiarize themselves with all relevant information and provide a methodology on the best approach for this project.

6.0 SCOPE OF SERVICES

The following essential tasks have been identified for this project.

TASK # 1 Kick-off Meeting

Attend initial kick-off meeting with District staff and consultants. The primary

objectives of this meeting will be to identify key personnel that will be involved in the project, discuss project objectives, policies and procedures, and establish effective lines of communications. This meeting will likely include specific discussions of the District's funding goals and priorities, identification of the improvements, political considerations, the overall project timeline, budget information, and availability and access to pertinent documentation. We envision these discussions to touch on any potential policy and legal issues the District is concerned with, specific steps for implementation and any limitations and/or restrictions for funding the proposed improvements. Individual meetings with District staff may be necessary and are in addition to this kick-off meeting.

TASK # 2 Data Gathering

Obtain the latest assessor maps and equalized tax roll from the San Bernardino County Assessor's Office for all parcels within the proposed assessment district. In addition, obtain information on existing liens and assessments in order to determine overlapping debt. Prepare a database showing the assessor's parcel numbers, land use code, acreage, status of development and assessed values of each parcel within the proposed district. From this database, a mailing list will be prepared. Review financial plan and revenue requirements projected for the project, capital improvement program, and any other documents and data relating to the project.

TASK # 3 Report Methodology

Determine the rate and method of Apportionment that outlines the specific benefit conferred from the improvements on parcels within the proposed district, the calculations used to establish each parcel's proportional special benefit assessment, and a description of the assessment range formula that establishes a rate ceiling or a maximum annual increase in subsequent years.

TASK # 4 Engineer's Report Preparation

Compile items from Tasks 2-3 above into the preliminary and final Engineer's Reports and submit them for review and comment to District Staff. Submit up to ten (10) copies each of the preliminary and final Engineer's Reports to District staff for filing with the District Board. We will present the Engineer's Report to the Board and field any questions received at the Public Hearing. The preliminary and final Engineer's Reports will include, but not being limited to, the following components:

1. A description of the proposed public facilities to be funded
2. Plans and specifications (or reference to those on file)
3. A detailed cost estimate of the proposed facilities, including estimates of bond issuance and other incidental costs
4. The assessment roll showing assessor number, parcel identification, and assessment lien or maximum annual assessment as appropriate

5. The method of assessment
6. The assessment diagram
7. The maximum annual administrative add-on assessment
8. A right-of-way schedule indicating right-of-way still to be acquired (if necessary)
9. A public property schedule indicating the public property to be assessed in the Assessment District (if necessary)

TASK # 5 Prepare Mailing

After the Board of Directors approves the Engineer's Report, the Assessment Engineer will prepare the mail ballots, pursuant to Proposition 218 to all property owners within the proposed assessment district by first class mail. The ballots will contain the assessor's parcel number, the owner's name, mailing address, site address, proposed assessment (lien amount), the total amount thereof chargeable to the entire District, the amount chargeable to the owner's property, the duration of payments, the reason for the assessment and the basis upon which it was calculated, explanation of benefit as required by Proposition 218, and the proportionate special benefit derived by each parcel, the date, time, and location of the public hearing, and a summary of the procedures for completing, returning, and tabulating the ballots.

TASK # 6 Attend Pubic Hearing and Tabulate Ballots

Attend the Public Hearing on the formation of the Assessment District, and coordinate with the Board Clerk to tabulate the ballots. Each ballot should include a unique barcode that can be scanned and tabulated.

TASK # 7 Meetings

The Assessment Engineer will attend up to 2 Public Hearings and will be prepared to give a presentation on the contents of the Engineer's Report describing the proposed improvements, explaining the assessment spread methodology and answer questions.

TASK # 8 Post Formation Meetings

If the District is approved and formed, the Assessment Engineer will notify property owners of their final assessments and cash prepayment amount to assist the financing team with data required to fund the improvements, and record necessary documents. Provide any assistance as necessary to bond and disclosure counsel for the issuance of bonds.

OPTIONAL TASKS

TASK # A Public Outreach and Property Owner Workshops

Provide public outreach efforts to discuss the proposed assessments. The proposed services should include attendance at three (3) property owner workshop during the course of the outreach efforts. The consultant may be asked to address property owner's questions. The consultant's role during this meeting will be as the District's technical advisor regarding the assessment balloting process and the method of apportionment. Additional attendance to workshops may be compensated on a time and material basis.

11.0

**SAMPLE PROFESSIONAL SERVICES AGREEMENT
HI-DESERT WATER DISTRICT
PROFESSIONAL SERVICES AGREEMENT
WITH xxx
FOR ENGINEERING CONSULTING SERVICES FOR ASSESSMENT DISTRICT
FORMATION**

1. PARTIES AND DATE.

This Agreement is made and entered into this 00TH day of xxx, 2010 by and between the **Hi-Desert Water District**, a public water district organized under the laws of the State of California with its principal place of business at 55439 29 Palms Highway, Yucca Valley, California 92284 ("District") XXXXXX with its principal place of business at xxxxxx ("Consultant"). District and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the District on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Engineering Consulting Services to public clients, is licensed in the State of California, and is familiar with the requirements of the scope of services requested by the District.

2.2 Project.

District desires to engage Consultant to render such services for the Formation of the Assessment District ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the

District all labor, materials, tools, equipment, services, and incidental and customary work necessary to perform the professional financial planning services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from xxxx, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of District and shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the Schedule, District shall respond to Consultant’s submittals in a timely manner. Upon request of District, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of District.

3.2.4 Substitution of Key Personnel. Consultant has represented to District that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of District. In the event that District and Consultant cannot agree as to the substitution of key personnel, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who

fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the District. The key personnel for performance of this Agreement are as follows: XXXXXXXXXXXXXXXX.

3.2.5 District's Representative. The District hereby designates Frank J. Luckino, Chief Financial Officer, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates XXXX, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with District staff in the performance of Services and shall be available to District's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub-consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and sub-consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Town of Yucca Valley Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner

affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any Services knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or alleged failure arising out of any failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Consultant shall not allow any sub-consultants to commence work on any subcontract until it has provided evidence satisfactory to the District that the sub-consultants has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or sub-consultants. Consultant shall also require all of its sub-consultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance.
Coverage shall be at least as broad as the latest version of the following:

- (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001);
- (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and
- (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance.
Consultant shall maintain limits no less than:

- (1) *General Liability:* \$1,000,000 per occurrence for bodily injury,

personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit;

- (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and
- (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of three (3) years following completion of the Project, errors and omissions liability insurance appropriate to its profession. Such insurance shall be in an amount not less than \$1,000,000 per claim and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and authorized volunteers shall be covered as additional insured with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the District, its directors, officials, officers, employees, agents and authorized volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from Services performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by regular mail, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the District.

3.2.10.7 Verification of Coverage. Consultant shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require copies of all required insurance policies, at any time. The District or an authorized representative of the District reserves the right to review complete, certified copies of all required insurance policies at a local office of Consultant during normal business hours upon provision of twenty-four (24) hours notice to Consultant.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property.

3.2.11.1 Safety of Consultant's employees: In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Services and the conditions under which the Services are to be performed. Safety precautions as applicable shall include, but shall

not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and sub-consultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **XXX (\$ 000)** without written approval of the District. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to District a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by District.

3.3.4 Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from District's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq, as well as California Code of Regulations, Title 8, Section 16000 et seq ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. District shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or

alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. District may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to District, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

xxx

District:

Hi-Desert Water District
55439 29 Palms Highway
Yucca Valley, California 92284
Attn: Frank J. Luckino, Chief Financial Officer

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all sub-consultants to agree in writing that District is granted a non-exclusive and perpetual license for any Documents & Data the sub-consultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the District. District shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at District’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of District, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use District’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of District.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney’s Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney’s fees and all other costs of such action.

3.5.6 Indemnification. Consultant agrees to protect, save, defend and hold harmless the District and its Board and each member of the Board, officers, agents, employees and volunteers from any and all claims, liabilities, expenses or damages of any

nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, to the extent arising out of the negligent acts, errors or omissions or willful misconduct by Consultant, Consultant's agents, officers, employees, sub-consultants, or independent Consultants hired by Consultant under this Agreement. The only exception to Consultant's responsibility to protect, save, defend and hold harmless the District, is due to the sole negligence, willful misconduct or active negligence of the District. This hold harmless Agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 District's Right to Employ Other Consultants. District reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the District. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and sub-consultants of Consultant, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any sub-consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of District's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

HI DESERT WATER DISTRICT

XXX

By: _____

Sarann Graham

XXX

Board President

Attest:

Ed Muzik

General Manager

Approved as to Form:

Attest:

Best Best & Krieger LLP
Legal Counsel

