



WESTERN RIVERSIDE COUNTY REGIONAL  
CONSERVATION AUTHORITY

# REQUEST FOR PROPOSALS

UPDATED FEE NEXUS STUDY AND  
PUBLIC PROJECT CONTRIBUTION STUDY

**Revised**

**Bidders Conference is no longer Mandatory (pg-7) and  
Questions after Bidders Conference to be submitted in  
writing (pg-10)**

## **INTRODUCTION AND PURPOSE**

The Western Riverside County Regional Conservation Authority (“RCA”) is a joint powers agency responsible for overseeing and implementing the Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”). The RCA is seeking proposals to prepare an updated Fee Nexus Study and Public Project Contribution Study (“Nexus Study Update”), which compiles with Section 66000 et. seq. of the State Government Code and develops options for calculating public project / infrastructure contributions.

In addition, the RCA is expecting the successful Consultant to address unique issues that will shape this study, including:

1. Integration of a study conducted by the RAND Corporation regarding the cost of implementing the MSHCP.
2. The preparation of a “Fee/Contribution Handbook” that describes the steps in the collection and accounting process.

Some provisions of the MSHCP regarding levels of funding and contribution are complex. The RCA expects the successful Consultant to examine these areas to offer clarifications to specific provisions of the Plan.

## **PLAN DESCRIPTION**

The Western Riverside County Multiple Species Habitat Conservation Plan (“Plan” or “MSHCP”) is a “habitat conservation plan” as set forth in the Federal Endangered Species Act. The Plan is a framework for the assembly and management of a 500,000-acre reserve, to protect 32 federally-listed animal and plant species, and 114 species that are anticipated to be listed in the future (“Covered Species”). The Plan also qualifies as a Natural Communities Conservation Plan (“NCCP”) under California law. The Western Riverside County MSHCP is the largest and most comprehensive habitat conservation plan in the United States.

Three hundred forty-seven (347,000) acres of the reserve are currently in conservation and managed by various federal, state and local agencies. Pursuant to the Plan, the County of Riverside, 17 cities in the western County, the Riverside County Transportation Commission, and Caltrans – referred to as Permittees - are granted authorization to “take” or disturb the habitats of the covered species to accommodate development and public infrastructure. In return, the Permittees, in conjunction with Federal and State wildlife agencies, must acquire 153,000 acres of new conservation lands. (347,000 acres of existing conservation land plus 153,000 acres of new lands achieves the 500,000-acre goal.) Local Permittees are responsible for the acquisition of 97,000 acres. Since the Plan’s inception, a total of 43,034 acres of new conservation land has been acquired.

## **PLAN IMPLEMENTATION AND ADMINISTRATION**

The RCA is a regional joint powers authority formed by the County and 17 cities in the western portion of the county. The authority was created in 2004 to: (1) oversee implementation of the Plan by Permittees, particularly local government Permittees, (2) administer the land acquisition process, and (3) provide general policy direction. The RCA is governed by a board of directors made up of elected officials from member local government agencies.

The local Permittees, under the provisions of the Plan, have the authority to grant “third party take” to private entities (i.e., developers and builders). These take authorizations are granted in recognition of the conservation efforts embodied in the Plan and mitigation fees paid by the third party entities, the primary source of funds used to purchase conservation lands.

The precise boundaries of the 153,000 acres of new reserve lands are not specifically identified in the MSHCP. Rather, conservation land is contained in areas targeted for acquisition, called “criteria cells.” The location of these cells accommodates both large habitat blocks and the necessary connections to link these blocks. As land is acquired over time within these cells, the reserve is formed. The assembly of the new reserve lands was anticipated to occur over the first 25 years of the program. When the reserve is completed it must be in a configuration that includes the habitats necessary for the conservation of the 146 covered species.

The Plan assumed that the 56,000 acres of the Permittees’ share of new reserve lands (97,000 acres) would be purchased and 41,000 acres would be acquired through development exactions. However, it seems clear now that exactions will make up a far smaller contribution to the program. Therefore, more land will need to be purchased directly from willing sellers.

While land acquisition is a critical component of the conservation process, monitoring and management programs serve as an ongoing protection and evaluation of the conservation efforts. The studies conducted by the monitoring program assess the biological needs and distribution of covered species and natural communities within the MSHCP. The management program conducts a range of activities to ensure that the reserve system can retain the habitat values measured by monitoring program assessments or can be enhanced through adaptive management.

A Fee Nexus Study is required under California law to determine the level of the mitigation fees. This Nexus Study Update is necessary to revise the mitigation fee to reflect current market conditions, values of land slated for conservation, monitoring requirements, management efforts and funding an endowment as required by the MSHCP.

Additional information on the RCA and the MSHCP, including all Plan documents, studies, fees, procedures, acquisitions, annual reports, and other public documents and records can be found on the RCA Website (<http://www.wrc-rca.org>).

## **RAND STUDY**

In 2008, the RAND Corporation was commissioned by the RCA to prepare an economic analysis of the MSHCP, *Balancing Environment and Development, Costs, Revenues, and Benefits of the Western Riverside County Multiple Species Habitat Conservation Plan*, (<http://www.wrc-rca.org/library.asp>). Commonly referred to as the “RAND Study,” the treatise examines the cost of the lands needed to complete the reserve, the financial consequences of acquiring these land over an extended period of time, and the projected costs of monitoring and managing the reserve lands.

In addition, the study compares the original projected costs and revenues to current and projected market conditions, utilizing land purchases made during the first four years of reserve assembly and assessor data. Finally, it identifies issues that the RCA Board of Directors, RCA staff, and stakeholders should address to ensure the Plan's success.

## **ORIGINAL NEXUS STUDY**

The original nexus study for the MSHCP, *Final Mitigation Fee Nexus Report of the Western Riverside County Multiple Species Habitat Conservation Plan*, formed the basis for the current local development mitigation fee. It was completed in July 2003 by David Taussig and Associates (<http://www.wrc-rca.org/library.asp>).

The Nexus Study Update will need to address the current national, state and local economic conditions. It will also clarify and simplify contribution levels for public projects, including infrastructure.

## **SCOPE OF SERVICES**

Coordination with RCA: The successful Consultant will begin the study with a working meeting with the RCA staff, environmental consultants, and attorneys. Throughout the process, the Consultant will be expected to keep the staff informed of the study's progress and of preliminary results and findings.

Data Collection, Review and Cost Analysis: The Consultant will collect and evaluate cost data associated with the following:

1. Administration – The Consultant will address the costs associated with the implementation of the Plan such as costs of appraisals and audits.
2. Land values - Since the original nexus study, some of the lands targeted for potential conservation may have been developed or planned for development by Permittee General Plans. In addition, over 40,000 acres have been acquired. These land use changes and conserved lands must

be considered in the cost analysis. As mentioned above, more land will need to be purchased than originally anticipated.

3. Monitoring of reserve lands – The Plan requires the RCA to survey conservation lands and biologically monitor species and habitat conditions.
4. Management of reserve lands – The management program conducts a range of activities to ensure that the reserve system can retain the habitat values measured by monitoring program assessments or can be enhanced through adaptive management.
5. Adaptive management program – In addition to overseeing the reserve, the RCA is mandated to manage certain habitats for the benefit of specific species. For example, enhancing acquired dry-farmed land for the burrowing owl habitat. The Plan requires the RCA to create an endowment to cover the cost of this program.

Integration of Data and Conclusions from RAND Study: As mentioned above, the RAND study examined the long-term costs of Plan implementation. These data and analysis should be integrated into the cost analysis prepared for the updated study.

Consideration of Original Nexus Study: The study should take into account the assumptions and impact of the original Nexus Study.

Advanced Payment of Discounted Fees: The RCA is formulating a program to allow developers the opportunity to pay all required fees in advance of building permits at a discounted rate. The Consultant will consider and account for this program as a part of the analysis.

Funding Sources: The Consultant will provide a complete assessment of funding sources or equivalent land contributions to the plan and will consider the following:

1. Exactions by Permittees.
2. Review of funding sources and their relevance today.

Review and Critique of Prior Methodologies for Calculating Fees: The Consultant will review the methodologies for calculating fees to ensure they are rational, satisfy the fee nexus tests by the courts, comply with State law, and meet the Plan's objectives.

Calculation of Land Development Mitigation Fee: The Consultant will develop a legally enforceable and rational method to establish a mitigation fee that includes administrative, land acquisition, monitoring, management and endowment costs. The fee should include the following development types:

1. Residential
  - a. Less than 8 dwelling units per acre
  - b. 8 to 14 dwelling units per acre
  - c. More than 14 dwelling units per acre
2. Commercial
3. Industrial

The Consultant will provide methods for calculating the residential fee on a “per unit” and “per acre” basis.

Contributions from Local Public Projects: The Plan addresses contributions from regional infrastructure projects. The RCA has been successful in working with Permittees to collect contributions for civic projects and local infrastructure but would like to simplify the process. Therefore, the Consultant will examine the MSHCP and related materials and offer at least three optional methodologies for calculating contributions for the following:

1. City/County transportation projects.
2. City/County infrastructure projects other than transportation.
3. City/County civic projects.

Fee Administration Handbook: The fee collection and accounting procedure has been evolving over the last four years. RCA staff has been working with Permittee staffs and conducting audits to resolve inconsistencies in the process. The RCA would like to develop a fee administration handbook to provide Permittees a step by step procedure and ensure the reliable collection and accounting of funds.

## **STUDY TIMELINE**

The RCA anticipates that the study will be complete in approximately one year.

## **PRODUCTS / ACTIVITIES**

Meetings and Presentations – The successful Consultant will provide for the following meetings and presentations:

- Kick-off meeting with RCA staff – 1 (approximately 4 hours)
- Monthly progress meetings with staff – 12 (approximately 2 hours each)
- Working session with staff to present and discuss the draft study and recommendations – 2 (approximately 4 hours each)
- Working session with local Permittees to present and discuss the draft study and recommendations – 2 (approximately 4 hours each)

- Working session with stakeholders to present and discuss the draft study and recommendations – 1 (approximately 4 hours)
- Presentation to Executive Committee – 3 (approximately 1 hour each)
- Presentation to Board - 2 (approximately 1 hour each)

Products and Deliverables – The following products will be provided by the Consultant:

- Draft/Screencheck study and recommendations
- Final report
- Executive summary of study and conclusions, including a PowerPoint version that presents the highlights of the study and its conclusions
- Fee implementation handbook – The handbook will address the following:
  - Summary of fee and contribution methodology
  - Collection of fees and public project contributions
  - How fees are remitted to the RCA
  - Auditing

## **RFP SCHEDULE**

- |                                |                          |
|--------------------------------|--------------------------|
| • Release of RFP               | June 16                  |
| • Bidders conference           | July 14 (RSVP by July 7) |
| • Submittal of proposals       | July 28 (by Noon PST)    |
| • Complete review of proposals | August 25                |
| • Bidder interviews            | September 14             |
| • Award contract               | Early November           |

## **PROPOSAL FORMAT**

The Proposals shall follow the format outlined below:

**I. Signature/Cover Page** - This page will include the title information and the signature of the Bidder or primary firm, if the study is developed by a consultant team. The signature shall constitute a warranty, the falsity of which shall entitle the RCA to pursue any remedy authorized by law, which shall include the right, at the option of the Regional Conservation Authority, of declaring any contract made as a result thereof, to be void.

**II. Table of Contents**

**III. Firm(s) Profile** - This section of the Proposal is designed to establish the Bidder as an entity with the ability and experience to operate the program as specified in the RFP. The Company Profile should be concise and clear, and include descriptive

information regarding service delivery. The following information must be provided as follows:

1. Identification of Bidder

- a. Legal name and address of the company.
- b. Legal form of company (partnership, corporation).
- c. If company is wholly owned subsidiary of a "parent company," identify the "parent company."
- d. Company's organizational chart.
- e. Name, title, address and telephone number of the proposed representative to contact concerning the proposal submittal.

2. Experience and Past Performance

- a. Describe proposed team organization, including identification and responsibilities of key personnel. Please include one-page resumes.
- b. Provide three (3) references regarding the Bidder's experience and performance performing similar services. Furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Identify Bidder's key personnel who worked on the reference projects. References cannot include elected officials and staff from RCA member agencies or Permittees.
- c. A Campaign Contribution Disclosure Form shall also be included.

**IV. Description of services** - All Proposals must include a detailed description of the services to be rendered, including but not limited to the following:

1. A written general understanding to the requirements in the Scope of Services as detailed in the RFP.
2. A work plan or description of how the work will be performed.
3. Bidder's project reporting mechanisms, including:
  - a. A complete description of how the interaction between the Bidder's company and the RCA will take place to ensure that the services are performed and to the RCA's satisfaction, including resolving problems that may be encountered during the project.

- b. Time frames and phases of work.
4. Company policies regarding this project to ensure proper compliance and quality assurance.
5. Technical capabilities for this service/project.
6. Whether or not the Bidder will be subcontracting portion(s) of the work. If so, indicate the name of the sub consultant and the portion of the work which will be subcontracted.
7. Sub consultant's qualifications that meet the requirements of the scope of work.
8. A sample invoice.

**V. Evidence of Insurability/Business Licenses** - All Bidders shall submit evidence of all required insurance. An Accord cover page will suffice, and if awarded the contract, the Bidder has ten (10) calendar days to produce the required insurances including a certified endorsement naming the RCA as additionally insured. Bidders shall certify to the possession of any and all current required licenses or certifications. Do not purchase additional insurance until this bid has been awarded. Provide a copy of current business license or other applicable licenses.

**VI. Financial Statement** - All Bidders must submit financial statements (balance sheet and income statement) for its business dated no more than twelve (12) months prior to the date of the Proposal submission and cover a period of at least one (1) year. These statements should clearly identify the financial status and condition of the Bidder's entire business entity. Please place in a separate envelope and mark "Confidential" if your firm requires this to be kept confidential. The RCA does not guarantee that the financials submitted will be kept confidential.

**VII. Clarification, Exceptions, or Variations** - All Bidders shall describe any exception or variation from the requirements of the RFP, including, but not limited to the "Professional Services Agreement" attached hereto as Exhibit "A." If any exceptions are taken, such exceptions must be clearly noted in the Proposal and may be reason for rejection of the Proposal. As such, Bidder is directed to carefully review the proposed Professional Services Agreement and, in particular, the insurance and indemnification provisions therein.

**VIII. Cost Proposal** - Bidders must fully describe all costs and charges to the RCA. **Place the cost proposal in a sealed envelope separate from the copies.**

## SUBMITTAL REQUIREMENTS

1. The Proposal shall not exceed **50 pages single-sided** (size 8 ½" x 11"), including the organizational chart and staff resumes, but excluding the cover letter and cost proposal.
2. Six (6) hard copy original Proposals are required, along with an electronic copy of the Proposal in Adobe Portable Document Form (pdf).
3. All Proposals must be received in the RCA offices by **Noon (12 pm PST) July 28, 2011. Late Proposals will not be accepted.** Proof of receipt before the deadline is a RCA date/time stamp.
4. Proposals must be submitted to:

WRC Regional Conservation Authority  
Attn: Pat Egetter  
3403 10<sup>th</sup> Street, Suite 320  
Riverside, CA 92501  
(951) 955-9700

## RFP AND PROPOSAL PROCESS

Prospective Consultants are expected to thoroughly review the RFP. A Bidders conference will be held on July 14, 2011. Questions and clarifications of the RFP after the bidders conference must be submitted to the RCA in written format no later than July 25<sup>th</sup> and all questions, answers and clarifications will be posted on the RCA website. <http://www.wrc-rca.org>.

The RCA will conduct a review of each Proposal according to the criteria outlined below. This may be followed by a face to face interview with some or all of the Bidders. The RCA will make a decision and notify the successful and unsuccessful Bidders.

## CONSULTANT SELECTION

1. Each Proposal will be reviewed by an evaluation group to determine if it meets the proposal requirements. Failure to meet the requirements of the Request for Proposals will be cause for rejection of the Proposal.
2. The evaluation group may ask for formal oral presentations by the selected consultants. The number 1 ranked Consultant will then proceed to contract negotiation.

3. The Prospective Consultant is advised that should this Request for Proposal result in award of a contract, the contract will not be in force until it is approved and fully executed by the RCA.
4. The Consultant will be selected for final negotiation of a contract based upon the following factors:
  - a. Project Understanding: Degree of understanding and familiarity with the work.
  - b. Scope of Work: Proposed approach to the project including the expected time commitment of key personnel and technical approach to the project.
  - c. Project Managers/Staff Qualifications: Qualifications of the staff assigned to manage and conduct the project.
  - d. Firm Qualifications/Consultant References: Past experience in projects related to the outlined Scope of Work.
  - e. Project Cost

## **MISCELLANEOUS**

**Cancellation of RFP:** The RCA reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

**No Commitment to Award:** Issuance of this RFP and receipt of Proposals does not commit the RCA to award a contract. The RCA expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all Proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or part of this RFP. The RCA reserves the right to waive any discrepancy or technicality and to split or award the contract in any manner determined to be the most advantageous to the agency.

**EXHIBIT "A"**  
**MODEL PROFESSIONAL SERVICES AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN**  
**WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY**  
**AND \_\_\_\_\_**

**1. Parties and Date.**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the Western Riverside County Regional Conservation Authority, a Joint Powers Authority organized under the laws of the State of California with its principal place of business at 3403 Tenth Street, Suite 320 Riverside, California, 92501 ("RCA") and [NAME OF FIRM], a/an [LEGAL STATUS OF CONSULTANT] with its/his/her principal place of business at [ADDRESS OF CONSULTANT]("Consultant"). RCA 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 RCA on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing [INSERT TYPE OF SERVICES] services to public clients, is licensed in the State of California, and is familiar with the plans of RCA.

2.2 Project. RCA desires to engage Consultant to render such services for the [INSERT PROJECT DESCRIPTION] ("Project") as set forth herein.

**3. Terms.**

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to RCA all labor, materials, tools, equipment, services and incidental and customary work necessary to fully and adequately supply the [INSERT TYPE OF SERVICES] services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Services shall include, but not be limited to, any duties and responsibilities assigned by the RCA Executive Director. 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 the date first specified above to [INSERT DATE], 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. RCA retains Consultant on an independent contractor basis and Consultant is not an employee of RCA. 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 not be employees of RCA 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, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall provide 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 expertise and personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the schedule, RCA shall respond to Consultant's submittals in a timely manner. Upon request of RCA, 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 RCA.

3.2.4 RCA's Representatives. RCA hereby designates its Executive Director, or his or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the Executive Director. The Executive Director shall be responsible for directing Consultant's activities pursuant to this Agreement. The Executive Director shall have the power to act on behalf of RCA for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the Executive Director or his or her designee.

3.2.5 Substitution of Key Personnel. Consultant has represented to RCA 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 and experience upon written approval of RCA. In the event that RCA and Consultant cannot agree as to the substitution of key personnel, RCA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.5.1 of this Agreement. The key personnel for performance of this Agreement are as follows: **[INSERT NAME OR TITLE OF KEY PERSONNEL]**

3.2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME OR TITLE]**, 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 or her 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. Consultant shall work closely and cooperate fully with RCA’s Representative and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant’s Representative shall be available to the RCA staff at all reasonable times.

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform the 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 subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, 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 RCA, 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 and shall be fully responsible to RCA for all damages and other liabilities arising from the Consultant’s errors and omissions. Any employee of the Consultant or its sub-consultants who is determined by RCA 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 RCA, 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 work knowing it to be contrary to such laws, rules and regulations and without giving written notice to RCA, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold RCA, its officials, directors, officers, employees, consultants, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to RCA that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to RCA that the subcontractor 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 subcontractors. Consultant shall also require all of its subcontractors 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) *If Consultant has employees, 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) If Consultant has employees, 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 five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 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 to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) RCA, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds 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 RCA, 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 RCA, 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) RCA, its directors, officials, officers, employees, agents and 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 RCA, 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 RCA, 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 RCA, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work 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 certified mail, return receipt requested, has been given to RCA; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to RCA, 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 RCA, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by RCA. If RCA does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of RCA, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects RCA, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 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 RCA.

3.2.10.8 Verification of Coverage. Consultant shall furnish RCA with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to RCA. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by RCA before work commences. RCA reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. 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 work and the conditions under which the work is 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 subcontractors, 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 "B" attached hereto and incorporated herein by reference. The Total Compensation shall not exceed **\$(INSERT WRITTEN DOLLAR AMOUNT) (\$[INSET NUMERICAL DOLLAR AMOUNT])**, without written approval of RCA's Executive Director. Reimbursable expenses shall include \_\_\_\_\_. 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 RCA 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. Said compensation shall be paid in accordance with an invoice submitted to RCA by Consultant within fifteen (15) days from the last day of each calendar month, and RCA 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 RCA.

3.3.4 Extra Work. At any time during the term of this Agreement, RCA may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by RCA 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 RCA's Representative.

3.3.5 Prevailing Wages. By execution of this Agreement, Consultant certified that it 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. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. RCA shall provide Consultant with a copy of the prevailing rate 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 RCA, its directors, officials, officers, consultants, employees, volunteers 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.

3.3.6 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

3.3.7 No Waiver. Failure of RCA to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.3.8 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker

employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day (“Eight-Hour Law”), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to RCA as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him or her, or by any sub-consultant under him or her, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

### 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 and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of RCA 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. RCA 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 fully and adequately rendered to RCA through the effective date of the termination, 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, RCA may require Consultant to provide all finished or unfinished Documents and Data, as defined below, 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 documents 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, RCA 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RCA:** Western Riverside County Regional  
Conservation Authority  
Attention: Executive Director  
3403 Tenth Street, Suite 320  
Riverside, CA 92501

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/Confidentiality.

3.5.3.1 Documents & Data. This Agreement creates an exclusive and perpetual license for RCA to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, materials, data 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 subcontractors to agree in writing that RCA is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such 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 RCA.

RCA shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at RCA’s sole risk.

3.5.3.2 Intellectual Property. In addition, RCA shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

RCA shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether paid for wholly or in part by RCA, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of RCA.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of RCA.

All materials and documents which were developed or prepared by Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

RCA further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

3.5.4 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 RCA, 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 RCA’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 RCA.

3.5.5 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.

3.5.6 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 costs of such actions.

3.5.7 Indemnification. Consultant shall defend, indemnify and hold RCA, its directors, officials, officers, agents, consultants, employees, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against RCA, its directors, officials, officers, agents, consultants, employees, and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against RCA or its directors, officials, officers, agents, consultants, employees, and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse RCA and its directors, officials, officers, employees, agents, consultants, and volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by RCA, its directors, officials, officers, agents, consultants, employees, and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section 3.5.7 shall survive any expiration or termination of this Agreement.

3.5.8 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.

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

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

3.5.11 RCA's Right to Employ Other Consultants. RCA reserves the right to employ other consultants in connection with this Project.

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 RCA. 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 Successor and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of RCA.

3.5.14 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 directors, officials, officers, agents, consultants, employees, and volunteers of Consultant, except as otherwise specified in this Agreement. All references to RCA include its directors, officials, officers, agents, consultants, employees, 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.

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

3.5.16 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.

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

3.5.18 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.

3.5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, RCA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of RCA, during the term of his or her service with RCA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, 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 any RCA programs or guidelines concerning equal opportunity employment currently in effect or hereinafter enacted.

3.5.21 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 Workers' 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.

3.5.22 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.

3.5.23 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 work or Services required by this Agreement, except as expressly stated herein, without prior written approval of RCA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

<p><b>RCA</b></p> <p>By: _____          Jeff Stone, Chairman          RCA Board of Directors</p>		<p><b>CONSULTANT</b></p> <p>By: _____</p> <p>Title: _____</p>
<p><b>ATTEST</b></p> <p>By: _____          Honey Bernas          Clerk of the Board</p>		<p><i>Approved as to form:</i></p> <p>_____          RCA General Counsel          Best Best &amp; Krieger LLP</p>