

AGREEMENT FOR SERVICES

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Fluid Resource Management with an address at 2385 Precision Dr, Arroyo Grande, CA 93420 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, the COUNTY operates Cachuma Lake Recreational Area, which is the only fresh water lake in the County as hosts over 800,000 per year; and

WHEREAS, the COUNTY operates a domestic water treatment plant as well a wastewater treatment plant at Cachuma Lake Recreational Area; and

WHEREAS, due to retirement of the Chief Water Wastewater Plant Operator and the Water and Wastewater Plant Operator, the County entered into a service contract with CONTRACTOR to operate and maintain the two plants while the COUNTY conducted a recruitment for the Chief Water Wastewater Plant Operation; and

WHEREAS, after two separate recruitments the COUNTY was unable to find qualified applicants and now wishes to enter into a 12-month agreement with the CONTRACTOR

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Sherman Hansen at phone number 805-568-3408 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Mike Ellison at phone number 805-597-7100 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Sherman Hansen
Community Services Department- Parks Division
123 E. Anapamu St, Santa Barbara CA, 93101
Shansen@countyofsb.org
Phone: 805-568-3408

To CONTRACTOR: Michael Ellison
Fluid Resource Management-Operations and Maintenance Manager
2385 Precision Drive
Arroyo Grande, CA 93420
MikeE@FRM-ops.com
Phone: 805-597-7100

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

CONTRACTOR shall commence performance on December 1, 2023, and end performance upon completion, but no later than November 30, 2024, unless otherwise directed by COUNTY or unless earlier terminated. At the end of this term COUNTY in its sole discretion may exercise an annual renewal option and amend this Agreement to continue the term of the Agreement on a year-to-year basis, for up to an additional four (4) years, subject to annual appropriations and upon adoption and approval of the County Operating Budget and the Final Budget for the Agreement by the County Board of Supervisors.

5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or

omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

18. **NON-ASSIGNMENT**

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. **TERMINATION**

- A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein.
1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services.
 2. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
 3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by CONTRACTOR, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.
- C. Should either Party fail to substantially perform its obligations in accordance with the provisions of this Agreement, the other Party shall thereupon have the right to cancel the Agreement by giving written notice and specifying the effective date of such cancellation
- D. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Fluid Resource Management...

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: Sheila LaGuerra
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: Das Williams
Das Williams Chair, Board of Supervisors

Date: 12-12-23

RECOMMENDED FOR APPROVAL:

Community Services Department

DocuSigned by:
George Chapjian
516A633ACF984F9
George Chapjian
Department Head

CONTRACTOR:

Fluid Resources Management

DocuSigned by:
Carinna Ellison
328DEAD5661C41C...
Authorized Representative
Carinna Ellison
Name:
Title: O&M Project Manager

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

DocuSigned by:
Tyler Sprague
0AC5688DE45F483...
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

DocuSigned by:
C. Schaffer
A09ED58D71D04FB...
Deputy

APPROVED AS TO FORM:

Risk Management

DocuSigned by:
Greg Milligan
DC249AC1E64247D...
Risk Management

EXHIBIT A

SCOPE OF SERVICES

CACHUMA LAKE RECREATIONAL AREA

WASTEWATER

Inspect and clean the headworks and comminutor, ensure operation of the aeration system including the blowers and diffuser pattern; check operation of Clarifiers 1/2, test operation of Clarifiers 1/2 air lift pumps. Collect settleable solids of aeration tanks 1/2 and effluent. Waste sludge and make operational adjustments necessary to maintain operation of the plant per the Waste Discharge Requirements ("WDR"). Document all readings as necessary for plant performance and reporting requirements. Perform housekeeping to maintain a presentable facility. Calibrate the pH probe; sample and document the effluent pH sample; document the effluent ponds freeboard. Inspect Lift Station 1/2/3 for operation; document pump run hours, wet well depth, generator hours and any alarms; inspect the wet well and document solids and grease accumulation; test automation of the equipment. Collect samples required by the WDR.

WATER

Perform a visual inspection to the contact chambers; document intake pump hours and tank level; inspect the high lift pumps; verify operation of the water filtration equipment; document the pressure differential; inspect the back wash tank; document the effluent flow meter; record the raw water turbidity, pH, temperature; record the post filtration turbidity, pH and chlorine residual; inspect the polymer tank and pump, add chemical as necessary; inspect the aluminum sulfate tank and pump, add chemical as necessary; inspect the chlorine tank and pre/post filtration pumps, add chemical as necessary, inspect and document the levels of tanks 1/2; inspect and sample the chlorine residual at sample station 1; visually inspect the distribution system; perform housekeeping to maintain a presentable facility. Calibrate the pH Probe and any other maintenance tasks needed. Collect samples required per permit.

COMPLIANCE

MONTHLY

Prepare the Monthly Self-Monitoring Report; submit to client for input, review, approval and signature. Once approved, submit to Regional Water Quality Control Board ("RWQCB").

Prepare the Monthly Drinking Water System Report(s); submit completed reports to Santa Barbara County Public Health Department ("SBCPHD").

ANNUALLY

Perform compliance review of the water system's required testing/sampling using the State/County monitoring schedules. After review, compile following year's sample schedule.

Prepare the Electronic Annual Report ("EAR"), submit for input, review, approval and signature; once approved, upload to the online State system.

Prepare the Annual Self-Monitoring Report; submit to water company for input, review, approval and signature. Once approved, submit to RWQCB).

Attend water system Sanitary Survey Inspection.

LIVE OAK CAMP

WATER

Perform an inspection to the well; document the well's flowmeter reading, pressure, turbidity and pH; inspect the filtration equipment and document the turbidity, pressure differential and pH; inspect the chlorine

system and document the chlorine level, add chlorine as necessary; inspect the potable tanks, document the tank level and chlorine residual; Sample for chlorine at Sample Station 1; inspect the distribution system; perform housekeeping to maintain a presentable facility. Collect samples required per permit.

WASTEWATER

Inspect the Orenco treatment system, document pump run hours; perform a visual inspection to the leach fields verify there are no leaks or a high level; perform housekeeping to maintain a presentable facility. Collect samples required per permit.

COMPLIANCE

MONTHLY

Prepare the Monthly Drinking Water System Report(s); submit completed reports to Santa Barbara County Public Health Department ("SBCPHD").

ANNUALLY

Perform compliance review of the water system's required testing/sampling using the State/County monitoring schedules. After review, compile following year's sample schedule.

Prepare the Electronic Annual Report ("EAR"), submit for input, review, approval and signature; once approved, upload to the online State system.

Prepare the Annual Self-Monitoring Report; submit to water company for input, review, approval and signature. Once approved, submit to RWQCB).

Attend water system Sanitary Survey Inspection.

EMERGENCY RESPONSE

CONTRACTOR will respond as quickly as practical to emergency conditions when notified by the client directly, and/or by electronic notification methods such as an auto-dialer or SCADA System. FRM maintains a 24-hour emergency number for this purpose as well as paid standby personnel who are ready to respond to any emergency. CONTRACTOR's response to emergency situations will be billed in accordance with the current Schedule of Fees (EXHIBIT B-1), with a two-hour minimum regardless of the time of day.

ANNUAL DEFERRED MAINTENANCE

CONTRACTOR agrees to perform regular maintenance not identified in the EXHIBIT A as well annual deferred maintenance and on items identified by COUNTY or reported to the COUNTY by the CONTRACTOR. CONTRACTOR will bill this work based on time and material costs, unless materials are provided by COUNTY, and in accordance with the current Schedule of Fees (EXHIBIT B-1)

ANNUAL COST ADJUSTMENT

Annual Cost Adjustment for payments for Services as contained in this Agreement shall be subject to an All-Urban Consumer Price Index for the Los Angeles, Long Beach and Anaheim Area ("CPI"), or two percent (2%), whichever is greater. Any increase in rates herein as a result of an increase to the CPI will be rounded up to the nearest dollar. Any changes in Professional's rates shall be based on the August CPI, released every year in September, and shall become effective on January 1st of each year, following a thirty (30) day notice to COUNTY.

EMPLOYEE SOLICITATION

For a period of three (3) years from the date hereof, COUNTY shall not actively solicit, seek, attempt to entice away, any employee or person who has been employed or subcontracted by CONTRACTOR in the preceding twelve (12) months without the prior written consent of CONTRACTOR. For purposes hereof, solicit to employ shall not be deemed to include general solicitations of employment not directed specifically towards employees of CONTRACTOR or should any employee of the CONTRACTOR voluntarily leave then seek employment with COUNTY. Should COUNTY violate this clause, relief shall include COUNTY paying Professional one (1) year of the solicited employee's wages at the last hourly or salaried rate they were paid by Professional immediately upon demand.

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EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$650,00, as follows:
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Monthly payment for services and/or reimbursement specified in **EXHIBIT A**, with the exception of those items listed under "**EMERGENCY RESPONSE**" and "**ANNUAL DEFERRED MAINTENANCE**", shall be \$35,000. Invoices must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Monthly payment for services and/or reimbursement specified in **EXHIBIT A**, "**EMERGENCY RESPONSE**" and "**ANNUAL DEFERRED MAINTENANCE**", shall be based on material costs and the current Schedule of Fees (**EXHIBIT B-1**).
- D. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- E. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT B-1

Schedule of Fees

<p>MAINTENANCE SCHEDULE OF FEES PREVAILING WAGE</p>		<p>FLUID RESOURCE MANAGEMENT CONTRACTORS LICENSE NO. 937346</p>
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HOURLY RATES*	
Maintenance Manager	\$190
Electrician	\$170
Teamster 3	\$170
Crane Operator	\$190
Mechanical Technician (Laborer 4)	\$170
Mechanical Technician (Laborer 1)	\$160
Administrative Assistant	\$105
Vactor truck (Includes attachments)	\$185
Vacuum truck (Includes up to 100' hose)	\$125
Vacuum trailer (Includes up to 50' hose)	\$75
15-ton crane and rigging	\$125
Tow behind compressor	\$50
Gang truck	\$40
Light truck	\$30
Confined space equipment for single-man entry	\$150/day
Per diem per employee	\$175/day
Overtime rates	Time and a half: 1.5 times the above rates Double time: Add 22% to the time-and-a-half rate

*Above rates are based on portal-to-portal billing

DIRECT EXPENSES

Reimbursement of direct expenses incurred in connection with the project Scope of Work will be invoiced to the client including a handling charge of 20%. Direct expenses include, but are not limited to, the following:

- | | |
|---|--|
| <ul style="list-style-type: none"> • Sub-consultants/sub-contractors • City/county/state fees • Copies/outside reproduction • Materials | <ul style="list-style-type: none"> • Equipment rental • Postage/delivery service • Data and communication charges |
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**OPERATIONS AND MAINTENANCE
SCHEDULE OF FEES
NON-PREVAILING WAGE**



**FLUID RESOURCE
MANAGEMENT**
CONTRACTORS LICENSE NO. 937346

HOURLY RATE	
Director of Operations	\$170
Maintenance Division Manager	\$160
Operations Division Manager	\$160
Programmer	\$200
Qualified Industrial Stormwater Practitioner (QISP)	\$145
Operations Consultant/Maintenance Mechanic/Senior SCADA Specialist	\$145
Account Manager/Project Manager	\$140
Senior Compliance Specialist	\$140
Senior Safety Consultant	\$140
System Supervisor/Chief Plant Operator	\$150
Operator III	\$145
Operator II	\$135
Compliance Specialist	\$130
Operator I	\$120
Maintenance Technician	\$110
SCADA Technician/Fabricator	\$110
Operator in Training (OIT)	\$95
Qualified Technician	\$90
Maintenance Assistant	\$80
Administrative Assistant	\$65
Vactor truck and operator (Includes mileage)	\$338
Vacuum truck and operator (Includes mileage)	\$270
Mileage – light truck	\$1.76/mile
Mileage – service/gang/heavy truck	\$2.70/mile

EMERGENCY CALLOUTS (EITHER BY THE CLIENT, ALARM SYSTEM, SCADA SYSTEM, ETC.) MAY BE BILLED AT UP TO TWICE THE RATES SHOWN ABOVE WITH A TWO HOUR MINIMUM.

DIRECT EXPENSES

Reimbursement of direct expenses incurred in connection with the project Scope of Work will be invoiced to the client including a handling charge. Direct expenses include, but are not limited to, the following:

- Sub-consultants/sub-contractors
- City/county/state fees
- Copies/outside reproduction
- Travel expenses
- Materials
- Equipment rental
- Postage/delivery service
- Data and communication charges

EXHIBIT C

Indemnification and Insurance Requirements (For Service Contracts Not Requiring Professional Liability Insurance)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. ***(Not required if CONTRACTOR provides written verification that it has no employees)***

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

