

# SAMPLE CONTRACT FOR DESIGN PROFESSIONAL SERVICES

## 1. PARTIES:

The parties to this contract are the SAN DIEGO COUNTY WATER AUTHORITY, a county water authority, (the Water Authority) and \_\_\_\_\_, [a / an] \_\_\_\_\_ (Design Professional).

## 2. SCOPE OF SERVICES:

(a) The design professional services to be provided by Design Professional [are described in Attachment A] [are (describe within paragraph)].

(b) Design Professional represents and warrants that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in paragraph (a).

## 3. PAYMENT:

(a) Payment for services. **[Option 1]** The Water Authority shall pay for services in a lump sum of \$\_\_\_\_\_ upon satisfactory completion of the services and delivery of the work product.

**[Option 2]** The Water Authority shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

**[Option 3]** The Water Authority shall pay for services performed in accordance with this contract at an hourly rate of \$\_\_\_\_\_.

(b) Reimbursement of expenses. **[Option 1]** The payment for services includes payment for all costs and expenses that may be incurred by Design Professional in the performance of services.

**[Option 2]** Design Professional will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the expense reimbursement schedule included in Attachment B.

(c) Maximum payment. The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed \$\_\_\_\_\_.

(d) Invoices. **[Option 1]** An invoice for services shall be submitted upon completion of all services. **[Additional Option.** If reimbursement of expenses is authorized, Design Professional may submit monthly invoices for such expenses, including appropriate documentation of each expense incurred.] The Water Authority generally will process and pay bills within thirty (30) days from receipt.

**[Option 2]** All invoices for services will be submitted on a monthly basis to the Contract Manager. The Water Authority generally will process and pay bills within thirty (30) days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. **[Additional Option A.** If reimbursement of expenses is authorized, Design Professional shall submit monthly invoices for such expenses, including full documentation of each expense incurred.] **[Additional Option B.** The invoice shall be accompanied by a separate confidential invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work, the time of performance if payment is on an hourly basis, and itemized reimbursable expenses.] Payments are subject to a final audit upon completion of services or other termination of this contract.

(e) **Audit of Records.** Design Professional shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Water Authority or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment to Design Professional. All such records shall be clearly identifiable. Design Professional shall allow Water Authority representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours notice.

#### **4. TIME FOR PERFORMANCE:**

(a) **[Option 1]** Design Professional will complete all services by \_\_\_\_\_.

**[Option 2]** Design Professional will perform the services according to the schedule contained in Attachment C. If the schedule calls for the services to be performed in phases or discrete increments, Design Professional shall not proceed from one phase or increment to the next without written authorization from the Contract Manager. Design Professional will complete all services by \_\_\_\_\_.

(b) **Extension of time for unforeseen circumstances.** In the event that the Design Professional is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Design Professional's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, except strikes, lockouts, or work slow down or stoppage of Design Professional's employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Design Professional shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

#### **5. STANDARD OF PERFORMANCE:**

(a) Services shall be performed by Design Professional in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of Design Professional's profession currently practicing in California. By delivery of completed work, Design Professional certifies that the work conforms to the requirements of this contract and all

applicable federal, state and local laws and the professional standard of care in California.

(b) Design Professional is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state, and local laws and regulations, and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, and other similar information provided by the Water Authority relating to site, local, or other conditions is not warranted or guaranteed, either expressly or implied, by the Water Authority.

(c) Design Professional's responsibilities under this section shall not be delegated. Design Professional shall be responsible to the Water Authority for acts, errors, or omissions of Design Professional's subcontractors.

(d) Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by the Water Authority, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this contract and determining whether the Design Professional is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the Water Authority of any responsibility, professional or otherwise, for the work, and shall not does not relieve the Design Professional of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Design Professional.

## **6. INDEPENDENT CONTRACTOR:**

Design Professional is an independent contractor. Neither Design Professional nor any of Design Professional's officers, employees, agents or subcontractors, if any, is an employee of the Water Authority by virtue of this contract or performance of any work under this contract.

## **7. ASSIGNMENT:**

Design Professional shall not subcontract, assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the Water Authority in each instance.

## **8. SUBCONTRACTORS:**

(a) Design Professional will perform the work personally or through Design Professional's employees. Design Professional may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority's Small Contractor Professional Outreach and Opportunities Program, if the Water Authority determines that the program provisions are applicable. If subcontracting of work is permitted, Design Professional shall pay subcontractor within ten (10) days of receipt of payment by Water Authority for work performed by a subcontractor and billed by the Design Professional. Use of the term

subcontractor in any other provision of this contract shall not be construed to imply authorization for Design Professional to use subcontractors for performance of any service under this contract.

(b) The Water Authority is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the Water Authority.

## **9. DESIGN PROFESSIONAL'S EMPLOYEES:**

(a) Immigration Reform and Control Act of 1986. Design Professional is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all of Design Professional's officers, employees, agents and subcontractors that are included in this contract.

(b) Limitation of Water Authority Liability. The payment made to Design Professional pursuant to this contract shall be the full and complete compensation to which Design Professional and Design Professional's officers, employees, agents, and subcontractors are entitled for performance of any work under this contract. Neither Design Professional nor Design Professional's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Water Authority. The Water Authority will not make any federal or state tax withholdings on behalf of Design Professional. The Water Authority shall not be required to pay any workers' compensation insurance on behalf of Design Professional.

(c) Indemnification for Employee Payments. Design Professional agrees to defend and indemnify the Water Authority for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Water Authority may be required to make on behalf of Design Professional or any employee of Design Professional, or any employee of Design Professional construed to be an employee of the Water Authority, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

**[ONLY IF APPLICABLE]** (d) Prevailing wage. Design Professional shall comply with all provisions of California laws dealing with prevailing wages, apprentices, and hours of work. Design Professional shall also comply with provisions of Labor Code section 1720 as applicable. A copy of the prevailing wage rates is available for review at the Water Authority's office at 4677 Overland Avenue, San Diego, California, 92123. This provision applies only to the following portions of the scope of work: **[LIST APPLICABLE SERVICES.]**

## **10. FAIR EMPLOYMENT PRACTICES:**

(a) Administrative Code Provisions. Design Professional acknowledges and agrees to abide by the following provision of the Water Authority Administrative Code Section 2.24.010 that

states:

“(a) It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Design Professionals shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, Design Professional, vendor, or recipient of Authority services on account of the person’s race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Design Professionals shall not knowingly give preferential treatment to any applicant for employment, bidder, Design Professional, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

“(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority.”

(b) Civil Rights Act. Design Professional agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Water Authority’s Small Contractor Professional Outreach and Opportunities Program.

(c) Water Authority Discrimination/Harassment Policy. Design Professional and its officers, employees, agents and subcontractors shall comply with the Water Authority’s Discrimination/Harassment Prohibition Policy in performance of this contract.

(d) Indemnification. To the fullest extent permitted by law and without limitation by the

provisions of Section 19 relating to insurance, the Design Professional shall also indemnify, defend and hold harmless the Water Authority, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Design Professional or any of the Design Professional's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractors of the Design Professional or its subcontractors, the Design Professional shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractors. The provisions of this Section survive completion of the services or termination of the Contract.

#### **11. WORKPLACE CONDUCT AND BEHAVIOR:**

Design Professional and Design Professional's officers, employees, agents and subcontractors shall comply with the Water Authority's Substance-free Work Place Policy, Information and Communications Systems Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the Water Authority or using Water Authority facilities or equipment.

#### **12. OWNERSHIP OF WORK PRODUCT:**

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the Water Authority. Design Professional agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the Water Authority and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Water Authority. Water Authority acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Design Professional makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

#### **13. FORMAT OF DOCUMENTS:**

Documents submitted to the Water Authority in electronic format shall be formatted according to specifications provided by the Water Authority, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Professional 2007 format as appropriate for the particular work product or, if directed by the Contract Manager in Adobe Acrobat pdf format.

#### **14. CHANGES IN WORK:**

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the

appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Design Professional or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract. All changes in work that increase the amount of payment shall be subject to Section 4.04.040 of the Water Authority Administrative Code.

**15. CONFIDENTIALITY:**

- (a) Confidential Nature of Information. Design Professional shall treat all information obtained from the Water Authority in the performance of this contract as confidential and proprietary to the Water Authority. Design Professional shall treat all records and work product prepared or maintained by Design Professional in the performance of this contract as confidential.
- (b) Limitation on use and disclosure. Design Professional agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Design Professional's scope of work. Design Professional will not disclose any information prepared for the Water Authority, or obtained from the Water Authority or obtained as a consequence of the performance of work to any person other than the Water Authority, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the Water Authority.
- (c) Security plan. If requested by the Contract Manager, Design Professional shall prepare a security plan to assure that information obtained from the Water Authority or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Design Professional shall advise the Water Authority of any request for disclosure of information or of any actual or potential disclosure of information.
- (d) Survival. Design Professional's obligations under this paragraph shall survive the termination of this contract.

**16. PROHIBITED INTEREST:**

No official or employee of the Water Authority who is authorized in such capacity on behalf of the Water Authority to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the Water Authority who is authorized in such capacity and on behalf of the Water Authority to exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or

indirectly interested personally in this contract or any part thereof.

**17. CONFLICT OF INTEREST:**

(a) Local Conflict of Interest Code Compliance.[**OPTION 1**]: The Water Authority has determined, based on the scope of the services to be provided by Design Professional under this contract, that this contract does not confer on Design Professional or any of Design Professional’s employees the status of a “designated employee” or “Consultant” of the Water Authority for the purposes of the Water Authority’s Local Conflict of Interest Code and the California Political Reform Act. This contract does not require or permit Design Professional to make a governmental decision as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(A), or serve in a staff capacity as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(B).

[**OPTION 2**: The Water Authority has determined, based on the scope of the services to be provided by Design Professional under this contract, that this contract confers on Design Professional or any of Design Professional’s employees the status of a “designated employee” or “Consultant” of the Water Authority for the purposes of the Water Authority’s Local Conflict of Interest Code and the California Political Reform Act. Design Professional will be subject to the same provisions as the \_\_\_\_\_ Designation in the Water Authority’s Local Conflict of Interest Code.

(b) Disqualification. Design Professional shall not make or participate in making or in any way attempt to use Design Professional’s position to influence a governmental decision in which Design Professional knows or has reason to know Design Professional has a direct or indirect financial interest other than the compensation promised by this contract. Design Professional will not have such interest during the term of this contract. Design Professional will immediately advise the Contract Manager and General Counsel of the Water Authority if Design Professional learns of a financial interest of Design Professional’s during the term of this contract. If Design Professional’s participation in another Water Authority project would create an actual or potential conflict of interest, in the opinion of the Water Authority, the Water Authority may disqualify Design Professional from participation in such other project during the term of this Contract.

**18. INDEMNIFICATION:**

(a) To the fullest extent permitted by law, the Design Professional shall (1) immediately defend and (2) indemnify the Water Authority, and its directors, officers, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. The Design Professional’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally

adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Design Professional's indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from Design Professional's duty to indemnify. Design Professional shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Water Authority, the Water Authority and its directors, officers, and employees, immediately upon tender to Design Professional of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Design Professional are responsible for the claim does not relieve Design Professional from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Design Professional asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Design Professional may submit a claim to the Water Authority for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

(c) The review, acceptance or approval of the Design Professional's work or work product by any indemnified party shall not affect, relieve or reduce the Design Professional's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

## **19. INSURANCE:**

(a) Requirement. Design Professional shall procure and maintain during the period of performance of this contract and for \_\_\_ months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority so that any other coverage held by the Water Authority shall not contribute to any loss under Design Professional's insurance.

General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than **[\$2,000,000]** general aggregate and **[\$1,000,000]** per occurrence for general liability, bodily injury, personal injury, and property damage.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than **[\$1,000,000]** per accident for personal injury, including death, and property damage.

Professional liability: (errors and omissions) for damage alleged to be as a result of errors, omissions or negligent acts of Design Professional coverage in an amount not less than **[\$1,000,000]** per claim.

Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of [**\$1,000,000.**]

A deductible or retention may be utilized, subject to approval by the Water Authority. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party including additional insureds or insurers, shall satisfy the self-insured retention limits

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the Water Authority (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract.

Design Professional's insurance is primary to any other insurance available to the Water Authority with respect to any claim arising out of this Agreement. Any insurance maintained by the Water Authority shall be excess of the Design Professional's insurance and shall not contribute with it. The Design Professional's endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority, and its directors, officers, employees and agents.

Design Professional's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after thirty (30) days' written notice has been given to the Water Authority, or after ten (10) days' written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Design Professional shall provide proof of the carrier's A-V rating to Water Authority.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Design Professional shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority, or on equivalent ISO forms that contain provisions required by this contract.

## **20. ACCIDENT REPORTS:**

Design Professional shall immediately report (as soon as feasible, but not more than 24 hours) to the Contract Manager and Water Authority Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Water Authority's Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

## **21. COVENANT AGAINST CONTINGENT FEES:**

Design Professional agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Design Professional, to solicit or secure this contract, and that Design Professional has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the Water Authority shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

## **22. TERMINATION OR ABANDONMENT:**

(a) **Water Authority's Rights.** The Water Authority has the right to terminate or abandon any portion or all of the work by giving 10 days' written notice. Upon receipt of a notice of termination, Design Professional shall perform no further work except as specified in the notice. Before the date of termination, Design Professional shall deliver to Water Authority all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Water Authority shall pay Design Professional for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the Water Authority and Design Professional for the portion of work completed in conformance with this contract before the date of termination. In addition, the Water Authority will reimburse Design Professional for authorized expenses incurred and not previously reimbursed. The Water Authority shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) **Design Professional's Rights.** Design Professional, if Design Professional is not in default or breach, may terminate Design Professional's obligation to provide further services under this contract upon 30 days' written notice only in the event of a material default by the Water Authority, which default has not been cured within thirty (30) days following the written

notice.

**23. SUCCESSORS OR ASSIGNS:**

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

**24. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:**

(a) General Obligation. Design Professional shall pay to the Water Authority the replacement cost of any equipment or repair cost of any facilities provided by the Water Authority for Design Professional's use in performance of services that is lost or damaged by Design Professional or Design Professional's officers, employees, agents, or subcontractors.

(b) Keys. During the term of the contract, Design Professional may be issued keys to Water Authority facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Design Professional will sign for each key and each key will be returned to the project manager when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Design Professional shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Water Authority, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the Water Authority security level is returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as \$40,000.

**25. ELECTRONIC COMMUNICATIONS:**

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Design Professional and the Water Authority acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Design Professional and the Water Authority view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Design Professional agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

**26. LAWS AND VENUE:**

This contract and disputes arising out of or relating to the contract or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties' relationship shall be brought in a state or federal court situated in the County of San Diego, State of California.

**27. ADMINISTRATION:**

(a) Design Professional's principal place of business and agent for service of process. Design Professional's principal place of business is \_\_\_\_\_.  
Design Professional's agent for service of process is \_\_\_\_\_.

(b) Water Authority's Representative. The Water Authority's representative for administration of this contract is \_\_\_\_\_, who is the designated Contract Manager. The Water Authority may change the Contract Manager at any time upon notice to the Design Professional.

(c) Design Professional's Representative. The Design Professional's representative for administration of this contract is \_\_\_\_\_, who is designated as the Project Manager. The Design Professional may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) Notices. Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123-1233

Attn: \_\_\_\_\_(Contract Manager)

Design Professional:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_(Project Manager)

Either party may change the address or identity of the person for notices under this paragraph by

written notice to the other delivered in accordance with this paragraph.

(e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Design Professional and Contract Manager.

**28. INTEGRATION AND MODIFICATION:**

This contract represents the entire understanding of the Water Authority and Design Professional as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the Water Authority and Design Professional.

**29. ADVICE OF COUNSEL:**

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

**30. INDEPENDENT REVIEW:**

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

**31. TIME:**

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

**32. ASSIGNMENT OF ANTI-TRUST CLAIMS:**

The Design Professional offers and agrees to assign to the Water Authority all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the Water Authority tenders final payment to Design Professional, without further acknowledgment by the parties. The Design Professional shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

**33. TAXES:**

The Design Professional shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

**34. SIGNATURES:**

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

DATED: \_\_\_\_\_, 20\_\_

San Diego County Water Authority

\_\_\_\_\_

By: \_\_\_\_\_

Design Professional:

\_\_\_\_\_

By: \_\_\_\_\_

Approved as to form:  
DANIEL S. HENTSCHKE  
General Counsel  
San Diego County Water Authority

By: \_\_\_\_\_

**ATTACHMENT A**  
**SCOPE OF WORK**

**ATTACHMENT B**  
**PAYMENT and FEE SCHEDULE**

**ATTACHMENT C**  
**PERFORMANCE SCHEDULE**

**ATTACHMENT D**

CERTIFICATES OF INSURANCE  
and  
ADDITIONAL INSURED ENDORSEMENTS

**GENERAL LIABILITY SPECIAL ENDORSEMENT  
FOR THE SAN DIEGO COUNTY WATER AUTHORITY**

ENDORSEMENT NO.

ISSUE DATE (MM/DD/YY)

**PRODUCER**

Telephone \_\_\_\_\_

**NAMED INSURED**

**POLICY INFORMATION**

Insurance Company: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_

Deductible OR  Self-Insured Retention of \$ \_\_\_\_\_  
 Each Occurrence  Per Claim

**APPLICABILITY.** This insurance pertains to the operations, products and/or activities of the Named Insured under all written agreements and permits in force with the Water Authority unless checked here  in which case only the following specific agreements and permits with the Water Authority are covered: AGREEMENTS/PERMITS

**TYPE OF INSURANCE**

COMMERCIAL GENERAL LIABILITY  Claims Made Retroactive Date \_\_\_\_\_  
 COMPREHENSIVE GENERAL LIABILITY  Occurrence  
 OWNERS & CONTRACTORS PROTECTIVE

**OTHER PROVISIONS**

**COVERAGES**

LIABILITY LIMITS IN THOUSANDS \$

EACH OCCURRENCE

AGGREGATE

GENERAL LIABILITY  
 PRODUCTS-COMPLETED OPERATIONS  
 PERSONAL & ADVERTISING INJURY  
 FIRE LEGAL LIABILITY  
 EXPLOSION, COLLAPSE, UNDERGROUND HAZARD  
 CONTRACTUAL LIABILITY

**CLAIMS:** Underwriter's Representative for claims pursuant to this insurance

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

- 1. ADDITIONAL INSURED.** The Water Authority, its directors, officers, employees, and agents, are included as additional insureds with regard to liability and defense of suits or claims arising from the operations, products and activities performed by or on behalf of the Named Insured.
- 2. CONTRIBUTION NOT REQUIRED.** This insurance shall be primary. Any other insurance or self-insurance available to the insureds added by this endorsement shall be in excess of and shall not contribute with this insurance.
- 3. SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- 4. CANCELLATION NOTICE.** With respect to the interests of the Water Authority, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to the Water Authority at address indicated below. (Except 10 days shall be allowed for non-payment of premium.)
- 5. PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure by the Named Insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added by this endorsement.
- 6. SCOPE OF COVERAGE.** This endorsement shall afford coverage at least as broad as Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG 0001; or claims made form CG 0002

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**ENDORSEMENT HOLDER / ADDITIONAL INSURED**

SAN DIEGO COUNTY WATER AUTHORITY  
 4677 OVERLAND AVENUE  
 SAN DIEGO, CA 92123

**PROJECT:** \_\_\_\_\_

ATTENTION: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE**

I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Employer of Signatory \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Date Signed \_\_\_\_\_

**AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT  
FOR THE SAN DIEGO COUNTY WATER AUTHORITY**

ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)
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**PRODUCER**

Telephone \_\_\_\_\_

**POLICY INFORMATION**

Insurance Company: \_\_\_\_\_  
 Policy No.: \_\_\_\_\_  
 Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_

Deductible OR  Self-Insured Retention \$ \_\_\_\_\_

**NAMED INSURED**

**APPLICABILITY.** This insurance pertains to the operations, and/or activities of the Named Insured under all written contracts and agreements in force with the Water Authority unless checked here  in which case only the following specific permits and agreements with the Water Authority are covered:  
 AGREEMENTS/PERMITS \_\_\_\_\_

**TYPE OF INSURANCE**

BUSINESS AUTO POLICY  
 TRUCKERS AND MOTOR CARRIER LIABILITY POLICY  
 GARAGEKEEPERS LIABILITY  
 NON-OWNED - - HIRED VEHICLES  
 OTHER \_\_\_\_\_

**OTHER PROVISIONS**

**LIABILITY LIMIT IN THOUSANDS \$**

\$ \_\_\_\_\_ per accident, for bodily injury and property damage liability.

**CLAIMS:** Underwriter's Representative for claims pursuant to this insurance.

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: ( ) \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

- 1. ADDITIONAL INSURED.** The Water Authority, its directors, officers, employees, and agents, are included as additional insureds with regard to liability and defense of suits or claims arising from the operations, products and activities performed by or on behalf of the Named Insured.
- 2. CONTRIBUTION NOT REQUIRED.** This insurance shall be primary. Any other insurance or self-insurance available to the insureds added by this endorsement shall be in excess of and shall not contribute with this insurance.
- 3. SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- 4. CANCELLATION NOTICE.** With respect to the interests of the Water Authority, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to the Water Authority at address indicated below. (Except 10 days shall be allowed for non-payment of premium.)
- 5. PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure by the Named Insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added by this endorsement.
- 6. SCOPE OF COVERAGE.** This endorsement shall afford coverage at least as broad as Insurance Services Office form number CA0001, Code 1 ("any auto").

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**ENDORSEMENT HOLDER / ADDITIONAL INSURED**

SAN DIEGO COUNTY WATER AUTHORITY  
 4677 OVERLAND AVENUE  
 SAN DIEGO, CA 92123

ATTENTION: (PROJECT MANAGER)

TELEPHONE: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE**

I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature \_\_\_\_\_  
 Title \_\_\_\_\_  
 Employer of Signatory \_\_\_\_\_  
 Telephone: ( ) \_\_\_\_\_ Date Signed \_\_\_\_\_

# PROFESSIONAL LIABILITY SPECIAL ENDORSEMENT

FOR THE SAN DIEGO COUNTY WATER AUTHORITY

ENDORSEMENT NO.

ISSUE DATE (MM/DD/YY)

## PRODUCER

Telephone \_\_\_\_\_

## POLICY INFORMATION

Insurance Company: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_

Deductible OR  Self-Insured Retention \$ \_\_\_\_\_  
 Per Occurrence  Per Claim

## NAMED INSURED

**APPLICABILITY.** This insurance pertains to services and/or activities of the Named Insured under all written contracts and permits in force with the Water Authority unless checked here  in which case only the following specific agreements and permits with the Water Authority are covered:

CONTRACTS/PERMITS: \_\_\_\_\_

## TYPE OF INSURANCE

Claims Made Form  Occurrence Form

**CLAIMS:** Underwriter's Representative for claims pursuant to this insurance.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

## COVERAGES

LIABILITY LIMITS IN THOUSANDS \$

EACH OCCURRENCE

AGGREGATE

- ARCHITECTS /ENGINEERS PROFESSIONAL LIABILITY
- ENVIRONMENTAL PROFESSIONAL LIABILITY
- CONTRACTORS / PROJECT MANAGER'S PROFESSIONAL LIABILITY
- LAWYER'S PROFESSIONAL
- OTHER \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **CANCELLATION NOTICE.** This insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to the Water Authority at address indicated below. (Except 10 days shall be allowed for non-payment of premium.)
2. **OTHER PROVISIONS.** The following exclusions, or special provisions apply to this coverage.

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

## ENDORSEMENT HOLDER

SAN DIEGO COUNTY WATER AUTHORITY  
4677 OVERLAND AVENUE  
SAN DIEGO, CA 92123

ATTENTION: (PROJECT MANAGER)

TELEPHONE: \_\_\_\_\_

## AUTHORIZED REPRESENTATIVE

I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Employer of Signatory \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Date Signed \_\_\_\_\_

**WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT**  
 FOR THE SAN DIEGO COUNTY WATER AUTHORITY

ENDORSEMENT NO. \_\_\_\_\_

ISSUE DATE (MM/DD/YY) \_\_\_\_\_

**PRODUCER**

Telephone \_\_\_\_\_

**POLICY INFORMATION**

Insurance Company: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_

Deductible OR  Self-Insured Retention \$ \_\_\_\_\_  
 Each Occurrence  Per Claim

**APPLICABILITY.** This insurance pertains to the operations, products and/or activities of the Named Insured under all written contracts and permits in force with the Water Authority unless checked here  in which case only the following specific contracts and permits with the Water Authority are covered:  
 CONTRACTS/PERMITS

**NAMED INSURED**

**COVERAGES (check as applicable)**

Statutory Workers' Compensation

Employer's Liability \_\_\_\_\_ Bodily Injury (each accident)

\_\_\_\_\_ Bodily Injury by Disease (each employee)

\_\_\_\_\_ Bodily Injury by Disease (policy limit)

**OTHER PROVISIONS**

**CLAIMS:** Underwriter's Representative for claims pursuant to this insurance

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

- WAIVER OF SUBROGATION.** The Insurance Company agrees to waive all rights of subrogation against the Water Authority, its directors, officers, employees, and agents for losses paid under the terms of this policy which arise from the work performed by the Named Insured for the Water Authority.
- CANCELLATION NOTICE.** With respect to the interests of the Water Authority, this insurance shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice by receipted delivery has been given to the Water Authority at address indicated below. (Except 10 days shall be allowed for non-payment of premium.)

Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**ENDORSEMENT HOLDER**

THE SAN DIEGO COUNTY WATER AUTHORITY  
 4677 OVERLAND AVENUE  
 SAN DIEGO, CA 92123

ATTENTION: **(PROJECT MANGER)** \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE**

I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Employer of Signatory \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Date Signed \_\_\_\_\_