

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN FALLBROOK PUBLIC UTILITY DISTRICT
AND**

[Insert Consultant's Name]

This Agreement is made and entered into as of _____, 20__ by and between **FALLBROOK PUBLIC UTILITY DISTRICT** (hereinafter referred to as the "District"), a public utility district organized and operating under the Public Utility District Act, California Public Utilities Code section 15501 et seq. and **[Insert Consultant's Name]**, a **[insert type of business or entity]** (hereinafter referred to as "Consultant").

RECITALS

- A. District is a public agency of the State of California and is in need of professional services for the following project: _____ (hereinafter referred to as "the Project").
- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The parties desire by this Agreement to establish the terms for District to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Services. Consultant shall provide District with the services described in the Scope of Services attached hereto as Exhibit "A."
- 2. Compensation.
 - a. Subject to paragraph 2(b) below, the District shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."
 - b. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed the sum of \$ **[Insert Amount of Compensation]** without the written approval of the District. Periodic payments shall be made within 30 days of receipt of an undisputed statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.
 - c. Payment shall not constitute acceptance of any work completed by Consultant.
- 3. Additional Work. At any time during the term of this Agreement, the District may request changes in the Scope of Services, and any such change shall be processed by in the following manner: a letter outlining the changes shall be

forwarded to the District by Consultant with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by the District and executed by both parties before performance of such services or the District will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by the District.
5. Time of Performance. Consultant shall perform its services hereunder in a prompt and timely manner and shall commence performance upon receipt of a written Notice to Proceed from the District. Consultant shall complete the services required hereunder within **[Insert Number of Calendar Days for Performance of the Services--if more detail is required Attached a "Schedule of Performance" as Exhibit "C" and renumber Exhibit "C" as Exhibit "D"]** The Notice to Proceed shall set forth the date of commencement of the work. Consultant shall confer as requested with District representatives to review progress of work elements, adherence to work schedule, coordination of work, scheduling of review and resolution of problems which may develop.
6. Delays in Performance.
 - a. Neither the District nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.
 - b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
7. Compliance with all Laws.
 - a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
 - b. Consultant shall assist the District, as requested, in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

- c. Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of Consultant's services or operations performed under this Agreement.
8. Standard of Care. Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
9. Assignment and Subconsultant. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the District, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.
10. Independent Consultant. Consultant is retained as an independent contractor and is not an employee of the District. No employee or agent of Consultant shall become an employee of the District. The work to be performed shall be in accordance with the work described in Exhibit "A," subject to such directions and amendments from the District as herein provided.
11. Integration. This Agreement represents the entire understanding of the District and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.
12. Insurance. Consultant shall not commence work for the District until it has provided evidence satisfactory to the District it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor or subconsultant to commence work on any subcontract until it has secured all insurance required under this section.
 - a. Commercial General Liability.
 - (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the District.
 - (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

- (2) The policy shall contain no endorsements or provisions limiting coverage for (A) contractual liability; (B) cross liability exclusion for claims or suits by one insured against another; (C) products/completed operations liability; or (D) contain any other exclusion contrary to the Agreement.
- (iii) Commercial General Liability Insurance must include coverage for the following:
 - (1) Bodily Injury and Property Damage
 - (2) Personal Injury/Advertising Injury
 - (3) Premises/Operations Liability
 - (4) Products/Completed Operations Liability
 - (5) Aggregate Limits that Apply per Project
 - (6) Explosion, Collapse and Underground (UCX) exclusion deleted
 - (7) Contractual Liability with respect to this Agreement
 - (8) Broad Form Property Damage
 - (9) Independent Consultants Coverage
- (iv) All such policies shall name the Fallbrook Public Utility District, the Board and each member of the Board, its officers, directors, employees, agents and the Fallbrook Public Utility District designated volunteers as Additional Insureds under the policy using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.
- (v) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District, and provided that such deductibles shall not apply to the District as an additional insured.

b. Automobile Liability.

- (i) At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.
- (ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- (iii) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the District and provided that such deductibles shall not apply to the District as an additional insured.

(iv) All such policies shall name the Fallbrook Public Utility District, the Board and each member of the Board, its officers, directors, employees, agents and Fallbrook Public Utility District designated volunteers as Additional Insureds under the policies.

c. Workers' Compensation/Employer's Liability.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subcontractors to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

(iii) Such insurance shall include an insurer's Waiver of Subrogation in favor of the District and will be in a form and with insurance companies acceptable to the District.

d. Professional Liability (Errors and Omissions). [INCLUDE IF CONSULTANT IS OF THE TYPE TO CARRY E&O INSURANCE, OTHERWISE DELETE]

(i) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability insurance or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the District and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

The retroactive date, if any, of each such policy is to be no later than the effective date of this Agreement, and Consultant shall maintain such coverage continuously for a period of at least three (3) years following the completion of work under this Agreement.

e. Minimum Policy Limits Required.

(i) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000 per occurrence
Professional Liability (E&O)	\$1,000,000 per claim and aggregate [DELETE IF NOT APPLICABLE]

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirement of specific coverage or minimum limits contained in this Agreement are not intended as a limitation on coverage, limits or any other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required.

(i) Prior to execution of the Agreement, the Consultant shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with all endorsements to the policies described therein. All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required.

- (i) All policies shall contain a provision for thirty (30) days prior written notice by the insurer(s) to the District of cancellation of any policy required by this Agreement, except that the Contractor shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates. In the event any insurer providing coverage required under this Agreement shall fail to provide the notice required in this section, Contractor shall be responsible to provide such notice to the District. If any of the required coverage is cancelled or expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the District at least ten (10) days prior to the effective date of cancellation or expiration.
- (ii) All policies of Commercial General Liability and Automobile Liability Insurance shall contain a provision stating that Contractor’s policies are primary insurance and that any insurance, self-insurance or other coverage maintained by the District or any named insureds shall not be called upon to contribute to any loss.
- (iii) All policies of Commercial General Liability and Automobile Liability insurance shall contain or shall be endorsed to contain a waiver of subrogation in favor of the Fallbrook Public Utility District, the Board and each member of the Board, its officers, directors, employees, agents and designated volunteers; or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against Fallbrook Public Utility District, the Board and each member of the Board, its officers, directors, employees, agents and designated volunteers, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- (iv) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further, the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit the Contractor’s indemnification obligations to the District and shall not preclude

the District from taking such other actions available to the District under other provisions of the Agreement or law.

h. Qualifying Insurers.

- (i) All policies required shall be issued by acceptable insurance companies, as determined by the District, which satisfy the following minimum requirements:

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions.

- (i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- (ii) If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents, the District has the right but not the duty to acquire the insurance it deems necessary and deduct the cost thereof from the appropriate progress payments due the Consultant, or backcharge the Consultant for such costs in the event they exceed the amount of unpaid progress payments due the Consultant. In the alternative, District may in its sole discretion terminate this Agreement for cause.
- (iii) The District may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- (iv) Neither the District, nor the Board, nor any member of the Board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Agreement.
- (v) Insurance certificates shall be attached hereto as Exhibit "C."

j. Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they

have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage.

13. Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the District, its officials, officers, employees, agents, or volunteers.

To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the District, Consultant's obligations shall be reduced in proportion to the established comparative liability of the District and shall not exceed the Consultant's proportionate percentage of fault.

14. California Labor Code Requirements.
 - a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to

prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

- b. If the services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

15. District Material Requirements. Consultant is hereby made aware of the District’s requirements regarding materials, as set forth in San Diego Water Agencies Standards, which are deemed to be a part of this Agreement.

16. Laws, Venue, and Attorneys’ Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney’s fees, as determined by the court.

17. Termination or Abandonment.

- a. The District has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, the District shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. The District shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by the District and Consultant of the portion of such task completed but not paid prior to said termination. The District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

- b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to the District only in the event of substantial failure by the District to perform in accordance with the terms of this Agreement through no fault of Consultant.
- 18. Documents. Except as otherwise provided in Section 17, above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the District.
- 19. Organization. Consultant shall assign **[Insert Name of Consultant's Assigned Project Manager]** as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the District.
- 20. Notice. Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

District:

Fallbrook Public Utility District
 990 E. Mission Road
 Fallbrook, CA 92028

Attn.:

Consultant:

[Insert Name of Consultant and Consultant Information]

Attn.:

and shall be effective upon receipt thereof.

- 21. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the District and the Consultant.
- 22. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
- 23. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FALLBROOK PUBLIC UTILITY DISTRICT

[Insert Name of Consultant]

By: _____
Jack Bebee
General Manager

By: _____
Name: _____
Title: _____

EXHIBIT A
PROPOSED SCOPE OF WORK

EXHIBIT B

SCHEDULE OF CHARGES

Consultant will invoice Fallbrook Public Utility District (“District”) on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task and the percent complete for each task. Consultant will inform District regarding any out-of-scope work prior to that work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C
INSURANCE CERTIFICATES