

**AGREEMENT FOR MAINTENANCE SERVICES
BETWEEN FALLBROOK PUBLIC UTILITY DISTRICT
AND
[Insert Contractor'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 Contractor's Name]**, a **[insert type of business or entity]** (hereinafter referred to as "Contractor").

RECITALS

- A. District is a public agency of the State of California and is in need of maintenance services for the following project: _____ (hereinafter referred to as "the Project").
- B. Contractor 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 Contractor to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Services. Contractor 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 Contractor pursuant to Exhibit "A" exceed the sum of **\$(Insert Amount of Compensation)** ("Total Contract Price"). This amount is to cover all labor, materials, tools, equipment, supplies, services, incidental and customary work and administrative costs, including printing and related costs, and the District will not pay any additional fees for any such expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Contractor for work performed will be made on a monthly billing basis.
 - c. To the extent applicable, District shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for work not completed in accordance with this Agreement. Contractor

shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others, including, but not limited to, Section 7108.5 of the California Business and Professions Code.

- d. To the extent required by law, if the Total Contract Price exceeds \$5,000, from each approved progress estimate, five percent (5%) will be deducted and retained by the District, and the remainder will be paid to Contractor. In accordance with California Public Contract Code Section 22300, the District will permit the substitution of securities for any monies withheld by the District to ensure performance under this Agreement.
 - e. In addition to retention, the District may deduct from each progress payment an amount necessary to protect District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations which Contractor has failed to perform or has performed inadequately; (3) defective work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the work by Contractor; (7) unauthorized deviations from the terms of this Agreement; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Agreement or by District during the prosecution of the work; (9) erroneous or false estimates by Contractor of the value of the work performed; (10) any sums representing expenses, losses, or damages as determined by the District, incurred by the District for which Contractor is liable; and (11) any other sums which the District is entitled to recover from Contractor under the terms of this Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums.
3. Time of Performance. Contractor shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the District to proceed ("Notice to Proceed"). Contractor shall complete the services required hereunder within **[Insert number of calendar days for performance of the services – if more detail is required attach "Activity Schedule" as Exhibit C and renumber all subsequent exhibits accordingly.]** The Notice to Proceed shall set forth the date of commencement of work.
4. Additional Work/ Disputed Work.
- a. If additions or changes in the work seem merited by Contractor or the District, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the District by Contractor with a statement of estimated changes in fee or time schedule. An amendment to this 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.

- b. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the District. If Contractor disputes the District's decision, Contractor shall have such remedies as may be provided by law.
5. Completion and Inspection. When Contractor determines that it has completed the work required herein, Contractor shall so notify District in writing. District shall thereupon inspect the work. If the work is not acceptable to the District, the District shall indicate to Contractor in writing the specific portions or items of work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory work, Contractor may request a re-inspection by the District. Once all work is acceptable to District, District shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which District may be authorized or directed by law to retain.
6. Maintenance of Records. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Contractor and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by District.
7. Delays in Performance.
 - a. Neither District nor Contractor 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.
8. Compliance with Law and Safety.
 - a. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the

District, Contractor shall be solely responsible for all costs arising there from. District is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

- b. If required, Contractor shall assist the District, as requested, in obtaining and maintaining all permits required of Contractor by federal, state and local regulatory agencies.
 - c. If applicable, Contractor is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of its services or operations performed under this Agreement.
 - d. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its work, Contractor shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.
9. Standard of Care. Contractor'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.
10. Assignment and Subcontractor. Contractor 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 Contractor from employing independent associates and subcontractors as Contractor may deem appropriate to assist in the performance of services hereunder.
11. Independent Contractor. Contractor is retained as an independent contractor and is not an employee of the District. No employee or agent of Contractor shall become an employee of the District. The work to be performed shall be in accordance with the

work described in this Agreement, subject to such directions and amendments from District as herein provided. Any additional personnel performing the work under this Agreement on behalf of Contractor shall also not be employees of District and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

12. Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the work until the same is fully completed and accepted by District. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the District may terminate this Agreement as herein provided, however, that the District shall provide Contractor with one (1) day advanced written notice.
13. Claims.
 - a. Resolution of Claims. Notwithstanding any other provision herein, all claims shall be resolved pursuant to the claims resolution process set forth in Public Contract Code § 9204. Furthermore, the resolution of claims of \$375,000 or less shall also comply with the claims resolution procedures set forth in California Public Contract Code §§ 20104 et seq.
 - b. Third Party Claims. Pursuant to Public Contract Code Section 9201, the District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to this Agreement. The District is entitled to recover its reasonable costs incurred in providing such notification.
 - c. Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the District. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the District.
14. Insurance. Contractor 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, Contractor shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability.

- (i) The Contractor 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 Contractors Coverage
- (iv) The policy shall give the Fallbrook Public Utility District, the Board and each member of the Board, its officers, directors, employees, agents and designated volunteers additional insured status 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 Contractor 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 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) Contractor 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 Contractor has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Contractor 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. Contractor 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. Contractor's Pollution Liability Coverage. [REQUIRED FOR CONTRACTS INVOLVING HAZARDOUS SUBSTANCES.] At all times during the performance of the work under this Agreement, the Contractor shall maintain Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions Insurance covering losses caused by pollution conditions arising from the operations of Contractor.

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
Pollution Liability	\$1,000,000 per claim and aggregate (errors and omissions)

- (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 Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor, or backcharge the Contractor for such costs in the event they exceed the amount of unpaid progress payments due the Contractor. In the alternative, District may in its sole discretion terminate this Agreement for cause.
- (iii) The District may require the Contractor 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 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 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.

15. Bonds.

a. Performance Bond. If required by law or otherwise specifically requested by District, Contractor shall execute and provide to District concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in the form provided in Exhibit "C" attached hereto or otherwise approved by the District. If such bond is required, no payment will be made to Contractor until it has been received and approved by the District.

b. Payment Bond. If required by law or otherwise specifically requested by District, Contractor shall execute and provide to District concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in the form provided in

Exhibit "C" attached hereto or otherwise approved by the District. If such bond is required, no payment will be made to Contractor until it has been received and approved by the District.

- c. Bond Provisions. Should in District's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within ten (10) days of receiving notice from District. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the District, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the District. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the District may terminate this Agreement for cause.
 - d. Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the District.
16. Indemnification. To the fullest extent permitted by law, Contractor shall defend (with counsel reasonably approved by the District), indemnify and hold the District, its Board, members of the Board, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Claims"), in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code Section 2782, Contractor's indemnity obligation shall not apply to liability for damage or expense arising from the sole or active negligence or willful misconduct of the District or the District's agents, servants, or independent contractors who are directly responsible to the District, or for defects in design furnished by those persons.

Contractor shall defend, with counsel of District's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against District or its Board, members of the Board, employees, and authorized volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse District for the cost of any settlement paid by District, its Board, members of the Board, District employees and/or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for District's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse District and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by District, its Board, members of the Board, employees, and/or authorized volunteers.

17. California Labor Code Requirements.

- a. Contractor 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, Contractor agrees to fully comply with such Prevailing Wage Laws, if applicable. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors must be registered with the Department of Industrial Relations ("DIR"). Contractor shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

18. Verification of Employment Eligibility. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended

from time to time, and shall require all subcontractors and consultants to comply with the same.

19. 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.
20. 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 Contractor. 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 Contractor 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 Contractor 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. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.
 - b. Contractor 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 Contractor.
21. Documents. Except as otherwise provided in Section 21, 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.
22. Warranty. Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the

date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the District of any defect in the work or non-conformance of the work under the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the District in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the District may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the District, regardless of whether or not such warranties and guarantees have been transferred or assigned to the District by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the District. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the District, the District shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the District for any expenses incurred hereunder upon demand.

23. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.
24. Displaced Janitor Opportunity Act. If applicable, Contractor, as the "Successor Service Contractor", shall comply with California Labor Code Sections 1060 and 1061 pertaining to the retention of employees for a minimum 60-day transition employment period, employees who have been employed by the terminated Contractor or any Subcontractors. Contractor expressly agrees to indemnify all of the indemnified parties for any damages or claims of any type arising from Contractor's breach of its obligations under these provisions of law.
25. Organization. Contractor shall assign [Insert Name of Contractor's Assigned Project Manager] Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the District.

26. 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
P.O. Box 2290
Fallbrook, CA 92088-2290
Attn.:

Contractor:

**[Insert Name of Contractor
Contractor Information]
Contractor Information]**
Attn.:

and shall be effective upon receipt thereof.

27. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the District and the Contractor.
28. Entire Agreement. This Agreement, with its exhibits, represents the entire understanding of District and Contractor as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.
29. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
30. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of District. Any attempted assignment without such consent shall be invalid and void.
31. Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.
32. Time of Essence. Time is of the essence for each and every provision of this Agreement.
33. District's Right to Employ Other Contractors. District reserves the right to employ other contractors in connection with this Project or other projects.
34. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making

of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

35. Certification of License.

- a. Contractor certifies that as of the date of execution of this Agreement, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.
- b. STATE LICENSE BOARD NOTICE. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

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

FALLBROOK PUBLIC UTILITY DISTRICT **[Insert Name of Contractor]**

By: _____
Brian Brady
General Manager

By: _____
Name: _____
Title: _____

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF CHARGES

Contractor will invoice Fallbrook Public Utility District (“District”) on a monthly cycle. Contractor 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. Contractor will inform District regarding any out-of-scope work prior to that work being performed by Contractor. This is a time-and-materials contract.

EXHIBIT C
BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Fallbrook Public Utility District (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto District in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees incurred by District in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect District from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at District's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by District under the Contract and any modification thereto, less any amount previously paid by District to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by District under the Contract and any modification thereto, less any amount previously paid by District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if District, when declaring the Contractor in default, notifies Surety of District's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

_____ Title(s)

_____ Title or Type of Document

- Partner(s) Limited
- General

_____ Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

_____ Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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- General

_____ Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

_____ Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that:

WHEREAS, the Fallbrook Public Utility District (hereinafter designated as "District"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

(the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto District in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond

has been given, by reason of any breach of contract between the owner or District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
- General

Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

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evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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END OF PAYMENT BOND