



MIDWAY CITY SANITARY DISTRICT

Serving the Community of Westminster and Midway City since 1939

MIDWAY CITY SANITARY DISTRICT

REQUEST FOR PROPOSALS

LOCAL HAZARD MITIGATION PLAN (LHMP)

October 14, 2024

Important Dates:

Proposal Due Date:	November 1, 2024, at 3:00 p.m.
Award of Agreement:	November 19, 2024
Projected Start Date:	December 2, 2024
Public Draft LHMP:	March 31, 2025
Submit to Cal OES:	April, 2025
Submit to FEMA:	Dependent upon Cal OES
Projected Completion Date:	Dependent upon FEMA Approval

Contact:

Milo Ebrahimi, P.E., District Engineer
Midway City Sanitary District
14451 Cedarwood Street
Westminster, CA 92683
(714) 893-3553

TABLE OF CONTENTS

I. INTRODUCTION.....3

A. Background.3

B. Purpose of the Request.3

II. SCOPE OF WORK.....3

III. PROPOSAL FORMAT.....4

A. Approach.4

B. Description of Firm, Management and Team Members.4

C. Qualifications.....4

D. Scope of Work.4

F. Proposed Pricing.5

G. References, Related Experience and Examples of Work.5

H. Sample Report.....5

IV. APPLICABLE LAWS.....5

V. SELECTION PROCESS.....5

A. Evaluation.....5

B. Selection Criteria and Scoring.6

C. Proposed Selection and Project Schedule.6

D. Award of Contract.....7

VI. PROPOSAL DUE DATE AND DELIVERY7

VII. GENERAL CONDITIONS OF THE RFP.7

A. General Conditions.7

B. Liability of Costs and Responsibility.8

C. Validity.....8

E. Licenses and Certificates.....9

F. Oral and Written Explanations.9

G. Proposer's Representative.....9

H. Insurance.9

VIII. Exhibits.....9

EXHIBIT A - SCOPE OF WORK10

EXHIBIT B – SAMPLE AGREEMENT15

I. INTRODUCTION.

The Midway City Sanitary District (“District” or “Owner”) is requesting Proposals from qualified firms (“Consultant” or “Proposer”) to manage, coordinate, prepare, and administer the development of a Local Hazard Mitigation Plan (LHMP) for the District and to assist District to obtain approval of the Plan by the Federal Emergency Management Agency (FEMA). The Consultant shall perform all necessary planning, administration, professional analysis, supporting documentation, and work required for the preparation and adoption of the District LHMP in full conformance with the requirements of the Disaster Mitigation Act of 2000, 44 CFR 201 (Planning) and Part 206 (Projects), and in title 2 of the Code of Federal Regulations (2 CFR), Part 200 (Uniform Administrative Requirements) and the FEMA Local Mitigation Planning Handbook May 2023.

A. Background.

The District is a California special district organized in 1939 under the Sanitary District Act of 1923 (Health & Safety Code §§ 6400 et seq.) to serve the citizens and businesses of the City of Westminster and unincorporated community of Midway City, in Orange County. The District's operations are conducted from office located at 14451 Cedarwood Street, Westminster, CA 92683.

Situated in Orange County, the area of Westminster and Midway City is a large and diverse community. As a service district, the District supplies sanitary sewer services and maintains approximately 174 miles of gravity sewer lines that transport 13 million gallons a day to treatment facilities for 103,000 residents.

B. Purpose of the Request.

The District desires to obtain the services of a Consultant to develop a Local Hazard Mitigation Plan for the District and to obtain approval of the Plan by FEMA. The District intends to apply for federal grants to improve District's operations during times of crisis, and will need an approved LHMP to do so. In the near term, the District is planning to create a microgrid at its headquarters, which will include the installation of solar panels and battery storage/backup, as well as electric vehicle chargers for use by District's fleet. The District's headquarters also operates as the Emergency Operations Center during times of crisis for the District's sewer collection infrastructure. The goal of the Microgrid Resiliency Project is to ensure that the headquarters can continue operations during prolonged electrical outages.

II. SCOPE OF WORK.

The attached Exhibit A contains a general list of major work tasks that should be accomplished as part of the scope of work and used as a basis for responding to this RFP. Please note that all items necessary for the successful planning, preparation, approval and adoption of this LHMP may not be included in this Scope of Work, and Proposers responding to this RFP shall take the type and magnitude of this project into account when submitting their proposal. Proposers are asked to define the approach and the specific scope of work and methodology to achieve the

objectives presented in this RFP. Proposers should include a refined scope of work by developing a detailed description of all project tasks and any changes, additions or recommendations proposed to achieve successful completion, approval, and adoption of the LHMP. The description of each project task should include specification of the task itself, the methodology or analytical process, scheduling, personnel, and costs. If you have any questions, please contact:

Milo Ebrahimi, P.E., District Engineer
Midway City Sanitary District
14451 Cedarwood Street
Westminster, CA 92683
(714) 893-3553

III. PROPOSAL FORMAT.

All proposals shall include the following minimum information:

A. Approach.

A short discussion of the intended approach to the Project that demonstrates the proposer's understanding of the issues and tasks and the proposer's ability to address them.

B. Description of Firm, Management and Team Members.

A description of the proposer and its proposed team. The proposer's description should clearly identify who will be the Project Manager and the day-to-day contact person for the Project. The proposal must identify the legal name, address, telephone number, and primary contact for each business entity that will provide services for the Project. The proposal shall expressly indicate if it is a joint proposal by more than one business entity. If a proposer intends to subcontract any of the work for the Project, the proposal shall identify and describe the qualifications of each subcontractor proposed to be used. The proposer(s) shall demonstrate that each business entity proposed to provide work for the Project is authorized to do business in the State of California, the County of Orange, and the City of Westminster. For any business entity that is organized as a corporation, limited liability company, or other entity under the laws of another state, the proposal shall include evidence that such business entity is properly registered with the California Secretary of State.

C. Qualifications.

Provide an outline of the proposer's qualifications and relevant background experience and capabilities for this Project.

D. Scope of Work.

The proposal should contain a description of each work task with an explanation of how the proposer plans to approach the tasks and the steps that will be taken to complete the tasks.

Proposers must demonstrate that they understand the magnitude and importance of each individual task.

E. Proposed Project Schedule.

Time is of the essence for this Project. The proposal shall include a schedule to undertake and complete the Project. If the Consultant believes the Public Draft of LHMP could be ready sooner than March 31, 2025, it shall be reflected in the Project schedule and will be considered during the evaluation of the proposals. The District understands that the final Project completion date is dependent to the approval of FEMA.

F. Proposed Pricing.

The proposal must include a Price Proposal that outlines proposed pricing for each of the required work tasks and the total proposed pricing.

G. References, Related Experience and Examples of Work.

Include a minimum of 3 client references with phone numbers for relevant work within the past 5 years. Specify the client, location, type of work, implementation results or status, examples of work, and other relevant information as needed.

H. Sample Report.

Include a minimum of 2 client LHMPs or similar work within the past 3 years.

IV. APPLICABLE LAWS.

The Consultant shall keep itself fully informed of all existing and future federal, state and local laws which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the Project.

V. SELECTION PROCESS.

A. Evaluation.

All proposals received by the due date will be evaluated by the District's General Manager and assigned staff and/or consultants, and the General Manager will make a recommendation to the District's Board of Directors based on this evaluation. Only information which is received in response to the RFP, from references, or via any subsequent interview will be evaluated. The District will evaluate the responses of each proposer in several critical areas. Selected proposers may be invited to an oral interview.

B. Selection Criteria and Scoring.

The District will select the most qualified proposal based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

1. Pricing and Cost (Maximum Score: 20 points).
2. Ability of the proposer to design an approach and work plan to meet the Project requirements, which will include an assessment of the overall quality of the proposal (Maximum Score: 20 points). Qualities and indicators that will receive consideration include:
 - The proposer's performance in converting the Scope of Services into a work plan;
 - The detail and clarity of the discussion as to the proposer's approach to undertaking the Project;
 - The proposer's performance in identifying any special problems or concerns which may be associated with the Project and preliminary ideas about how these obstacles should be addressed;
 - The inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; and
 - The demonstrated ability to work with governmental bodies and a full understanding of applicable laws or regulations that relate to the Project.
3. Ability of the Proposer to carry out and manage the Project, which includes an assessment of the past experience of the proposer in general (Maximum Score: 20 points).
4. Capabilities of the proposer and/or its proposed team, which includes an assessment of the capabilities of the proposer and individuals that will be engaged in the Project (Maximum Score: 20 points).
5. Willingness to comply with the proposed Agreement terms. A sample Agreement is attached in Exhibit B (Maximum Score: 20 points). Proposals will be rated based on the exceptions taken to the proposed Agreement.

C. Proposed Selection and Project Schedule.

Proposal Due Date:	November 1, 2024, at 3:00 p.m.
Award of Agreement:	November 19, 2024
Projected Start Date:	December 2, 2024
Public Draft LHMP:	March 31, 2025
Submit to Cal OES:	April, 2025
Submit to FEMA:	Dependent upon Cal OES
Projected Completion Date:	Dependent upon FEMA Approval

D. Award of Contract.

It is anticipated that any award of an agreement for services will be made by the District Board at its November 19, 2024 regular meeting. The District Board may direct the General Manager to negotiate with one or more proposers.

VI. PROPOSAL DUE DATE AND DELIVERY

Proposals shall be prepared according to the instructions contained in this RFP, including any addenda hereto published by the District. Proposals must be delivered by email to the District at mebrahimi@midwaycitysanitaryca.gov by 3:00 p.m., prevailing time, on or before November 1, at 3:00 p.m. Proposals will not be accepted after this time.

VII. GENERAL CONDITIONS OF THE RFP.

A. General Conditions.

The District reserves the right to cancel or reject all or a portion or portions of the RFP without notice. Further, the District makes no representations that it will enter into an Agreement with any proposer submitting a proposal. The District reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional proposals and to reject the proposal of any proposer that the District believes would not be in the best interest to hire. The District also reserves the right to reject any subcontractor or individual working on a proposed team and to replace them with a mutually acceptable replacement.

Upon receipt by the District, proposals are considered a public record and subject to disclosure under the Public Records Act, including all personally identifying information included in the proposal. Further, after the award of the Contract by the District, whether or not a proposer is the successful Consultant, all material in proposals received by the District shall be subject to the right of the public to inspect and to obtain copies. The District shall retain all proposals submitted in response to this RFP for as long as the District is required to do so under the law.

In submitting a proposal, each proposer agrees that the District may reveal any trade secret materials contained in such response to all District staff and District officials involved in the selection process, and to any outside consultant or other third parties who are hired or appointed by the District to assist in the evaluation process.

Each proposer may designate specified information as a trade secret and confidential and agrees to indemnify and hold harmless the District and each of its officers, employees, and agents from all liability, damages and expenses, including reasonable attorneys' fees, incurred by any of them in connection with the District's refusal to disclose any material that the proposer has so designated. Any Consultant that designates its entire proposal as a trade secret will be disqualified.

Any changes to the proposal requirements will be made by written addendum.

The District reserves the right to waive any and all defects or informalities in any proposal.

It shall be the responsibility of each proposer before submitting a proposal:

- To examine thoroughly the requirements of this RFP;
- To visit the District to become familiar with and satisfy the proposer as to the general, local, and site conditions, and has obtained any additional or supplementary examinations, investigations, explorations, tests, or other studies concerning conditions at the District;
- To study and carefully correlate proposer's knowledge with this RFP and such other related data; and
- To promptly notify the District of all conflicts, errors, ambiguities or discrepancies that proposer has discovered in this RFP.

B. Liability of Costs and Responsibility.

The District assumes no liability for any cost incurred by proposers responding to this RFP or in responding to any further requests for interviews, or additional information, prior to the issuance of the Contract. All costs shall be borne by the person or firm responding to the request. Proposers responding to the request shall hold the District harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or firm. All submitted material becomes the property of the District.

The selected Consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their firm. The Consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

C. Validity.

Proposers agree to be bound by their proposals for a period of ninety (90) days commencing on Proposal Due Date, during which time the District may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only that portion so amended or clarified.

D. Standard Agreement Terms.

The selected Consultant will be required to enter into the District's standard Agreement, a copy of which has been provided in Exhibit B. Each proposer shall assume that the execution of this Agreement, without changes, will be a required condition unless proposed modifications are requested at the time of submittal of the proposal and then accepted by the District. If a proposer wishes to take exception to any of the terms and conditions contained in the Agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the Agreement as it is written. Failure to identify contractual issues of dispute can later be

the basis for the District disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the District will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The District will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The Agreement will not be executed by the District without first being signed by the proposer.

E. Licenses and Certificates.

The Consultant and all of its subcontractors, at its and/or their sole expense, shall obtain and maintain during the term of the Agreement, all appropriate licenses and certificates required in connection with the performance of the Project.

F. Oral and Written Explanations.

The District will not be bound by oral explanations or instructions given at any time during the review process or after the award. Oral explanations given during the review process and after award become binding when confirmed in writing by an authorized District official.

Written responses to question(s) asked by one proposer will be provided to all proposers who received the Request for Proposals.

G. Proposer's Representative.

The person signing the proposal must be a legal representative of the firm authorized to bind the proposer to an agreement in the event of the award.

H. Insurance.

Unless waived or modified by the District, General Liability, Automobile, Professional Liability and Worker's compensation insurance are required in the amounts set forth in the attached sample Agreement.

VIII. Exhibits.

- A. Scope of Work
- B. Sample Agreement

EXHIBIT A - SCOPE OF WORK

Preparation of the Local Hazard Mitigation Plan shall cover the planning area of the District's jurisdiction and involve an inclusive District-wide planning process. The Consultant will manage, coordinate, prepare, and administer the development of a Local Hazard Mitigation Plan (LHMP) for the District and assist the District to obtain approval of the Plan by the Federal Emergency Management Agency (FEMA). The Consultant shall perform all necessary planning, administration, professional analysis, supporting documentation, and work required for the preparation and adoption of the District LHMP in full conformance with the requirements of the Disaster Mitigation Act of 2000, 44 CFR 201 (Planning) and Part 206 (Projects), and in title 2 of the Code of Federal Regulations (2 CFR), Part 200 (Uniform Administrative Requirements) and the FEMA Local Mitigation Planning Handbook May 2023.

The plan shall be organized into the following tasks/phases in accordance with the Disaster Mitigation Act planning process:

- 1) Planning Process
- 2) Hazard Identification
- 3) Risk Assessment
- 4) Mitigation Strategy
- 5) Plan Preparation and Drafting
- 6) Public Outreach, Meetings, and Public Comment
- 7) Plan Approval and Adoption

1. Planning Process

Consultant will assemble a Planning Team, define the planning area, and develop a public outreach strategy that will be utilized throughout the development of the LHMP.

- Identify a Midway City Sanitary District (District) Planning Team consisting of key management staff from departments within the District.
- Prepare, organize, and maintain documentation that memorializes the entire planning process, informs the public and stakeholders of the overall approach, and serves as permanent record as to the plans development, public involvement, and decisions made.
- Develop and implement a public outreach strategy which conforms to the statutory requirements of the Code of Federal Regulations 44 CFR 201.6, the requirements of FEMA Local Mitigation Plan Guidelines, and the Community Rating System (CRS) program.
- Document, evaluate and incorporate input received from outreach efforts.
- Organize, assist in noticing, and facilitate a minimum of two (2) public outreach workshops. The workshops should provide the public with an opportunity to interact with the LHMP Planning Team, introduce the public to the progress and outcomes of the LHMP planning process, review the outcomes of the hazard identification and risk assessment, and act as a public commenting tool for the Public Review Draft LHMP.
- Present at a minimum of two (2) Board of Directors meetings (which may coincide with public outreach workshops).

- Ensure neighboring communities, local and regional agencies involved in hazard mitigation activities, agencies that have the authority to regulate development, as well as other to be determined interests are involved in the planning process as required by 44 CFR 201.6 (b)(2).
- This phase also includes administrative tasks, such as establishing project timeline tracking and accounting procedures.

2. Hazard Identification

The Hazard Identification phase will include a description and prioritization of the hazards that have occurred within the District’s jurisdiction. The hazard categories may include all the following:

- Flood-related hazards
- Wildfire hazards
- Debris flows
- Earthquake hazards
- Severe weather-related hazards (extreme temperatures, drought, fog, heavy rains and/or thunderstorms, wind, lightning, etc.)
- Nuclear hazards
- Climate change hazards
- Other man-made hazards
- Other geologic and soil hazards
- Other hazards as identified by the consulting firm, District staff, neighboring Local Hazard Mitigation Plans, and other data sources

3. Risk Assessment

Risk assessment will include hazard mapping, a vulnerability assessment, and a capability assessment. Risk assessment results will form the foundation for the subsequent identification of the appropriate mitigation actions for reducing damages and losses.

a. Hazard Mapping

Hazard mapping will use the best available data that delineates areas affected by hazards as well as identify locations of local assets. The geographic information data will include an inventory for use in developing map data layers (to the extent data is available), of the following items relative to the multiple hazard area:

- Operational and Public buildings/structures
- Critical facilities and infrastructure
- Maps of the location of parcels, structures, land use, and populations

b. Vulnerability Assessment

The vulnerability assessment will develop an overview of the District’s vulnerability to specific hazards. Digital maps and GIS data will be developed that identify local assets

that are located within known hazard areas. HAZUS will be used to model losses as appropriate. This vulnerability assessment will include:

- Types and numbers of buildings, infrastructure, and critical facilities located within the planning area and within identified hazard areas.
- Potential economic losses from identified hazards will be estimated through a process that utilizes HAZUS-MH or GIS analysis of County assessor's data with hazard locations.
- Description of land uses and development trends to advise future land use decisions.

c. Capability Assessment

The capability assessment will consist of an inventory of existing plans, policies, and procedures that the District has in place to reduce the effect of hazards. This will include protective measures under the National Flood Insurance Program (NFIP), building codes, zoning ordinances, completed or ongoing mitigation projects, and mitigation policies established in the general or comprehensive plans of other local jurisdictions.

- Identify and evaluate vulnerable assets and estimate loss potential of those assets.
- Describe natural, technological, and/or human caused hazards that have potential to affect the District's assets.
- For each hazard affecting the planning area, prepare a description of geographic location, extent, previous occurrences, and probability of future events.
- Prepare and provide an overall summary of each hazard profile and its impact on the community in accordance with 44 CFR 201.6 (c)(2)(ii).
- Identify addresses of NFIP insured structures that have been repetitively damaged by floods.
- Review existing studies, reports and plans related to historical disasters, and document disaster declaration history.
- Utilize FEMA's HAZUS, RiskMAP products (and/or other appropriate software) to generate level 2 vulnerability assessments for earthquake and fire hazards.
- Develop a parcel-level inventory of vulnerable structures.
- Document the analysis and findings from this task element in a manner and format that planners, policy makers and community members can easily decipher. Technical data and output relevant to the risk assessment may be included in appendices.
- Include graphics and generate Geographic Information System (GIS) based maps that will illustrate the extent and location of each hazard, as well as other available information, within the defined planning area. All GIS based data and mapping shall be tied to the District's network.
- Develop strategies to expand upon and/or improve existing policies and programs.

4. Mitigation Strategy Development

The Mitigation Strategy development phase will develop mitigation actions to address identified hazards with the goal of reducing or avoiding long-term vulnerabilities. This phase will include identifying mitigation goals, mitigation actions, developing a mitigation action plan, and

evaluating and prioritizing mitigation actions based on a planning level Benefit-Cost assessment. Consultant will complete the following tasks:

- Develop a comprehensive range of mitigation actions to reduce the effects of each hazard type identified in the risk assessment.
 - Mitigation strategy should address mitigating losses for new and existing buildings and infrastructure and for future infrastructure development areas.
 - This section will include a list of prioritized hazard mitigation action items that best meet the District’s needs for hazard damage reduction.
 - Prioritization factors will include an analysis of proposed mitigation projects focused on several key areas, including but not limited to economic (including benefits and cost), engineering, technical, legal, environmental, social, and political feasibility.
- Define mitigation goal statements focused on reducing risk from identified hazards.
- Prepare a cost estimate on a defined comparative cost scale as a basis to compare and prioritize mitigation actions.
- Identify how each mitigation action will be implemented, including who is responsible for various actions, funding mechanisms, timeframe for implementation, and implementation priority.
- Identify those mitigation actions for which there is no current or planned funding mechanism.
- Prepare a matrix that summarizes mitigation actions, priority, responsible party(ies), funding mechanisms, benefit/cost, and technical feasibility.

5. Plan Preparation and Drafting

The plan preparation and drafting phases will have four primary objectives.

- Compile all data into a draft Local Hazard Mitigation Plan (LHMP) that meets all of FEMA’s criteria.
- Submit an administrative draft to the District for review and incorporate feedback into the draft to prepare for public review and comment.
- Incorporate public review comments and submit a draft LHMP to Cal OES State Hazard Mitigation Officer (SHMO) for review and comment.
- Incorporate comments from Cal OES/SHMO and submit a final draft LHMP through Cal OES to FEMA for review and comment.

6. Public Outreach, Meetings, and Public Comment

The public will be engaged at all stages of the planning process - from plan review through adoption of the LHMP. Initial public engagement will utilize online outreach and direct public outreach to assess community perspectives of local hazards and concerns. District and Consultant will provide public notice and opportunity for comment for all planning phases requiring such notice, including review of the proposed draft update prior to adoption of the LHMP. Consultant will be responsible for the following tasks to meet the public outreach, meetings, and public comment objectives through development of a public outreach strategy:

- Conform to the statutory requirements of the Code of Federal Regulations 44 CFR 201.6, the requirements of FEMA Local Mitigation Planning Handbook, and the Community Rating System (CRS) program.
- Document, evaluate and incorporate input received from outreach efforts.
- Organize, assist in noticing and facilitate a minimum of two (2) public outreach workshops. The workshops should provide the public with an opportunity to interact with the LHMP Planning Team, introduce the public to the progress and outcomes of the LHMP planning process, review the outcomes of the hazard identification and risk assessment, and act as a public commenting tool for the Public Review Draft LHMP.
- Present at a minimum of two (2) Board of Directors (which may coincide with public outreach workshops).
- Ensure neighboring communities, local and regional agencies involved in hazard mitigation activities, agencies that have the authority to regulate development, and other relevant interests are involved in the planning process as required by 44 CFR 201.6 (b)(2).

7. Plan Approval and Adoption

Following the plan preparation and drafting phases of the LHMP, Consultant will assist District staff with final adoption procedures by the District's Board of Directors and incorporate adoption in the final LHMP. Once the LHMP plan is finalized, Consultant will secure final approval letter and plan review tool from FEMA.

During this phase, the consultant is to ensure the plan and planning process are completed to the satisfaction of, and in accordance with the criteria established by, FEMA. Should the LHMP not receive approval following Cal OES and FEMA review, Consultant is responsible to review FEMA "required revision" comments provided and perform all necessary follow-on tasks to finalize the LHMP to the satisfaction of FEMA.

EXHIBIT B – SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

NAME OF CONTRACTOR

(Development of Local Hazard Mitigation Plan)

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter “Agreement”) is made this ____ day of _____, 2024, by the MIDWAY CITY SANITARY DISTRICT, a public entity (hereinafter referred to as “DISTRICT”) and _____, a _____, (hereinafter referred to as “CONTRACTOR”). DISTRICT and CONTRACTOR are sometimes hereinafter individually referred to as “Party” and are hereinafter collectively referred to as the “Parties.”

RECITALS

The following recitals are a substantive part of this Agreement:

- A. This Agreement is entered into pursuant to pursuant to Midway City Sanitary District Board authorization dated _____, 2024.
- B. DISTRICT has determined there is a need to retain the professional services of a qualified company to manage, coordinate, prepare, and administer the development of a Local Hazard Mitigation Plan (LHMP) for the DISTRICT and to obtain approval of the Plan by the Federal Emergency Management Agency (FEMA) (the “Project”).
- C. In response to DISTRICT’s Request for Proposals, dated _____, 2024, CONTRACTOR has submitted to DISTRICT a proposal, dated _____, to provide DISTRICT with professional services for the Project pursuant to this Agreement (the “Proposal”).
- D. CONTRACTOR represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and technical expertise to provide professional services to DISTRICT for the Project and has agreed to provide such services as provided herein. DISTRICT does not have the personnel, training, certification, or specialized technical expertise necessary to perform the work and services contracted for herein.
- E. DISTRICT desires to retain CONTRACTOR to provide professional services for the Project.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Term and Termination.** This Agreement shall commence on _____, 2024, and shall continue until completion of the Services provided for under this Agreement, unless earlier

terminated by DISTRICT. This Agreement may be terminated by DISTRICT without cause upon thirty (30) days written notice. In such event, the DISTRICT will compensate CONTRACTOR for work performed to date in accordance with Section 3.4 of this Agreement. CONTRACTOR is required to present evidence to support performed work completion. CONTRACTOR is required to present evidence to support performed work completion.

2. Services to be Provided and Standard of Performance.

2.1 Scope of Services. In compliance with all terms and conditions of this Agreement, CONTRACTOR agrees to provide and perform professional services for the Project as set forth in (a) the Proposal, which is attached hereto as Exhibit “A” and incorporated herein by reference, and (b) the Scope of Work included in the Request for Proposals, which is attached hereto as Exhibit “B” and incorporated herein by reference (hereinafter referred to as the “Scope of Services,” the “Services” or “Work”). As a material inducement to DISTRICT entering into this Agreement, CONTRACTOR acknowledges and understands that the Services and Work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR’s Services and Work shall be performed in a skillful and competent manner and shall be held to a standard of quality and workmanship prevalent in the industry for such Services and Work and with the standards recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR represents and warrants that it is skilled in the professional discipline necessary to perform the Services and Work and that it holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR represents and warrants that it and all of its employees, subconsultants and subcontractors providing any Work or Services under this Agreement shall have sufficient skill and experience to perform the Services and Work assigned to them. All Services and Work shall be completed to the reasonable satisfaction of DISTRICT. The Proposal, the Request for Proposals, and this Agreement do not guarantee any specific amount of work.

2.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; and (2) CONTRACTOR’s Proposal; and (3) the Scope of Work included in the Request for Proposals, which shall all be referred to collectively hereinafter as the “Contract Documents.” The CONTRACTOR’s Proposal is attached hereto as Exhibit “A” and is hereby incorporated by reference and made a part of this Agreement. The Scope of Work is attached hereto as Exhibit “B” and is hereby incorporated herein by reference. All provisions of the Contract Documents shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms and conditions of this Agreement; (2nd) the provisions of the CONTRACTOR’s Proposal (Exhibit “A”); and (3rd) the provisions of the Scope of Work (Exhibit “B”).

2.3 Compliance with Law. CONTRACTOR shall comply at all times during the term of this Agreement with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including without limitation all applicable fair labor standards and Cal/OSHA requirements. 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 Work and 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 performing the Work and Services. If CONTRACTOR performs any Work or Services in violation of such laws, rules, and regulations, CONTRACTOR shall be solely responsible for all penalties and costs arising therefrom. CONTRACTOR shall defend, indemnify, and hold DISTRICT, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

2.4 Licenses, Permits, and Fees. Prior to performing any Services or Work hereunder CONTRACTOR shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. CONTRACTOR represents and warrants to DISTRICT that CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement and any extension, any license, permit, qualification, or approval that is legally required for CONTRACTOR to perform the Work and Services under this Agreement. CONTRACTOR shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR's performance of the Work and Services required by this Agreement, and shall defend, indemnify, and hold DISTRICT, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

2.5 Familiarity with Work. By executing this Agreement, CONTRACTOR warrants that: (a) it has thoroughly investigated and considered the Scope of Work or Services to be performed; (b) it has carefully considered how the Services should be performed and has carefully examined the location or locations at or with respect to where such Services or Work is to be performed and is aware of all conditions there; and (c) it understands the facilities, difficulties, and restrictions of attending performance of the Services under this Agreement. If the Services involve work upon any site, CONTRACTOR represents and maintains that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the Work or as represented by DISTRICT, it shall immediately inform DISTRICT of this and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from DISTRICT.

2.6 Care of Work. CONTRACTOR shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by DISTRICT, except such losses or damages as may be caused by DISTRICT's own negligence.

2.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

3. Compensation.

3.1 Contract Amount. For the Services and Work rendered pursuant to this Agreement, CONTRACTOR shall be compensated by DISTRICT for the services performed, including authorized reimbursements, in accordance with the professional rates and charges set forth in the Proposal (Exhibit “A”). The method of compensation shall be as set forth in Exhibit “A”. Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the DISTRICT and will only be approved if such expenses are also specified in the Proposal.

3.2 Payment. In any month in which CONTRACTOR wishes to receive payment, no later than the tenth (10th) working day of such month, CONTRACTOR shall submit to DISTRICT, in a form approved by the DISTRICT’s Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by CONTRACTOR and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the DISTRICT. DISTRICT shall use reasonable efforts to make payments to CONTRACTOR within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

3.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by DISTRICT and agreed to by CONTRACTOR, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in CONTRACTOR’s profession.

3.4 Termination. DISTRICT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by DISTRICT, then the provisions of paragraph 3 would apply to that portion of the work completed.

3.5 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Midway DISTRICT Sanitary District Board of Directors for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to DISTRICT.

4. Insurance requirements.

4.1 Compliance with Insurance Requirements. CONTRACTOR shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to DISTRICT, all insurance required under this section. CONTRACTOR shall not commence any Work or Services under this Agreement unless and until it has provided evidence satisfactory to DISTRICT that it has secured all insurance required under this section. If CONTRACTOR's existing insurance policies do not meet the insurance requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the policies to do so.

4.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, unless a waiver or modification is approved by DISTRICT's General Manager, CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

A. Commercial General Liability Insurance. CONTRACTOR shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance written on an occurrence basis with limits of at least two million dollars (\$2,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and two million dollars (\$2,000,000.00) for products and completed operations. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

B. Automobile Liability Insurance. CONTRACTOR shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

C. Workers' Compensation Insurance. CONTRACTOR shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. CONTRACTOR agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the DISTRICT, its officials, officers, employees, agents and volunteers, and to require each of its subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. CONTRACTOR shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

D. Professional Liability (Errors & Omissions) Insurance. CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, a policy of Professional Liability or Errors and Omissions Insurance appropriate to CONTRACTOR's profession with limits of at least two million dollars (\$2,000,000.00). Covered professional services shall specifically include all Work or Services to be performed under the Agreement and delete any exclusions that may potentially affect the Work or Services to be performed under this Agreement. If the policy of insurance is written on a "claims-made" basis, the DISTRICT may require that the policy be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Work or Services provided hereunder. In the event of termination of the policy during this period, CONTRACTOR shall obtain continuing insurance coverage for the prior acts or omissions of CONTRACTOR during the course of performing the Work or Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the DISTRICT. In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Work or Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Work or Services under the terms of this Agreement.

4.3 Acceptability of Insurers. Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Lines Insurers (LASLI), by the latest edition of A.M. Best's Key Rating Guide, except that the DISTRICT will accept workers' compensation insurance from the State Compensation Fund. In the event the DISTRICT determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the DISTRICT, the CONTRACTOR agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the DISTRICT. CONTRACTOR shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

4.4 Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the DISTRICT for written approval. Required insurance policies shall contain the following provisions, or CONTRACTOR shall provide endorsements on forms approved by the DISTRICT to add the following provisions to the insurance policies:

A. The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to provide the following:

1. Additional Insured: The DISTRICT, its officials, officers, employees, agents and volunteers, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement; and

2. Additional Insured Endorsements: Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of CONTRACTOR, or (4) contain any other exclusions contrary to the Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

3. Notice: The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the DISTRICT. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of CONTRACTOR’s failure to pay the insurance premium, the notice provided to DISTRICT shall be by ten (10) days prior written notice.

B. For all policies of Commercial General Liability Insurance, CONTRACTOR shall provide endorsements for ongoing operations and completed operations to effectuate this requirement.

4.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the DISTRICT in advance and shall protect the DISTRICT, its officials, officers, employees, agents and volunteers, in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

4.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the DISTRICT, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

4.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the DISTRICT, its officials, officers, employees, agents and volunteers, or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. CONTRACTOR hereby agrees to waive its own right of recovery against the DISTRICT, its officials, officers, employees, agents and volunteers, and CONTRACTOR hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

4.8 Evidence of Coverage. Concurrently with the execution of the Agreement, CONTRACTOR shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies

shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the DISTRICT for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the DISTRICT. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, CONTRACTOR shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the DISTRICT evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. CONTRACTOR shall promptly furnish, at DISTRICT's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents DISTRICT requires to verify coverage.

4.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property.

4.10 Enforcement of Agreement (Non-Estoppel). CONTRACTOR acknowledges and agrees that actual or alleged failure on the part of the DISTRICT to inform CONTRACTOR of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the DISTRICT nor does it waive any rights hereunder.

4.11 Insurance for Subcontractors. CONTRACTOR shall either: (1) include all subconsultants or subcontractors engaged in any Work or Services for CONTRACTOR relating to this Agreement as additional named insureds under the CONTRACTOR's insurance policies, or (2) CONTRACTOR shall be responsible for causing its subconsultants or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the DISTRICT, its officials, officers, employees, agents and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance provided by CONTRACTOR's subconsultants or subcontractors performing any Work or Services related to this Agreement shall be endorsed to name the DISTRICT, its officials, officers, employees, agents and volunteers, as additional insureds. CONTRACTOR shall not allow any subconsultant or subcontractor to commence any Work or Services relating to this Agreement unless and until it has provided evidence satisfactory to DISTRICT that the subconsultant or subcontractor has secured all insurance required under this section.

4.12 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of CONTRACTOR pursuant to this Agreement:

A. CONTRACTOR shall provide immediate written notice to DISTRICT if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the

limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

B. All insurance coverage and limits provided by CONTRACTOR and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the DISTRICT or its operations shall limit the application of such insurance coverage.

C. None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the DISTRICT and approved in writing.

D. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is CONTRACTOR's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

E. CONTRACTOR agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by CONTRACTOR, provide the same minimum insurance coverage required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the DISTRICT for review.

F. CONTRACTOR agrees to provide immediate written notice to DISTRICT of any claim, demand or loss against CONTRACTOR arising out of the Work or Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

5. Non-Liability of Officials and Employees of the District. No official or employee of DISTRICT shall be personally liable to CONTRACTOR in the event of any default or breach by DISTRICT, or for any amount which may become due to CONTRACTOR.

6. Conflict of Interest. No officer or employee of the DISTRICT shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. CONTRACTOR represents and warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

7. Covenant Against Discrimination. In connection with its performance under this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. CONTRACTOR shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

8. Independent Contractor; PERS Eligibility & Indemnification.

(a) The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make CONTRACTOR a DISTRICT employee. During the performance of this Agreement, CONTRACTOR and its officers, employees, and agents shall act in an independent capacity and shall not act as DISTRICT officers or employees. CONTRACTOR will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The personnel performing the Services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither DISTRICT nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of CONTRACTOR or any of its officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR, its officers, employees or agents, shall not maintain a permanent office or fixed business location at DISTRICT's offices. DISTRICT shall have no voice in the selection, discharge, supervision, or control of CONTRACTOR's officers, employees, representatives or agents or in fixing their number, compensation, or hours of service. CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Services under this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. DISTRICT shall not in any way or for any purpose be deemed to be a partner of CONTRACTOR in its business or otherwise a joint venturer or a member of any joint enterprise with CONTRACTOR.

(b) CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability against DISTRICT, or bind DISTRICT in any manner.

(c) No DISTRICT benefits shall be available to CONTRACTOR, its officers, employees, or agents, in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to CONTRACTOR as provided for in this Agreement, DISTRICT shall not pay salaries, wages, or other compensation to CONTRACTOR for the performance of any Work or Services under this Agreement. DISTRICT shall not be liable for compensation or indemnification to CONTRACTOR, its officers, employees, or agents, for injury or sickness arising out of performing any Work or Services hereunder. If for any reason any court or governmental agency determines that the DISTRICT has financial obligations, other than pursuant to Section 3 herein, of any nature relating to salary, taxes, or benefits of CONTRACTOR's officers, employees, representatives, agents, or subconsultants or

subcontractors, CONTRACTOR shall defend, indemnify, and hold harmless DISTRICT from and against all such financial obligations.

(d) Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by DISTRICT, including but not limited to eligibility to enroll in the California Public Employee Retirement System (PERS) as an employee of DISTRICT and entitlement to any contribution to be paid by DISTRICT for employer contribution and/or employee contributions for PERS benefits. In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction or PERS to be eligible for enrollment in PERS as an employee of the DISTRICT, CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the DISTRICT.

9. Notices. All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; or (ii) five (5) business days after the date of posting by the United States Post Office if by mail. These addresses shall be used for delivery of service of process.

(CONTRACTOR) _____
Attn: _____

(DISTRICT) Midway City Sanitary District
Attention: General Manager
14451 Cedarwood Street
Westminster, CA 92863

(WITH COPY TO) Midway City Sanitary District
Attention: General Counsel
14451 Cedarwood Street
Westminster, CA 92863

10. Schedule of Performance.

10.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the Services to be performed by CONTRACTOR is an essential condition of this Agreement. CONTRACTOR shall prosecute regularly and diligently the Services according to the agreed upon Schedule of Performance.

10.2 Schedule of Performance. CONTRACTOR shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed, or on each task order, if applicable, and shall perform all Services within the time period(s) established in the Schedule of Performance set forth in the Proposal (Exhibit "A"), or otherwise mutually agreed upon by the Parties. When requested by CONTRACTOR, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the DISTRICT; however, the DISTRICT shall not be obligated to grant such an extension.

10.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, pandemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the DISTRICT, if CONTRACTOR, within ten (10) days of the commencement of such delay, notifies the DISTRICT's General Manager in writing of the causes of the delay. The General Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the General Manager such delay is justified. The General Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall CONTRACTOR be entitled to recover damages against the DISTRICT for any delay in the performance of this Agreement, however caused, CONTRACTOR's sole remedy being extension of the Agreement pursuant to this section.

11. Limitations Upon Subcontracting and Assignment. The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for DISTRICT to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the DISTRICT. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of DISTRICT. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to DISTRICT for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and DISTRICT. All persons engaged in the work will be considered employees of CONTRACTOR. DISTRICT will deal directly with and will make all payments to CONTRACTOR.

12. Indemnification. CONTRACTOR agrees to protect, defend, and hold harmless DISTRICT and its elective or appointive boards, officers, agents, and employees from any and all third party claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for bodily injury or death of any person, or damage to property, or interference with use of property, to the extent caused by negligent acts, errors or omissions or willful misconduct by CONTRACTOR, CONTRACTOR's agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The exception to CONTRACTOR's responsibility to protect, defend, and hold harmless DISTRICT, is due to the active negligence of DISTRICT, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

13. Reports.

(a) Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by CONTRACTOR pursuant to or in connection with this Agreement, shall be the exclusive property of DISTRICT. CONTRACTOR shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to District the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of DISTRICT, and all publication rights are reserved to DISTRICT.

(b) All Reports prepared by CONTRACTOR may be used by DISTRICT in execution or implementation of:

- (1) The original Project for which CONTRACTOR was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original Project; and/or
- (4) Other DISTRICT projects as appropriate.

(c) No Report, information or other data given to or prepared or assembled by CONTRACTOR pursuant to this Agreement shall be made available to any individual or firm by CONTRACTOR without prior approval by District.

14. Reserved.

15. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any

subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

16. Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

17. Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

18. California Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

19. Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

20. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by DISTRICT and CONTRACTOR.

21. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

22. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally

bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

23. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same counterpart. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) original document. These counterparts may be transmitted by facsimile or Portable Document Format (PDF), with the originals to be thereafter provided by the Parties. Such facsimiles or electronic copies shall be deemed original signatures.

[SIGNATURES ON FOLLOWING PAGE]

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

“DISTRICT”

“CONTRACTOR”

MIDWAY DISTRICT SANITARY
DISTRICT, a public entity

_____, a

By: _____
Robert Housley
General Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

General Counsel
Midway DISTRICT Sanitary District

By: _____
Name: _____
Title: _____

Tax ID No. _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to District.

**EXHIBIT "A" TO AGREEMENT
CONTRACTOR'S PROPOSAL**

EXHIBIT “B” TO AGREEMENT
SCOPE OF WORK