



REQUEST FOR PROPOSALS: LOUIS ROBIDOUX PARKLAND AND PECAN GROVE MAINTENANCE

SECTION 1: LRPPG BACKGROUND

The Louis Robidoux Parkland and Pecan Grove (LRPPG) is an approximately 40-A property owned by the Riverside County Regional Park and Open Space District (RCPOSD), located at 5370 Riverview Drive in Jurupa Valley, County of Riverside. The site is under the 25-year management of four partners through a Management Services Agreement with RCPOSD, including the Inland Empire Resource Conservation District (IERCD), San Bernardino Valley Municipal Water District (SBVMWD), Orange County Water District (OCWD), and Huerta del Valle (Hdv). More information on the site can be found at www.louisrobidouxparkland.org. This work is being solicited by and will be managed by the IERCD.

SECTION 2: ABOUT IERCD

The IERCD is a public agency, headquartered in the City of Redlands and focusing on open space preservation, wildland rehabilitation, and education and outreach within 1,286 square miles of northwestern Riverside and southwestern San Bernardino counties. Governed by a seven-member board of directors who are appointed by the San Bernardino County Board of Supervisors in cooperation with the Riverside County Board of Supervisors, IERCD staff members work to carry out the District's mission, both through IERCD-focused projects and through collaboration with a variety of public and private partners. More about our programs can be found at www.iercd.org.

SECTION 3: SCOPE OF SERVICES

Summary: This work request includes:

1. Full tree removals of dead trees noted under dead-remove and selection of scattered dead trees to be flush cut and left as habitat for wildlife
2. Tree maintenance consisting of trimming, pruning, or removal of large dead stems, the latter of which can occur at the discretion and expert advice of the arborist following consultation and agreement with IERCD staff.
3. Chipping and distributing all biomass removed from tree removals and maintenance.
4. Chipping and distributing biomass stacks placed near removal areas by IERCD, prior to beginning of this scope of work.

Total recommended removals: 9 trees

Total recommended for maintenance: 11 trees

Tag Number	2024 Survey	2024 Maintenance Notes	Tree Species
518	Dead-Remove	Recommend as habitat tree to leave	Pecan
519	Dead-Remove	Remove or flush cut	Pecan
527	Dead-Remove	Remove or flush cut	Pecan
530	Dead-Remove	Remove or flush cut	Pecan
537	Dead-Remove	Remove or flush cut	Pecan
560	Dead-Remove	Remove or flush cut	Pecan
566	Dead-Remove	Remove or flush cut	Pecan
672	Dead-Remove	Flush cut down to live growth	Pecan
674	Dead-Remove	Remove completely	Pecan
520	Maintenance Recommended	Recommend trim back dead ends of larger branches	Pecan
526	Maintenance Recommended	Recommend trim back dead ends of larger branches	Pecan
529	Maintenance Recommended	Prune back large dead branches.	Pecan
534	Maintenance Recommended	Recommend trim back dead ends of larger branches	Pecan
535	Maintenance Recommended	Recommend trim back dead ends of larger branches	Pecan
536	Maintenance Recommended	Recommend trim back dead ends of larger branches	Pecan
550	Maintenance Recommended	Recommend remove larger dead branches	Pecan
557	Maintenance Recommended	Honeybee tree. Recommend trim back dead ends of larger branches. May need to be removed.	Pecan

558	Maintenance Recommended	Large branch removal from S side. Near accessible walkway.	Pecan
629	Maintenance Recommended	Recommend trim back dead large branches	Pecan
673	Maintenance Recommended	Recommend trim back dead large branches	Pecan

Cost Proposal: Consultant will provide a proposed budget based on the services requested above. The costs shall provide hourly rates and hours to complete the project, including sub-consultants’ hourly rates and hours, any any other costs for project completion. The proposal must include a complete and fixed price.

Contact:
 Lus Gomez, LRPPG Site Specialist
 lgomez@iercd.org
 (951) 823-6522

SECTION 4: PROJECT SCHEDULE

Below is a timeline for important activities and deadlines during both the application and implementation periods of this project:

- Tuesday, August 20th: RFP is distributed
- Tuesday, August 27th at 8 AM: Bid walk
- Friday, August 30th at 5 PM: Last day to submit RFP questions to IERCD
- Tuesday, September 3rd at 5 PM: Final clarification and addendum to RFP questions posted.
- Monday, September 9th at 5 PM: RFP responses due
- Thursday, September 19th, 2024 by 5 PM Announcement of award
- Friday, September 20th: Work open to begin
- Thursday, October 3rd: Initial field review and walk-through
- Week of October 6th: Remaining work to be completed/site clean-up completed
- October 10th, 2024: Final deadline for work completion

SECTION 5: PROJECT GUIDELINES AND REQUIREMENTS

The IERCD is seeking Contractors whose combination of experience, personnel and equipment will provide environmentally sound, timely, and cost-effective professional services. The selected contractor’s responsibilities will include:

- site preparation

- Pedestrian controls
- tree removal and/or maintenance based on final scope
- debris removal, as necessary
- wood chipping/mulching
- site cleanup and repair, as necessary
- photographic documentation

The Contractor must verify ability to enter into attached Professional Services Agreement ("Exhibit B"), including all terms and conditions for services contained therein.

The Contractor acknowledges that the Contractor would be working as the agent of IERCD on property owned by the Riverside County Regional Park and Open Space District under a Memorandum of Agreement between IERCD and RCPOSD.

Examination of Documents

If a Proposer requires clarification of this RFP, the Proposer shall notify IERCD in writing over email. If the point in question is not clearly expressed in the RFP, IERCD will publish an addendum providing clarification. Any request for clarification regarding this RFP should be directed to Lus Gomez at the IERCD via the contact information noted below.

Contact

Inland Empire Resource Conservation District
ATTN: Lus Gomez
25864-K Business Center Drive
Redlands, CA 92374
EM: lgomez@iercd.org
PH: (951) 823-6522

Bid Walk, RFP Registration Schedule; Receipt of Addenda

Contractors are invited to participate in a bid walk on site, which will be held at **8:00 a.m. on Tuesday, August 27th, 2024**. Please RSVP with the contact listed above to participate in the bid walk.

Direct all questions in writing via email to the contact listed above on or before Friday, August 30th at 5 PM.

IERCD will not be responsible for mailing any addendums. All addenda and notifications will be made available on the IERCD webpage at <https://www.iercd.org/> under the Publications and Disclosures tab. Contractors are encouraged to check the website regularly since each contractor will bear sole responsibility for having the RFP and all addenda.

IERCD Response

Final clarifications will be published electronically by Tuesday, September 3rd at 5 PM, after which no further addenda will be added.

Proposal Requirements

Please provide the following information in your proposal in the following order:

1. Brief Cover Letter
 - a. The cover letter shall identify that the contractor has a clear understanding of the project scope and timing.
 - b. Additionally, contractor must acknowledge all addenda in the cover letter and provide the contractor license number and classification.
2. Qualifications and background
 - a. Contractor shall provide a list of qualifications and references relating to the contractor's experience and knowledge in tree and debris removal.
 - b. Provide at least 3 references.
3. Proposed Budget and Fees
 - a. Contractor shall submit a flat rate cost proposal that includes the complete and fixed price.
4. Proposed Project Timeline/Schedule
 - a. The contract will be executed and notice to proceed given the same day

Submission of Proposals

We will accept proposals until Monday, September 9th at 5 PM. Please mail or drop off **a physical copy** of the proposal to the contact listed below OR provide an email copy to RFP@iercd.org.

Inland Empire Resource Conservation District
ATTN: Lus Gomez
25864-K Business Center Drive
Redlands, CA 92374

Any Proposals received after the due date and time of Monday, September 9th at 5 PM will not be considered. There is no limit to the number of pages a submittal can be, however, please keep it to a minimum and include only the necessary information. The offer in each Proposal shall remain open for ninety (90) days after the submission deadline.

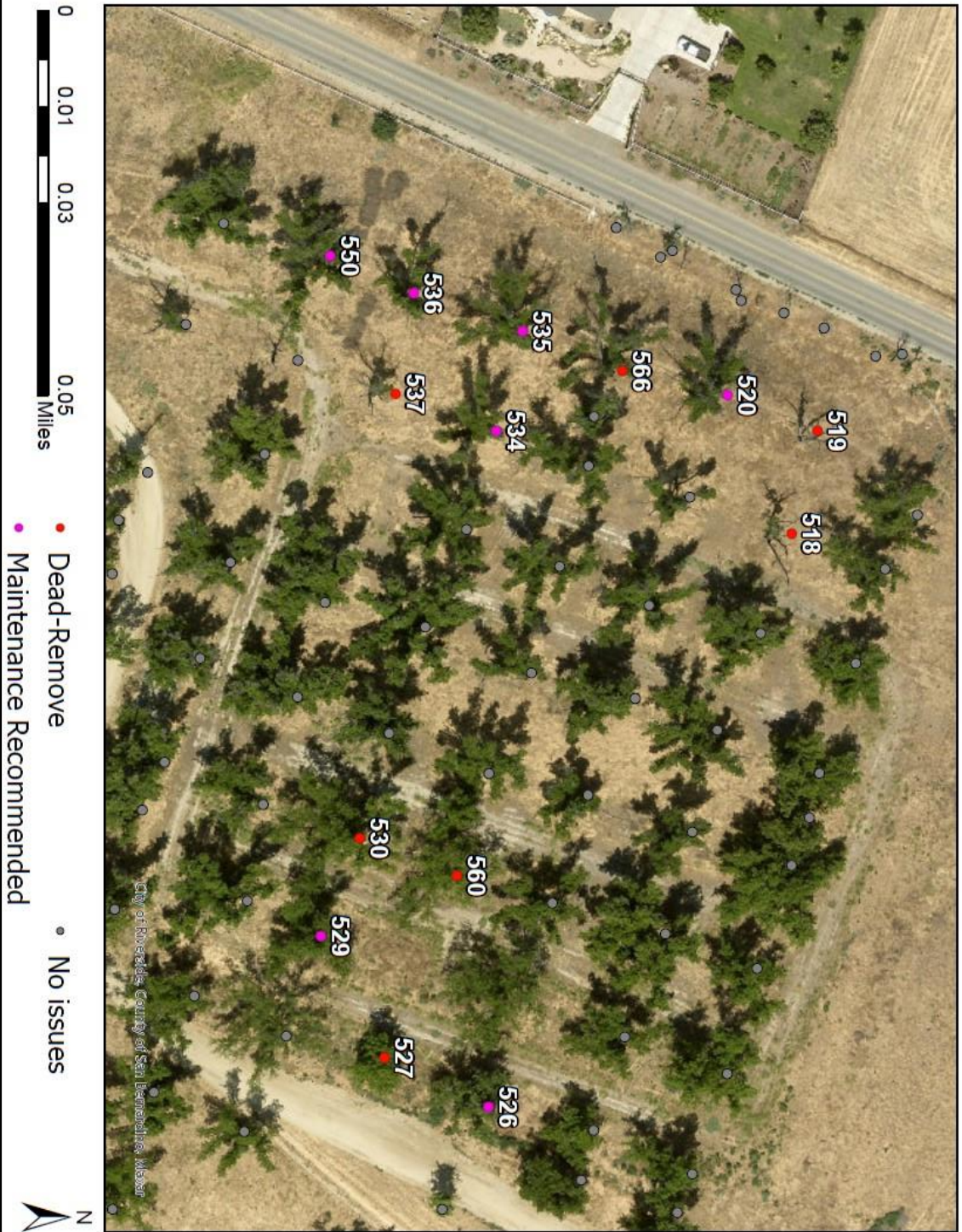
Acceptance of Proposals

- IERCD reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- IERCD reserves the right to withdraw this RFP at any time without prior notice, and IERCD makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- IERCD reserves the right to postpone proposal review for its own convenience.
- IERCD reserves the right to require confirmation of information furnished by Proposer, or to ask the Proposer for additional evidence of qualifications to perform the work, or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.
- Issuance of this RFP and receipt of proposals does not commit the IERCD to award a contract. IERCD expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or any part of this RFP.

- IERCD reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of IERCD, such action shall serve its best interests and those of the tax-paying public. The Proposers are encouraged to submit their best prices in their proposals, and IERCD intends to negotiate only with the Proposer(s) whose proposal most closely meets IERCD's requirements at the lowest estimated cost. The contract award, if any is awarded, will go to the Proposer whose proposal best meets IERCD's requirements.
- Proposals received by IERCD become public information and will be made available to the public upon request after award.
- Proposals submitted are not to be copyrighted.
- In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, IERCD's Professional Services Agreement, which is attached hereto and made a part hereof by this reference. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the attached Purchase Order (services) and, in particular, the insurance and indemnification provisions therein.

EXHIBIT A – WORK MAPS

Pecan Grove North



Pecan Grove South/Sunshine Access



EXHIBIT B – PROFESSIONAL SERVICES AGREEMENT TEMPLATE

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
INLAND EMPIRE RESOURCE CONSERVATION DISTRICT
AND
PROFESSIONAL CONSULTANT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of ____ 20____, by and between the Inland Empire Resource Conservation District, a governmental special district ("IERCD") and _____ ("Consultant"). IERCD and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by IERCD on the terms and conditions set forth in this Agreement, the scope of which is outlined in Exhibit "A" of this agreement. Consultant represents that it is a professional consultant and is licensed in the State of California, and is familiar with the services requested.

2.2 Project. IERCD desires to engage Consultant to render such services, the scope of which is outlined in Exhibit "A" ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to IERCD all labor, materials, tools, equipment, services and incidental and customary work identified and in Exhibit "A" necessary to fully and adequately supply the consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Services shall include, but not be limited to, any duties and responsibilities assigned by the IERCD District Manager. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. The terms of the

Agreement prevail over any conflicting or contradictory term in any exhibit to the Agreement.

3.1.2 Term. The term of this Agreement shall be from **MONTH DATE, YEAR to MONTH DATE, YEAR**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. IERCD retains Consultant on an independent contractor basis and Consultant is not an employee of IERCD. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall not be employees of IERCD and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant 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, and workers' compensation insurance.

3.2.2 Statement of Work. Consultant shall provide the Services expeditiously, within the term of this Agreement, and in accordance with the Statement of Work set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical expertise and personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the schedule, IERCD shall respond to Consultant's submittals in a timely manner. Upon request of IERCD, Consultant shall provide a more detailed schedule of anticipated performance to meet the Statement of Work.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of IERCD.

3.2.4 IERCD's Representatives. IERCD hereby designates its District Manager, Mandy Parkes, or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the District Manager. The District Manager shall have the power to act on behalf of IERCD for all purposes under this Agreement. Consultant's sole point of contact shall be the District Manager, or her designee.

3.2.5 Substitution of Key Personnel. Consultant has represented to IERCD that certain key personnel will perform and coordinate the Services under this Agreement.

requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to IERCD, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold IERCD, its officials, directors, officers, employees, consultants, volunteers 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.

3.2.10 Insurance.

3.2.1.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to IERCD that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to IERCD that the subcontractor has secured all insurance required under this section.

3.2.1.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *If Consultant has employees, Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) If Consultant has employees, Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.1.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years

following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.1.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) IERCD, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects IERCD, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by IERCD, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) IERCD, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects IERCD, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by IERCD, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against IERCD, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to IERCD; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to IERCD, its directors, officials, officers, employees, agents and volunteers.

3.2.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In

addition, such insurance shall not contain any special limitations on the scope of protection afforded to IERCD, its directors, officials, officers, employees, agents and volunteers.

3.2.1.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by IERCD. If IERCD does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of IERCD, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects IERCD, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.1.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to IERCD.

3.2.1.8 Verification of Coverage. Consultant shall furnish IERCD with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to IERCD. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by IERCD before work commences. IERCD reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and 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. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Total Compensation shall not exceed [REDACTED] ([REDACTED]) without written approval of IERCD's District Manager. Extra Work may be authorized, as described below, and, if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to IERCD a one-time itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Said compensation shall be paid in accordance with an invoice submitted to IERCD by Consultant within fifteen (15) days from the last day of each calendar month, and IERCD shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by IERCD.

3.3.4 Extra Work. At any time during the term of this Agreement, IERCD may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by IERCD to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from IERCD's Representative.

3.3.5 Prevailing Wages. By execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold IERCD, its directors, officials, officers, consultants, employees, volunteers 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.

3.3.6 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

3.3.7 No Waiver. Failure of IERCD to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.3.8 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to IERCD as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him or her, or by any sub-consultant under him or her, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of IERCD during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”).

Consultant shall require all subcontractors to agree in writing that IERCD is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by IERCD.

IERCD shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at IERCD’s sole risk.

3.5.4 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of IERCD, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use IERCD’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of IERCD.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney’s Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney’s fees and costs of such actions.

3.5.7 Indemnification. Consultant shall defend, indemnify and hold IERCD, its directors, officials, officers, agents, consultants, employees, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful

death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against IERCD, its directors, officials, officers, agents, consultants, employees, and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against IERCD or its directors, officials, officers, agents, consultants, employees, and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse IERCD and its directors, officials, officers, employees, agents, consultants, and volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by IERCD, its directors, officials, officers, agents, consultants, employees, and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section 3.5.7 shall survive any expiration or termination of this Agreement.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.11 IERCD's Right to Employ Other Consultants. IERCD reserves the right to employ other consultants in connection with this Project.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of IERCD. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Successor and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of IERCD.

3.5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all directors, officials, officers, agents, consultants, employees, and volunteers of Consultant, except as otherwise specified in this Agreement. All references to IERCD include its directors, officials, officers, agents, consultants, employees, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, 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, IERCD shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of IERCD, during the term of his or her service with IERCD, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap,

ancestry, sex or age. 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. Consultant shall also comply with all relevant provisions of any IERCD programs or guidelines concerning equal opportunity employment currently in effect or hereinafter enacted.

3.5.21 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.24 Subpoenas or Court Orders. Should Consultant receive a subpoena or court order related to this Agreement, the Services or the Project, Consultant shall immediately provide written notice of the subpoena or court order to IERCD. Consultant shall not respond to any such subpoena or court order until notice to IERCD is provided as required herein, and shall cooperate with IERCD in responding to the subpoena or court order.

3.5.25 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

3.5.26 Survival. All rights and obligations hereunder that by their nature are to be performed after any expiration or termination of this Agreement shall survive any such expiration or termination.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of IERCD. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on following page]

SIGNATURE PAGE
TO
PROFESSIONAL SERVICES AGREEMENT

IERCD

Professional Consultant

By: _____

By: _____
Name: _____
Title: _____

Approved as to form:

IERCD General Counsel
Best Best & Krieger LLP