



Request for Proposals  
for  
Cross Connection Control and  
Industrial Pretreatment and Pollution  
Prevention Programs  
Fee Schedule Development  
Professional Services

Contract No. RFP09-04

June 26, 2009

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## I. INTRODUCTION

El Dorado Irrigation District (District), an irrigation special district organized and existing under the California Irrigation District Law (Water Code § 20500, et seq.), hereby gives notice that it is now accepting proposals for Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs Fee Schedule Development professional services for the District's Environmental Division as described in this Request for Proposals (RFP).

## II. PROPOSAL SUBMISSION

**Four (4) printed copies of the Proposal and one (1) CD-ROM, containing the Proposal in PDF format, shall be delivered in a sealed envelope to the District at the front desk of its Customer Service Building located at 2890 Mosquito Road, Placerville, California 95667, no later than 3:00 p.m. local time, on July 15, 2009.** All proposal envelopes will be timed stamped to reflect their submittal time. Proposals received after the submission deadline will be returned unopened to proposer. The District will not accept proposals submitted by e-mail or facsimile transmission.

Proposer should label its proposal envelope: "Proposal for the District for Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs Fee Schedule Development Professional Services – Attention: Mr. Daniel Corcoran, Environmental Division Manager." The District may reject a proposal as non-responsive for failure to provide all information requested in this RFP.

## III. BACKGROUND INFORMATION

The District is located in El Dorado County, on the western slope of the Sierra Nevada Mountains. Its contiguous service area covers approximately 220 square miles and 100,000 residents, ranging from El Dorado Hills in the west to Pollock Pines in the east, and from the South Fork American River in the north to the Cosumnes River in the south. The District also owns and operates Project 184, a FERC-licensed hydroelectric project including high mountain lakes in the vicinity of Lake Tahoe.

The District provides treated water, wastewater treatment and disposal, recycled water, and recreation services and operates Project 184. It is a local public agency, governed by a five-member, elected Board of Directors with approximately 260 employees. Additional information about the District is available at its website, [www.eid.org](http://www.eid.org).

As part of ongoing compliance in providing safe drinking water and proper wastewater treatment, the District is required by State and federal regulations to operate Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs. The District is reviewing its fee structures for these programs to ensure sufficient revenues are obtained to fund its regulatory obligations.

#### IV. SCOPE OF WORK

The scope of work for the Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs Fee Schedule Development professional services being solicited is found in Exhibit A attached to this RFP. The successful proposal(s) will demonstrate sufficient staff resources, expertise, relevant experience, and lack of disabling professional conflicts to perform the scope of work, along with demonstrated commitment to cost-control and client service that meet the District's needs.

#### V. QUESTIONS/ADDENDA

Any questions about this RFP shall be submitted in writing (via U.S. mail, facsimile transmission, or e-mail) to Mr. Daniel Corcoran at the following address:

El Dorado Irrigation District  
2890 Mosquito Road  
Placerville, CA 95667  
Attn: Mr. Daniel Corcoran, Environmental Division Manager  
Fax: (530) 622-8597  
E-mail: dcorcoran@eid.org

**To be considered, questions must be received by the District no later than 5:00 p.m. on July 6, 2009.** The District may, if deemed necessary, respond to such questions by issuance of formal written addenda, interpreting or clarifying the requirements of this RFP. The District may also issue addenda to modify the RFP as deemed advisable by the District. All such addenda shall be part of this RFP and binding upon each proposer. The District may, upon inquiry, orally direct a firm's attention to specific provisions of the RFP which cover the subject of the inquiry. However, all supplemental information provided by the District during the RFP process shall not be binding unless communicated by formal written addenda. **Addenda to the RFP, if any, will be posted to the District's website:** ([http://www.eid.org/in\\_business.htm](http://www.eid.org/in_business.htm)) no later than 5:00 p.m. on July 9, 2009.

#### VI. INFORMATION TO BE SUBMITTED IN PROPOSAL

##### A. CONTENT

Each proposal shall be **limited to 14 pages** (not including transmittal letter and resumes) and shall follow the outline below:

- Section 1 – Scope of Work  
State in succinct terms your understanding of the scope of work listed in Exhibit A attached hereto. Identify additional tasks, if any, that you believe are essential or advisable to constitute a more complete scope of work.

- **Section 2 – Relevant Experience and Expertise**  
Describe in narrative form the experience and expertise of your firm and/or project team members in providing the service sought by District. Firms must demonstrate performance of similar fee studies and familiarity with Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs to be considered qualified to respond to this RFP. Identify representative clients. Compare and contrast their size, public or private-sector status, location, and operational activities to those of the District. Include a description of the project organization and project team experience.
- **Section 3 – Project Team**  
Identify each individual you expect to work on the project team, including sub-consultants, if any. Provide resumes for each member of the team. Describe with particularity the specific areas of expertise of each team member, and the specific education, experience, or other information that substantiates that expertise.
- **Section 4 – Quality Assurance and Control; Conflicts**  
Describe your approach to Quality Assurance and Control for your firm's performance as well as any performance guarantees you offer. Identify all current and reasonably foreseeable actual or potential professional conflicts that could hinder the provision of the requested services, and propose means of managing any such conflicts.
- **Section 5 – Client References**  
Provide contact information for representatives of three former or current clients for whom your firm or project team members have performed similar services so that the District may interview these references.
- **Section 6 – Contract and Insurance Requirements**  
The successful proposer will be required to execute a contract in the form shown in Exhibit C attached hereto and to meet the insurance requirements of Appendix C to that Exhibit. Please indicate your firm's willingness and ability to comply with these requirements.

## **B. COST OF SERVICES**

All proposals must include a complete and current table of all rates and charges to perform all the proposed services with detailed itemization of each task to be performed.

The rates and charges provided **shall include all overhead rates to cover costs and other compensation** of consultant's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, specialists, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by consultant whether at the site or in its principal or a branch office for general administration of the work and not specifically included in the list of personnel, consultant's principal and branch offices other than consultant's office at the site. Rates and charges shall also include any part of consultant's capital expenses, including necessary transportation, travel and subsistence expenses of consultant's employees incurred in discharge of duties connected with performance of the services. **The rates and charges shall also include minor expenses connected with performance of the services such as copies, computers, software, on-line legal research, office supplies, postage, faxes, long-distance telephone calls, telephone, and any other expense incurred to accomplish the work. Note that no separate charges for these items will be allowed. Note also that no administrative charges will be allowed, except a markup of five percent (5%) on sub-consultants' billings. Any markup shall be explicitly included in the cost schedule provided in Exhibit B.**

### **C. NON-DISCLOSURE AND DISCLOSURE OF PROPOSALS**

Proposals will be held in confidence during the evaluation process until District staff issues Notice of Intent to Award the contract. Thereafter, all proposals will be treated as documents subject to disclosure under the California Public Records Act (Act).

**If proposer believes any portion of its proposal contains confidential or proprietary information, exempt from public disclosure under the Act, proposer must submit that information with its proposal in a separate sealed envelope labeled "Confidential Information."** Except as compelled by court process, the District will not release any such documentation claimed to be exempt that is submitted in said manner without prior written notice to the proposer.

## **VII. SELECTION CRITERIA**

### **A. GENERAL**

The proposals received shall be subject to an evaluation by the District as deemed appropriate for purposes of selection. The evaluation will be made according to the following criteria:

1. Responsiveness to RFP
2. Experience and expertise

3. Project team makeup and capabilities
4. Rates and charges, affordability and cost control
5. Evaluations from client references

## **B. FINAL SELECTION**

Proposals will be rated based on the merit of the entire proposal. Notice of Intent to Award the professional services contract will be posted at the entry to the District's Customer Service Building at the aforementioned address and on the District's website at [www.eid.org](http://www.eid.org) upon selection of a consultant to perform the Services.

The District reserves the right to reject any or all proposals and to re-issue this RFP. The District may waive any minor informalities or irregularities in any proposal that are immaterial and inconsequential in nature. The District reserves the right to request additional written or oral information from proposers to obtain clarification of their proposals.

All proposals become the property of the District. All costs associated with development of the proposal shall be the sole responsibility of the proposing firm and shall not be charged in any manner to the District.

## **C. PROTEST PROCEDURE**

Any protest concerning the rating of any proposal or award of the contract hereunder must be submitted in writing to the District's Senior Deputy General Counsel at 2890 Mosquito Road, Placerville, CA 95667 on or before 5:00 p.m. of the tenth (10<sup>th</sup>) calendar day following the District's posting of Notice of Intent to Award the professional service contract at the entry to the District's Customer Service Building at the aforementioned address and on the District's website at [www.eid.org](http://www.eid.org). The procedure and time limit set forth in this paragraph are mandatory and are proposer's sole and exclusive remedy in the event of a protest of the rating of its proposal or award of the contract and failure to pursue said remedy shall constitute a waiver of any right to further pursue said protest, including filing a Government Code claim or legal proceedings.

### **ATTACHMENTS:**

- EXHIBIT A – Scope of Work
- EXHIBIT B – Cost Schedule
- EXHIBIT C – Professional Services Agreement

## EXHIBIT A

### SCOPE OF WORK

#### INTRODUCTION

The District's Environmental Division is seeking the services of a qualified firm(s) to develop service-based fees schedules for inspection, testing, monitoring, permitting, enforcement, and program administration activities associated with its Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs.

#### Cross Connection Control Program Overview

The role of the Cross Connection Control Program is to protect public water supply from contamination. The District administers a "system protection" type program that focuses on protection at the customer's point of connection to the District's drinking water distribution system. The program is implemented directly by the District. The District's Cross Connection Control Program is mandated by Title 17 California Code of Regulations Sections 7585 through 7605.

#### Industrial Pretreatment and Pollution Prevention Program Overview

The purpose of the Industrial Pretreatment and Pollution Prevention Program is to evaluate and ensure the wastewater discharged from various industrial and or commercial businesses complies with the State and federal requirements. These requirements are designed to protect public health, the environment, District's collection system and treatment plants, and employees from serious impacts that can occur from certain wastes discharged into the sewer system. EID is mandated to implement an Industrial Pretreatment and Pollution Prevention Program by the federal Clean Water Act through 40 Code of Federal Regulations Part 403.

#### CONSULTANT TASKS

The following services will be performed by the consultant:

- Review applicable supporting materials from Cross Connection Control and Industrial Pretreatment and Pollution Prevention Programs (Programs) including but not limited to administrative regulations, board policies, applicable State and federal regulations, example permits, survey results, and non-compliance enforcement letters. District shall make copies of such documentation available at no cost to consultant.

- Conduct interviews of appropriate field and professional staff to determine scope of effort required to implement compliance requirements for Programs. A minimum of five total interviews should be anticipated to adequately capture full range of Programs duties.
- Develop a technical memorandum documenting all efforts including materials and staff time of District's regulatory requirements of Programs. Provide at least three potential revenue-neutral fee schedule structures for District consideration along with a reference of regional utilities implementing a similar structure for each. Potential fee options shall include both efforts currently performed and those to be performed in foreseeable future as demonstrated during staff interviews and review of supporting materials.
- Prepare Microsoft PowerPoint presentation and participate in informational workshop with the District's Board of Directors to discuss fee schedule structure options should District staff determine workshop is necessary. Consultant shall be available and ready during workshop to answer questions regarding options and background analysis supporting contents of fee structure options technical memorandum.
- Following selection of fee structure by District, develop a separate technical memorandum with implemented fee structure for Programs including calculator for annual escalator adjustment to account for increases in program and administration costs. Fee structure shall itemize each major component to demonstrate breakdown of each fee (e.g. inspection, testing, monitoring, permitting, enforcement, program administration activities, etc.). Consultant shall include estimated staff time (hours or portions thereof) by classification (inspector, program lead, administrative support, division manager) to complete each task of each major component based upon Consultant's understanding of task from review of applicable supporting materials and information obtained during staff interviews. District will provide burdened hourly rates by staff classification to support Consultant's calculation of fee. Memorandum shall clearly state fee for each account by class, category, and/or size as appropriate. Include recommendation for review period timeframe to ensure all duties are addressed.

## **SCHEDULE**

August 3, 2009 – Anticipated date of issuance of Notice to Proceed to consultant.

Within 30 calendar days of date of issuance of Notice to Proceed - Consultant shall complete final draft of fee structure options technical memorandum. Final memorandum shall be completed within 5 working days of receiving comments from District on draft final memorandum.

Within 40 calendar days of issuance of final fee structure options technical memorandum (exact date to be determined by District) – Consultant shall complete Microsoft PowerPoint presentation and participate in informational workshop with District Board of Directors. Workshop date to be scheduled at later date, if necessary.

Within 45 calendar days of date of issuance of Notice to Proceed – Consultant shall complete final draft of fee structure implementation technical memorandum. Final memorandum shall be completed within 5 working days of receiving comments from District on draft final memorandum.

## **DELIVERABLES**

- Final draft fee structure options technical memorandum
- Final fee structure options technical memorandum
- Microsoft PowerPoint presentation for Board of Directors informational workshop
- Final draft fee structure implementation technical memorandum
- Final fee structure implementation technical memorandum

**EXHIBIT B**  
**COST SCHEDULE**

Task	Staff Hours*	Staff Rate*	Total Cost
1) Review supporting materials			
2) Conduct staff interviews			
3) Develop fee structure options technical memorandum			
4) Prepare Microsoft PowerPoint presentation and participate in Board of Directors informational workshop			
5) Develop fee structure implementation technical memorandum			
<b>Total</b>			

**\* Include staff hours and staff rate columns for each member of the Project Team as specified in Section 3 of consultant's proposal**

**EXHIBIT C**  
**PROFESSIONAL SERVICES AGREEMENT**  
**[See Attachment]**

**PROFESSIONAL SERVICES AGREEMENT**

**Between**

**EL DORADO IRRIGATION DISTRICT**

**And**

**[Consultant Name]**

**for the**

**Cross Connection Control**

**and**

**Industrial Pretreatment and Pollution Prevention Programs**

**Fee Schedule Development**

**Project No. N/A**

**Dated \_\_\_\_\_**

EL DORADO IRRIGATION DISTRICT

AGREEMENT BETWEEN  
EL DORADO IRRIGATION DISTRICT AND

TYPE CONSULTANT NAME IN CAPS

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the City of Placerville, State of California, by and between \_\_\_\_\_ NAME ALL CAPS \_\_\_\_\_, a \_\_\_\_\_, with a principal place of business at \_\_\_\_\_, hereinafter referred to as “**Consultant**” and the EL DORADO IRRIGATION DISTRICT, an irrigation special district organized and existing under the California Irrigation District Law (Water Code §20500, *et seq.*), hereinafter referred to as “**District.**”

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

**1. Scope of Professional Services.** The Consultant shall perform all services described in Appendix A (“Services”), for the compensation set forth in Appendix B (“Compensation”), which appendices are attached and made a part of this Agreement.

**2. Term.** This Agreement shall become effective upon its execution by Consultant and by District (including approval as to form by the District’s Office of the General Counsel). All Services whenever performed shall be deemed performed under this Agreement, and all compensation paid to Consultant on account of the Services performed shall be deemed as payments of the Compensation.

**3. Standard of Performance.** Consultant represents that it is qualified to perform the Services and that it possesses and will continue to possess at its sole cost and expense, all necessary licenses, registrations, permits, and personnel or will obtain such licenses, registrations, permits and personnel prior to the time required. Consultant also represents that it has extensive knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.

**4. Subconsultants.** Consultant shall perform the Services using the personnel and subconsultants listed in Appendix A. Consultant shall hire only qualified persons or firms who are experienced in performing work of like nature and complexity to the Services, and who agree to be bound to the terms of the Agreement to the extent of this scope of services. Consultant may substitute personnel or subconsultants prior to any such subconsultants commencing work only upon District’s written consent, which may be withheld or delayed in District’s discretion.

**5. Representatives for Both Parties.** Both parties shall designate a representative, authorized to act on the parties’ behalf with respect to this Agreement. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of Consultant’s services. The parties may delegate all or some of the representatives’ role and function to some other representative.

**6. Indemnification and Liability.**

6.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant shall defend (with legal counsel reasonably acceptable to District), indemnify and hold harmless District and its officers, agents, departments, officials, representatives and employees (collectively “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its sub-consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants and/or expert witnesses incurred in connection therewith and costs



of investigation) that arise from or relate to, directly or indirectly, in whole or in part, but only to the extent that any of the above are actually caused by, any negligent act or omission of Consultant, any sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of any Indemnitee.

6.2 Consultant shall defend (with legal counsel reasonably acceptable to District), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

6.3 Not used.

6.4 Consultant shall place in its subconsulting agreements and cause its subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.

6.5 District acknowledges that the discovery, presence, handling or removal of asbestos products polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Work site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall either hire an expert consultant in this field if the Work involves such materials or, the event the hazardous materials consist of naturally occurring asbestos, District shall require the contractor to comply with all applicable requirements of the El Dorado County Air Quality Management District (AQMD) and any other applicable governmental requirements relating thereto. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling, or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix A.

7. **Notices.** District and Consultant shall provide notices to the other in the form of a writing, sent by certified mail return receipt requested, or by overnight courier or delivery service with signature required, as follows:

**El Dorado Irrigation District**  
**2890 Mosquito Road**  
**Placerville, CA 95667**  
**Attn: Daniel Corcoran**

**[Consultant Name]**  
**[Consultant Address]**

**Attn: \_\_\_\_\_**

or to such other place as either party may similarly in writing designate to the other. Notices shall be effective three business days after mailing by certified mail, or upon receipt if delivered by overnight courier or delivery service.

8. **Insurance.** Consultant shall comply with all requirements of Appendix C, which is attached and made a part of this Agreement.

9. **Independent Contractor.** Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture or partnership relationship between District and Consultant, and no such relationship shall be implied from performance of this Agreement. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. Consultant shall pay all taxes (including California sales and use taxes) levied upon this Agreement, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Consultant represents that it will collect, report, and pay all sales and or use taxes to the State Board of Equalization. Upon full payment, the Consultant will issue District a

receipt pursuant to California Revenue and Taxation Code Section 6203, relieving District of all liability for any tax relating to the scope of this Agreement. The Consultant shall pay all other taxes including but not limited to any applicable city, county or other business tax, not explicitly assumed in writing by District hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

## **10. Conflict of Interest; Confidentiality.**

10.1 Consultant represents that it is familiar with Sections 1090 et seq. and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections. If, following execution of this Agreement, Consultant becomes aware of any such facts, whether presently existing or after-arising, Consultant shall promptly inform District of same, along with a proposal for remedying the violation. District may determine whether the proposal, or any other proposed resolution, is satisfactory, in its sole discretion.

10.2 Consultant represents that it has completely disclosed to District, and if applicable will disclose in the future, all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant agrees to comply with all conflict of interest codes adopted by the District and its reporting requirements, including without limitation the Conflict of Interest Code for the El Dorado Irrigation District.

10.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with District that Consultant has no present, and will have no future, conflict of interest between providing District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District. The provisions of this Section 10 shall remain fully effective indefinitely after termination of Services to District hereunder.

10.4 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to District's interests where such confidential information could be used adversely to District's interests. Consultant agrees to notify District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

10.5 Any publicity or press releases with respect to the Project or Services shall be under District's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

10.6 The provisions of this Section 10 shall remain fully effective indefinitely after termination of Services to District hereunder.

## **11. Suspension and Termination of Services.**

11.1 District may direct Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as District may determine in its sole discretion. District may issue such directives without cause. District will issue such directives in writing. Suspension of Services shall be treated as an excusable delay.

11.2 District may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should Consultant commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of District's written notice to Consultant demanding such cure. In the event District terminates this Agreement for default, Consultant shall be liable to District for all loss, cost, expense, damage and liability resulting from such breach and termination.

11.3 District may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever District determines that such termination is in District's best interests. In the event District terminates this Agreement for convenience, Consultant shall be entitled to be paid for Services satisfactorily performed to the termination date, but may recover no other cost, damage or expense.

11.4 Following any termination under this Section 11, Consultant shall:

11.4.1 Stop Services under the Agreement on the date and to the extent specified in the notice of termination;

11.4.2 Terminate and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require.

11.4.3 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated; and

11.4.4 Complete performance of any part of the Services which were not terminated; and

11.4.5 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which District has or may acquire an interest.

**12. Ownership of Work Product/Public Records Act.** Any interest (including copyright interests) of Consultant or its subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its subconsultants at any time in connection with the Services, shall be, immediately upon its creation, the property of District. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works and any former works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to District all copyrights to such works when and as created. With District's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities. Both parties understand and agree that District must comply with the California Public Records Act ("Act"). If Consultant believes that any document or information furnished to District in connection with Consultant's performance of Services is exempt from public disclosure under the Act, it shall so advise District in writing at the time the document or information is furnished.

**13. Audit/Inspection of Records.**

13.1 Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Consultant shall permit District to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

13.2 The Consultant shall maintain full and adequate records in accordance with District requirements to show the actual costs incurred by the Consultant in the performance of this Agreement. If such books and records are not kept and maintained by Consultant within a radius of seventy-five (75) miles from the offices of District at 2890 Mosquito Road, Placerville, California 95667, Consultant shall, upon request of District, make such books and records available to District for inspection at a location within said seventy-five (75) mile radius or Consultant shall pay to District the reasonable, and necessary costs incurred by District in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. Consultant shall provide such assistance as may be reasonably required in the course of such inspection. District further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by District, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after District makes the final or last payment or within three (3) years after any pending issues between District and Consultant with respect to this Agreement are closed, whichever is later.

**14. Non-discrimination.** Consultant shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. Consultant shall provide all information reasonably requested by District to verify compliance with such matters. Consultant stipulates, acknowledges and agrees that District has the right to monitor Consultant's compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.

**15. Disputes.** Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement. Consultant shall continue to receive payment under this Agreement for work that is unrelated to the dispute and completed in accordance with this Agreement. Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.

**16. No incidental, etc. damages.** Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

**17. California Law.** This Agreement shall be deemed to have been executed in the City of Placerville, El Dorado County, California. Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation arising from or relating to this Agreement shall be in El Dorado County, California. Should any clause, provision or aspect of this Agreement be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of

this Agreement shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Agreement.

**18. No Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

**19. Entire Agreement.** This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement.

**20. No Waiver.** The granting of any payments, and any inspections, reviews, approvals or oral statements by any District representative, or certification by any governmental entity, shall in no way limit Consultant's obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of District and Consultant.

**21. Statutes of Limitation.** As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of District's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects. The commencement and running of the statute of limitations for latent defects shall be as provided by California Code of Civil Procedure section 337.15 or any successor statute.

**22. Survival.** Without limiting any of the parties' other rights or obligations arising from this Agreement, and in addition to all other provisions indicated as surviving the termination or expiration of this Agreement, the following provisions will survive any termination or expiration hereunder: 6, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22 and 23.

**23. Miscellaneous.** Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by District in writing. Subject to the foregoing, this Agreement shall bind the parties, and their permitted successors and assigns. Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law. Captions to sections and subsections are for the convenience of the parties, and are not to be considered when construing this Agreement. The agreements contained herein shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Agreement. All terms not otherwise defined in this Agreement shall have the meanings provided in the Appendices or, if applicable, in the construction contract with the general contractor on the Project.

**24. Attorneys' Fees.** If either party institutes or is required to defend any legal proceeding, action or motion to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover all costs and expenses, specifically including, but not limited to, reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first mentioned above.

“District”

**EL DORADO IRRIGATION DISTRICT**

By: \_\_\_\_\_  
General Manager

Approved as to form:

\_\_\_\_\_  
Office of the General Counsel

THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL SIGNED BY THE DISTRICT’S OFFICE OF THE GENERAL COUNSEL.

“Consultant”

**CONSULTANT’S NAME ALL IN CAPS**

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_



## LIST OF APPENDICES AND SCHEDULES

Appendix A	Scope of Services
Appendix B	Payments to Consultant
Appendix C	Insurance
Appendix D	Deliverables
Schedule 1	Personnel

## APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Professional Services Agreement dated \_\_\_\_\_, 20\_\_ (“**Agreement**”) between the EL DORADO IRRIGATION DISTRICT (“**District**”) and CONSULTANT’S NAME ALL IN CAPS (“**Consultant**”), for the provision of professional services (“**Services**”).

### 1. Project Description.

#### 1.1 Conceptual Program.

Consultant shall perform the Services described in Exhibit 1 (Request for Proposals) and Exhibit 2 (Consultant’s Proposal) attached hereto to this Appendix A and incorporated herein by reference in accordance with all terms and conditions of this agreement and all attachments hereto.

#### 1.2 Milestone Schedule.

Consultant’s timetable for the Services shall be as follows:

September 4, 2009 - Consultant shall complete final draft of fee structure options technical memorandum. Final memorandum shall be completed within 5 working days of receiving comments from District on draft final memorandum.

September/October 2009 – Consultant shall complete Microsoft Powerpoint presentation and participate in informational workshop with District Board of Directors. Workshop date to be scheduled at later date, if necessary.

October 15, 2009 – Consultant shall complete final draft of fee structure implementation technical memorandum. Final memorandum shall be completed within 5 working days of receiving comments from District on draft final memorandum.

#### 1.3 Personnel.

Consultant shall use only the personnel listed in Schedule 1 to the Agreement.

#### 1.4 Bid Day Budget.

Not used.

#### 1.5 Criteria Governing Consultant’s Service.

Not used.

#### 1.6 Coordination with District.

For each phase of the Services under this Agreement, Consultant shall prepare and submit for District’s acceptance a task list. The purpose of this task list shall be promoting coordination between District and the Consultant. The task list for each phase of the Services under this Agreement shall be submitted with the deliverables at the conclusion of the previous phase of the Services under this Agreement. The task list shall list all points of District and Consultant/third party interface, for example, approvals, reviews, design input and supplying information. The task list shall include a listing of Consultant’s anticipated specific requirements for information, decisions or documents from District necessary for Consultant’s performance of its Services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.

1.7 Performance Schedule.

Consultant shall prepare and maintain a Performance Schedule detailing the Consultant's scheduled performance of the Services.

1.8 Coordination With Other Consultants/Subconsultants.

Not used.

1.9 Monthly Progress Report.

Not used.

1.10 Scope of Services.

Not used.

1.11 Deliverables Required Under This Agreement.

Required Deliverables are listed in Appendix D. Each deliverable shall be reviewed with representatives of District. Consultant shall promptly correct deficiencies in deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof included in the fee for Basic Services.

1.12 Electronic Documents.

Not used.

1.13 Consultant has prepared and supplied District with a proposed scope of work, which is attached to this Appendix as its Exhibit 2, and represents Consultant's initial proposed scope of services necessary to achieve the results described herein, as well as additional negotiated scope of work items. This Appendix A and its Exhibit 1 and 2 are deemed complimentary; what is called for by one is as binding as if called for in both and shall be performed by Consultant. In the case of direct conflict, then the requirement providing District with the broader scope of services shall have precedence.

2. **Preliminary Design Phase.** Not used.

3. **Design Development Phase.** Not used.

4. **Construction Document Phase.** Not used.

5. **Bidding and Award Phase.** Not used.

6. **Construction Phase.** Not used.

7. **Additional Services.** All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are ("**Basic Services**"). District may request Consultant to provide services in addition to Basic Services, referred to hereafter as ("**Additional Services**"). Additional Services must be authorized by District in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities.

7.1 Compensation for Additional Services.

Consultant shall be compensated for Additional Services as set forth in Appendix B.

7.2 Services.

The following services shall be considered Additional Services:

7.2.1 Making revisions in reports, drawings, or other documents, if:

7.2.1.1 Such revisions are not necessary because of a deficiency in Consultant's Services; and

7.2.1.2 Such revisions are inconsistent with written approvals or instructions previously given by District, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.

7.2.2 Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.

7.2.3 Required out-of town travel beyond limits specified in Appendix B.

7.2.4 Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.

7.2.5 Preparing to serve or serving on behalf of District as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.

7.2.6 Preparation of applications and supporting documents for governmental grants and permits.

7.2.7 Assisting in actual claims resolution efforts when such claims arise from matters unrelated to Consultant's performance.

7.2.8 Providing any other services requested by District that are not otherwise included in this Agreement and are not customarily furnished in accordance with generally accepted applicable professional practices.

7.2.9 Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions or conflicts of any type in deliverables prepared. All such services shall be performed at no cost to District, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

**END OF APPENDIX A**

**APPENDIX B – PAYMENTS TO CONSULTANT**

This is an appendix attached to, and made a part of, the Professional Services Agreement dated \_\_\_\_\_, 20\_\_ (“**Agreement**”) between the EL DORADO IRRIGATION DISTRICT (“**District**”), and CONSULTANT’S NAME ALL IN CAPS (“**Consultant**”), for the provision of professional services (“**Services**”).

**1. Basic Services.** District will pay Consultant for Basic Services, a maximum compensation of \$\_\_\_\_\_ (“**Agreement Price**”). Such payment shall be full compensation for all Basic Services required, performed or accepted under this Agreement. If District and Consultant previously executed a purchase order for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Agreement and the previous payments deemed payments against the Agreement Price established in this Appendix.

**2. Work Breakdown Structure.** To assist District in determining progress payments, Consultant shall provide District with an itemization of its fee under this Agreement according to a Work Breakdown Structure (“**WBS**”) that defines all project tasks, along with a project schedule defining the time line for each task, a project budget defining the planned man-hours and costs for each task, and a schedule of deliverables defining each deliverable to be provided to District. The WBS shall further define which tasks are to be performed by each sub-consultant. [The WBS is attached to this Appendix as its Exhibit 1.]

**3. Payment Schedule.** Progress payments for Basic Services for each phase of the work shall be made as follows:

- upon completion of work
- monthly based upon Consultant’s percentage completion of the Services as determined by District
- as set forth in the attached schedule

**4. Additional Services.** District will pay the Consultant for Additional Services as agreed to in a written addendum or amendment (“**amendment**”) to this Agreement executed by District and the Consultant. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment. Each such amendment shall provide for a fixed price; or, where payment for such Additional Services is to be at the rates specified in the attached schedule, up to the maximum amount indicated in the amendment. Such rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. Each amendment shall also provide for a method of payment (i.e., partial payments or lump sum) and whether it will be based upon percentage of completion or for services billed. Amendments must be negotiated and signed by the Consultant and District prior to commencing work of Additional Services; otherwise, such costs are deemed within Basic Services.

**5. Costs and Reimbursables.** The Agreement Price shall include all overhead rates to cover costs and other compensation of Consultant’s officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, specialists, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Consultant whether at the site or in his principal or a branch office for general administration of the Services and not specifically included in the list of personnel, Consultant’s principal and branch offices other than Consultant’s office at the site. In addition, the Agreement Price shall include any part of Consultant’s capital expenses, including necessary transportation, travel and subsistence expenses of Consultant’s employees, incurred in discharge of duties connected with the Services. The Agreement Price shall also include minor expenses connected with the Services such as copies, computers, software, office supplies, postage, faxes, long-distance telephone calls, telephone, and any other expense incurred to accomplish the Services.

**6. Invoices.** All payments shall require a written invoice from Consultant in a form acceptable to District. District shall make payment on approved amounts within each invoice within 30 days of receipt.

**END OF APPENDIX B**

## APPENDIX C - INSURANCE

This is an appendix attached to, and made a part of, the Professional Services Agreement dated \_\_\_\_\_, 20\_\_ (“**Agreement**”) between the EL DORADO IRRIGATION DISTRICT (“**District**”) and CONSULTANT’S NAME ALL IN CAPS (“**Consultant**”), for the provision of professional services (“**Services**”).

**1. Consultant’s Duty to Show Proof of Insurance.** Prior to the execution of this Agreement, Consultant shall furnish to District satisfactory proof, in the form of certificates of insurance and/or policy endorsements, that Consultant has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to District and with an insurance carrier satisfactory to District, authorized to do business in California and rated by A. M. Best & Company A- or better, financial category size VII or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:

1.1 Commercial General Liability Insurance

Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$2,000,000 general aggregate and \$1,000,000 each occurrence, subject to a deductible of not more than \$25,000 payable by Consultant.

1.2 Business Automobile Liability Insurance

Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than \$25,000 payable by Consultant.

1.3 Workers’ Compensation Insurance

Workers’ Compensation Employers’ Liability limits not less than the amounts required by law. Consultant’s Workers’ Compensation Insurance policy shall, by endorsement, contain a Waiver of Subrogation as to each named and additional insured. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

1.4 Professional Liability Insurance

Professional Liability Insurance, either (a) specific to this Project only, with limits not less than \$1,000,000 each claim, or (b) limits of not less than \$1,000,000 each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and any deductible not to exceed \$25,000 for each claim, with no exclusion for claims of one insured against another insured. Consultant shall maintain said insurance coverage for a period of five (5) years after the completion of the Services and shall, upon request of District, provide certificates of insurance evidencing Consultant has maintained said coverage.

**2. Insurance policies shall contain an endorsement containing the following terms:**

**2.1 Status of El Dorado Irrigation District as Additional Insured.**

On Consultant's Commercial General Liability policy and Automobile Liability Policy, the El Dorado Irrigation District, and its affiliates, directors, officers, officials, partners, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to District thirty (30) days in advance of the effective date thereof.

2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than that amount Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

2.5 Certificates of Insurance and Endorsements shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subsection 2.3.

2.6 Other than Professional Liability, any insurance policy written on a claims-made basis is subject to the approval of the District's Legal Counsel.

2.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.

2.8 If Consultant fails to maintain any required insurance, District may take out such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.

**END OF APPENDIX C**

## APPENDIX D – DELIVERABLES LIST

This is an appendix attached to, and made a part of, the Professional Services Agreement dated \_\_\_\_\_, 20\_\_ (“**Agreement**”) between the EL DORADO IRRIGATION DISTRICT (“**District**”) and CONSULTANT’S NAME ALL IN CAPS (“**Consultant**”), for the provision of professional services (“**Services**”).

Consultant shall provide the following deliverables:

- Final draft fee structure options technical memorandum
- Final fee structure options technical memorandum
- Microsoft Powerpoint presentation for Board of Directors informational workshop
- Final draft fee structure implementation technical memorandum
- Final fee structure implementation technical memorandum

**END OF APPENDIX D**

**SCHEDULE 1 – PERSONNEL**

This is a schedule attached to, and made a part of, the Professional Services Agreement dated \_\_\_\_\_, 20\_\_ (“**Agreement**”) between the EL DORADO IRRIGATION DISTRICT (“**District**”) and CONSULTANT’S NAME ALL IN CAPS (“**Consultant**”), for the provision of professional services (“**Services**”).

As described in Exhibit 2 to Appendix A.

**END OF SCHEDULE 1**