



MIDWAY CITY SANITARY DISTRICT

REQUEST FOR PROPOSALS

FOR INFORMATION TECHNOLOGY MANAGED SERVICES PROVIDER (MSP) AND CYBERSECURITY SERVICES

Release Date August 26, 2024

Site Walk (Non-Mandatory): September 18, 2024, at 10:00 a.m.

Proposals Due: On or Before October 1, 2024, at 3:00 p.m.

Proposal Submissions Shall be Directed to:

Robert Housley, General Manager
Midway City Sanitary District
14451 Cedarwood Street
Westminster, CA 92683
Phone (714) 893-3553
Email rhousley@midwaycitysanitaryca.gov

TABLE OF CONTENTS

- I. INTRODUCTION.....4**
 - A. Background.4**
 - B. Purpose of the Request.5**
- II. SCOPE OF SERVICES.....5**
- III. TERM OF AGREEMENT.....6**
- IV. PROPOSAL FORMAT.....6**
 - A. Approach.6**
 - B. Description of Firm, Management and Team Members.....6**
 - C. Qualifications.....7**
 - D. Scope of Work.7**
 - E. Proposed Pricing.7**
 - F. References, Related Experience and Examples of Work.7**
- V. APPLICABLE LAWS AND PREVAILING WAGES.....8**
 - A. Laws To Be Observed.....8**
 - B. Prevailing Wages.....8**
 - C. Licensing.....8**
- VI. SELECTION PROCESS.....8**
 - A. Evaluation.....8**
 - B. Selection Criteria.8**
 - C. Proposed Selection and Project Schedule.....9**
 - D. Award of Contract.....10**
- VII. PROPOSAL DUE DATE AND DELIVERY10**
- VIII. GENERAL CONDITIONS OF THE RFP.....10**
 - A. General Conditions.....10**
 - B. Liability of Costs and Responsibility.11**
 - C. Validity.....12**
 - D. Standard Agreement Terms.....12**
 - E. Permits.12**
 - F. Licenses and Certificates.....12**
 - G. Oral and Written Explanations.12**
 - H. Proposer's Representative.....13**

I. Insurance.13
J. Future Engagements.....13
IX. Exhibits.13
EXHIBIT A - SCOPE OF WORK14
EXHIBIT B – SAMPLE AGREEMENT18

I. INTRODUCTION.

The Midway City Sanitary District (“District” or “Owner”) is requesting Proposals from qualified firms (“Contractor” or “Proposer”) to perform a comprehensive assessment of its Information Technology (“IT”) infrastructure, cyber security, and to provide Managed Service Provider (MSP) services, cybersecurity protection, and aid in the formulation of and implementation of an ongoing technology strategic strategy and plan (“Project”).

A. Background.

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

Situated in Orange County, the area of Westminster and Midway City is a large and diverse community. As a service district, the District provides solid waste services to approximately 20,000 residential and commercial customer accounts, supplies sanitary sewer services and maintains approximately 174 miles of gravity sewer lines that transport 13 million gallons a day to treatment facilities for 103,000 residents.

The District has relied upon an independent contracting firm to provide information technology management services, including technical support, network administration, software support, device management, telecommunication (RingCentral) services, and cybersecurity measures. The General Manager has oversight and provides direction to the third-party vendor.

The District currently has 34 employees in various departments, consisting of administration, finance, engineering, sewer collection (wastewater), solid waste collection, fleet maintenance, along with 5 elected members of the Board of Directors. The District’s regular business hours are Monday through Friday, 7:00 a.m. to 4:30 p.m. The District operates out of offices and a yard located in Westminster, California, and its employees work mainly in the main office and may utilize a hybrid schedule. In addition, some employees routinely travel in the course of their job responsibilities and may work remotely off-site or from home.

B. Current Technology Environment.

The District does not have a dedicated IT professional on staff. Under direction of the General manager, the Director of Finance provides oversight and management of the MSP and ensures compliance with the MSP agreement.

The District has relied upon an independent third-party consulting firm to provide MSP services, including, but not limited to, technical support, network administration, software and subscription support, domain registration and management, device management, audio visual, security camera system, telecommunications (RingCentral), and cybersecurity protection and measures.

A detailed list of the current technical environment and a site visit is available upon request.

Network connectivity is maintained through a fiberoptic line and via wireless access points.

The District currently has 1 internet provider (Spectrum), 1 onsite server running Microsoft Windows Server 2022, 1 backup system, and approximately 12 desktop workstations with dual monitors, 8 iPads, and 8 laptops, 3 switches, 4 wireless access points, 2 wireless bridges, 28 users (13 Microsoft Licenses for exchange online plan, 1-email only user, 15 Microsoft 365 Business Standard Licenses), 20 iPhones, 10 printers, 6 scanners, 1 copier/scanner/printer, and external security cameras. The District uses the Azure services including AD and DNS, Microsoft 365 suite of applications, a variety of other third-party software applications, and RingCentral telephone phone service and equipment.

Future growth opportunities may include but are not limited to a District wide Customer Relationship Management Software (CRM) or Enterprise Resource Planning software (ERP) program, additional tablets, and technology solutions for the District's field and operations crew.

C. Purpose of the Request.

The District is seeking a locally based MSP to provide comprehensive managed IT services, such as cybersecurity management, infrastructure management, endpoint management, software as a service management, licensing management, domain management, disaster recovery management, and long-term planning and implementation. The Contractor will provide support for hardware (including servers, switches, workstations, laptops, scanners, printers, copiers, tablets, et cetera), network, software, locally based technical support ("helpdesk") services 24/7, back-ups, remote access, on-site support, email maintenance and security, inventory management, telecommunications (RingCentral), cybersecurity, and disaster recovery.

To successfully manage these services, the Contractor is expected to work and communicate effectively with District staff, officials, and other vendors to make District technologies and systems seamless to the end users. The Contractor is also expected to guide and support long-term planning efforts to meet strategic goals and to keep systems current and functional in the most cost-effective manner.

The overall goal of this RFP is to procure professional, comprehensive, reliable, timely, and proactive IT management, cybersecurity measures, and support that will promote the District's mission and vision in serving its community.

II. SCOPE OF SERVICES.

The attached Exhibit A contains a list of major work tasks that should be accomplished as part of the scope of work. Proposers are asked to define the approach and the specific scope of work and methodology to achieve the objectives presented in this RFP. Proposers should include a refined scope of work by developing a detailed description of all project tasks and any changes, additions or recommendations proposed. The description of each project task should include specification

of the task itself, the methodology or analytical process, scheduling, personnel, and costs. If you have any questions, please contact:

Robert Housley, General Manager
Midway City Sanitary District
14451 Cedarwood Street
Westminster, CA 92683
(714) 893-3553
rhousley@midwaycitysanitaryca.gov

or

Michelle Mai, Project Manager
Midway City Sanitary District
14451 Cedarwood Street
Westminster, CA 92683
(714) 893-3553
mmai@midwaycitysanitaryca.gov

III. TERM OF AGREEMENT

The District anticipates entering into an agreement with the selected Contractor for an initial three-year term, with one optional three-year extension, exercisable by the District in its sole discretion.

IV. PROPOSAL FORMAT.

All proposals shall include the following minimum information:

A. Approach.

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

B. Description of Firm, Management and Team Members.

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

shall include evidence that such business entity is properly registered with the California Secretary of State.

C. Qualifications.

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

D. Scope of Work.

The proposal should contain a description of each work task with an explanation of how the proposer plans to approach the tasks and the steps that will be taken to complete the tasks. Proposers must demonstrate that they understand the magnitude and importance of each individual task.

E. Proposed Pricing.

The proposal must include a Price Proposal that outlines the proposed pricing for each of the required work tasks. The Price Proposal shall include the following:

- Describe the pricing model(s) that you typically employ for your services.
- Indicate the charges associated with each of the items listed in Exhibit A - Scope of Work.
- A fixed “not-to-exceed” monthly price for recurring services. Overhead, mileage, and other reimbursable expenses shall be included in the fixed no-to-exceed price, except as otherwise expressly provided in the proposal. The Price Proposal shall expressly list all services, equipment, materials, and other items that are not included within the proposed fixed not-to-exceed monthly price.
- Special Projects: Provide additional hourly rates for project management and technical services to assist with projects; to be billed on an hourly basis for any additional services that may be provided (rates to be included in the proposal).

The District contemplates that the fees, rates, and/or unit prices set forth in the Price Proposal will remain fixed and unchanged for the first two (2) years of the Agreement, and that, thereafter, the Contractor may request price adjustments once per year, which will be subject to approval by the District’s General Manger and may not exceed the greater of (1) the value of the change in the Consumer Price Index for the Los Angeles/Orange County area for the preceding one year as published for the month of April of any given year, or (2) I five percent (5%) per year regardless of CPI or any other cost factors.

F. References, Related Experience and Examples of Work.

Include client references with phone numbers for relevant work. Specify the client, location, type of work, implementation results or status, examples of work, and other relevant information as

needed. Proposers shall provide a minimum of three (3) references for the development of IT assessments. References should be for local governments, located in the State of California, of similar size or larger than the Midway City Sanitary District. Proposers shall provide contact names, emails, and phone numbers for each reference.

V. APPLICABLE LAWS AND PREVAILING WAGES.

A. Laws To Be Observed.

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

B. Prevailing Wages.

The District has determined that this Project does not require work of labor categories which are subject to Prevailing Wage Laws identified in the State of California Labor Code.

C. Licensing.

The Contractor is responsible for obtaining a business license from the City of Westminster, and any professional licenses required to provide the requested services.

VI. SELECTION PROCESS.

A. Evaluation.

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

B. Selection Criteria.

While price is a factor, the District will select the most qualified proposal based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

1. Pricing and Cost.
2. Ability of the proposer to design an approach and work plan to meet the Project requirements, which will include an assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include:

- The proposer's performance in converting the Scope of Services into a work plan;
 - The detail and clarity of the discussion as to the proposer's approach to undertaking the Project;
 - The proposer's performance in identifying any special problems or concerns which may be associated with the Project and preliminary ideas about how these obstacles should be addressed;
 - The inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; and
 - The demonstrated ability to work with governmental bodies and a full understanding of applicable laws or regulations that relate to the Project.
3. Ability of the Proposer to carry out and manage the Project, which includes an assessment of the past experience of the proposer in general.
 4. Capabilities of the proposer and/or its proposed team, which includes an assessment of the capabilities of the proposer and individuals that will be engaged in the Project.
 5. Proximity of the proposer to the Project site. The application of this criteria will include an assessment of the following:
 - The proposer's geographic proximity to the Project site;
 - The location of the office from which the Project will be administered;
 - The perceived response time and general availability of the proposer's management to be on site;
 - The perceived effect that Project management location will have on price and the ability of the Project to be expedited on a timely basis; and
 - The availability of special travel or communication plans which would effectively mitigate difficulties associated with location.
 6. Willingness to comply with the proposed Agreement terms. A sample Agreement is attached in Exhibit B. Proposals will be rated based on the exceptions taken to the proposed Agreement.

C. Proposed Selection and Project Schedule.

Site Walk (Non-Mandatory): September 18, 2024, 10:00 AM
 Questions Due: September 20, 2024
 Response Date: September 25, 2024
Proposal Due Date: On or before October 1, 2024, 3:00 PM
 Award of Agreement: October 15, 2024 (or November 5, 2024, as backup)
 Projected Start Date: Within 14 calendar days from execution of contract.
 Projected Completion Date: To be determined.

D. Award of Contract.

It is anticipated that any award of an agreement for services will be made by the District Board at its October 15, 2024, regular meeting (November 5, 2024, as backup). The District Board may direct the General Manager to negotiate with one or more proposers.

VII. PROPOSAL DUE DATE AND DELIVERY

Proposals shall be prepared according to the instructions contained in this RFP, including any addenda hereto published by the District. Proposals must be delivered by e-mail with confirmation, mail, courier, express or by hand to the District at its offices at:

Midway City Sanitary District
Attention: GENERAL MANAGER
14451 Cedarwood Street
Westminster, CA 92683
E-mail: rhouley@midwaycitysanitaryca.gov

by 3:00, p.m., prevailing time, on or before October 1, 2024.

All copies received by that time will be date and time stamped. Proposals will not be accepted after this time.

VIII. GENERAL CONDITIONS OF THE RFP.

A. General Conditions.

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

Upon receipt by the District, proposals are considered a public record and subject to disclosure under the Public Records Act, including within such information, without limitation, personal identification information such as social security numbers, bank account numbers, and drivers' license numbers. Further, after the award of the Contract by the District, whether or not a proposer is the successful Contractor, all material in proposals received by the District shall be subject to the right of the public to inspect and to obtain copies. The District shall retain all proposals submitted in response to this RFP for as long as the District is required to do so under the law.

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

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

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

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

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

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

B. Liability of Costs and Responsibility.

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

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

C. Validity.

Proposers agree to be bound by their proposals for a period of ninety (90) days commencing on October 1, 2024, during which time the District may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only that portion so amended or clarified.

D. Standard Agreement Terms.

The selected Contractor will be required to enter into the District's standard Agreement, a copy of which has been provided in Exhibit B. Each proposer shall assume that the execution of this Agreement, without changes, will be a required condition unless proposed modifications are requested at the time of submittal of the proposal and then accepted by the District. If a proposer wishes to take exception to any of the terms and conditions contained in the Agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the Agreement as it is written. Failure to identify contractual issues of dispute can later be the basis for the District disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the District will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The District will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The Agreement will not be executed by the District without first being signed by the proposer.

E. Permits.

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

F. Licenses and Certificates.

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

The required Licenses and Certificates include:

1. City of Westminster Business License
2. Any professional licenses required to provide the requested services.

G. Oral and Written Explanations.

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

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

H. Proposer's Representative.

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

I. Insurance.

General Liability, Automobile, and Worker's compensation insurance are required in the amount set forth in the attached sample Agreement.

J. Future Engagements.

The District retains the right to engage with additional partners and vendors that can provide additional value and operational services similar to the scope of work within this proposal.

IX. Exhibits.

- A. Scope of Work
- B. Sample Agreement

EXHIBIT A - SCOPE OF WORK

The scope of work, as may be modified through negotiation and/or by written addendum issued by Midway City Sanitary District, will be included in the Agreement. Under the direction of the General Manager, the Contractor will be expected to perform all services described in the Scope of Services via remote access, telephone, and onsite support jointly agreed upon by District and Contractor.

The Contractor shall provide a dedicated on-site support person for approximately 4 hours per week during normal office business hours for the first two months of transition to a new Contractor, for the purpose of providing support and assure a smooth and successful transition from one firm to another.

- A. Initial Assessment:** The initial assessment will consist of the following but is not limited to:
- a. Review of inventory and assessment of system infrastructure and equipment, cybersecurity measures, software, and assets to determine protections, efficiency, life expectancy, speed, age, and efficacy of current processes.
 - b. Provide recommendations for improving routine maintenance to eliminate emergency maintenance situations, including cloud hosted services, intrusion testing to assess cybersecurity measures and protections.
 - c. A report of the initial assessment shall be submitted within sixty (60) days of the signed agreement and will be updated annually or as needed throughout the duration of the contract.
- B. Cybersecurity Management:** Includes comprehensive security solutions, including firewall management, IPS/IDS, VPN, antivirus, spam protection, and web filtering, along with advanced services such as real-time security monitoring through SIEM and 24/7 threat detection and response via SOC, ensuring robust protection against evolving cyber threats. Managing risks, and incident response. Employee training and intrusion testing.
- C. Infrastructure Maintenance and Management:** Includes local 24/7 monitoring and support for servers, storage, LAN/WAN, virtualization platforms, and IP telephony, ensuring maximum uptime and reliability.
- D. Disaster Recovery Management:** Includes comprehensive disaster recovery solutions, including backup management and offsite server replication to ensure data protection and swift recovery.
- E. End Point Management:** Full support for PCs, laptops, tablets, and smartphones, ensuring all devices are secure and fully operational.

- F. Software as a Service Management:** Management of cloud-based and desktop applications including but not limited to Microsoft 365, Azure, Adobe, and RingCentral, ensuring smooth integration and operation.
- G. Licensing Management:** Comprehensive management of software licenses, including but not limited to renewals and compliance for firewalls, antivirus, Microsoft 365, and more.
- H. Domain Management:** Manage domain renewals and DNS configuration to ensure a secure and uninterrupted online presence. Monitor domain status to prevent unauthorized changes or interruptions.
- I. Long-Term Planning:** Capacity planning, IT governance, and emerging technology research to align IT investments with District goals, including IT budget development and risk management for long-term success.
- J. Team Meetings:** Consistent and frequent communication to discuss any relevant topics or concerns is vital to the success of this partnership and protection of the District's operations, its data, and information. Team meetings provide for an informed and successful IT team. The team will consist of but not limited to District staff, the Contractor, and any other third-party partners necessary for the operations and security of the District. The Contractor and District personnel shall meet in person, on site, at least twice a year or as determined by the District.
- K. Equipment:** Historically, the Contractor has purchased new equipment based on Consultant recommendations. However, this contract does not obligate the District to purchase computer equipment, hardware devices, peripherals, cabling, licenses, software, etc., from the Contractor. The District retains the right to select and purchase any and/or all equipment itself.
- L. Infrastructure Maintenance and Management:** Ensuring consistent performance, maximizing uptime, and minimizing system failures largely depend on applying due diligence in performing routine maintenance and management tasks. These tasks include but are not limited to:
- a. Management of networks and computer systems, including complex applications, databases, communication systems, servers, external security camera system, and associated hardware, software, and operating systems necessary for system performance, security, reliability, and recoverability.
 - b. Reviewing all process logs for normal execution and performance.
 - c. Monitoring and reporting the status of servers, and networks.
 - d. Conducting preventative maintenance, software updates and patch management.

- e. Timely responses to repair, maintenance, and user support requests.
- f. Maintaining records of both on-site and "help-desk" support service tickets.
- g. Performing backups, backup rotations, and restoration of all systems, servers, networks, and equipment.
- h. Developing and maintaining procedural documentation for active servers, including comprehensive inventory (hardware, software, applications, and licensing), product manuals, baseline settings, scripts, a network map, and action logs.
- i. Configuration management, including changes, patches, etc., on a weekly basis.
- j. Support of software related to servers, workstations, laptops, tablets, and other network equipment.
- k. New equipment, software, and existing data will be installed and transferred as requested.
- l. Implementation of support related to software migrations, as needed. This may require communication and troubleshooting with other District vendors.
- m. Monitoring and adjusting data backup and recovery systems on a weekly basis to include new or changing data sources.
- n. Verify that backup is completed on a weekly basis. Quarterly backup verification by testing, Confirm that backups are stored offline.
- o. Testing of data restoration processes to evaluate effectiveness in the event of a system failure, occurring at least quarterly.
- p. Maintenance of IT asset inventory and regular scheduling of electronic retirement and proper disposal (e.g., wiping agency data from hardware prior to disposal, recording specs and estimated value of retired equipment, and coordinating the sale of serviceable equipment or e-waste collection of retired equipment). The District typically handles e-waste of retired equipment.
- q. Monitoring and managing of the District's telecommunications and phone system with a separate contracted vendor (RingCentral) and providing District staff support.

M. Network Administration: This consists of a variety of tasks required to initiate, adjust, and implement network functions, including but not limited to:

- a. Network equipment maintenance and support, including switches, firewalls, and other similar devices, including public and internal Wi-Fi.
- b. Network, network device, and server capacity monitoring and planning.
- c. Server OS configuration and version updates.
- d. Management of backup and disaster recovery systems.
- e. Installation and troubleshooting of printers/scanners not otherwise serviced by a separate vendor.
- f. Analysis, routine configuration changes, minor cabling, and installation of patches and upgrades.
- g. Proactive monitoring of network equipment, performance, and management; troubleshooting, as required.
- h. Maintenance of the District's email accounts using the District domain, including adding, changing, and/or deleting employee accounts as requested. District staff must have access and training to add/edit/audit.
- i. Mapping of network resources, such as shared file storage drives.
- j. Service pack installations.

N. Website: While the District contracts with a dedicated website vendor (Streamline) for its web platform and hosting services, the Contractor will be required to provide the following website- related support services but not limited to:

- a. Maintain required SSL certificates and domains.

O. Finance, Audit, Public Records Act Requests, and Grant Assistance: The Contractor shall provide and aid the District with any audit, finance, Public Record Act requests, and IT or Cybersecurity grants and funding tasks on an as-needed basis (including but not limited to):

- a. Maintain a list of all software and subscription-based programs and aid the District in providing any and all data and information that may be required as part of an audit, or as needed to support the District's obligations and reporting requirements.
- b. Assist the District with retrieving any data and information required to respond to any Public Records Act requests.
- c. Aid in preparing and applying for any grants for IT or Cybersecurity.

P. Communication: The Contractor is expected to uphold the following communication standards:

- a. Maintain a professional and effective communication rapport with District staff, promptly providing valuable and accurate information.
- b. Establish a consistent work schedule to outline when routine on-site maintenance and technical support will occur.
- c. Monitor lifecycles and service contracts for all hardware and software related licenses and warranties. Provide advice regarding management of end-of-life or impending expirations at least six months before expiration.
- d. Communicate new developments or recommendations regarding technology to improve IT operations' efficiency and effectiveness.
- e. Meet annually to review the current state of the District's information technology and managed services agreement.

Q. Training: At the request of the District, the Contractor will provide end-user training for various software (Microsoft 365), hardware, and network technologies, as needed.

- a. The Contractor shall provide trainings on a variety of topics but not limited to cybersecurity, ransomware, MFA, AI and other opportunities to protect the safety of the District's information technology and network.

R. Equipment: Historically, the Contractor has purchased equipment based on Contractor's recommendations. However, this contract does not obligate the District to purchase any equipment, hardware, devices, cabling, licenses, software, etc., from the Contractor. The District retains the right to purchase all equipment and software as it sees fit.

S. Exclusions: The District uses a different third-party vendor for management of its sewer SCADA system, and that system is excluded from this scope of work.

EXHIBIT B – SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

NAME OF CONTRACTOR

(Information Technology Managed Services Provided and Cybersecurity Services)

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

RECITALS

The following recitals are a substantive part of this Agreement:

- A. This Agreement is entered into pursuant to pursuant to Midway City Sanitary District Board authorization dated _____, 2024.
- B. DISTRICT has determined there is a need to retain the professional services of a qualified company to provide the DISTRICT with a comprehensive assessment of its Information Technology (“IT”) infrastructure and cyber security, to provide Managed Service Provider (MSP) services and cybersecurity protection, and to aid in the formulation of and implementation of an ongoing technology strategic strategy and plan (the “Project”).
- C. In response to DISTRICT’s Request for Proposals, dated _____, 2024, CONTRACTOR has submitted to DISTRICT a proposal, dated _____, to provide DISTRICT with professional services for the Project pursuant to this Agreement (the “Proposal”).
- D. CONTRACTOR represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and technical expertise to provide professional services to DISTRICT for the Project and has agreed to provide such services as provided herein. DISTRICT does not have the personnel, training, certification, or specialized technical expertise necessary to perform the work and services contracted for herein.
- E. DISTRICT desires to retain CONTRACTOR to provide professional services for the Project.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. **Term and Termination.** This Agreement shall commence on _____, 2024, and shall continue through _____, 2027, with an option to extend the Agreement for up to three

(3) additional one (1) year terms at the DISTRICT's option, unless earlier terminated by DISTRICT. The DISTRICT's General Manager is authorized to exercise said extension options on behalf of the DISTRICT. This Agreement may be terminated by DISTRICT without cause upon thirty (30) days written notice, and by CONTRACTOR without cause upon ninety (90) days' notice. In such event, the DISTRICT will compensate CONTRACTOR for work performed to date in accordance with Section 3.5 of this Agreement. CONTRACTOR is required to present evidence to support performed work completion. CONTRACTOR is required to present evidence to support performed work completion.

2. Services to be Provided and Standard of Performance.

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

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

2.3 Compliance with Law. CONTRACTOR shall comply at all times during the term of this Agreement with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including without limitation all applicable fair labor standards and

Cal/OSHA requirements. CONTRACTOR shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If CONTRACTOR performs any Work or Services in violation of such laws, rules, and regulations, CONTRACTOR shall be solely responsible for all penalties and costs arising therefrom. CONTRACTOR shall defend, indemnify, and hold DISTRICT, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

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

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

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

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

3. Compensation.

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

3.2 Optional CPI Adjustment. The fees, rates, and/or unit prices set forth in CONTRACTOR’s Proposal (Exhibit “A”) shall remain fixed and unchanged for the first two years of the term of this Agreement (i.e., from _____, 2024 through _____, 2026). Thereafter, CONTRACTOR may submit a request to adjust its fees, rates, and/or unit prices once per year during the remainder of the term of the Agreement as provided for herein. However, approval of any request to adjust CONTRACTOR’s fees, rates, and/or unit prices as set forth herein shall be made at the sole discretion of the DISTRICT’s General Manager, in writing, and is subject to the DISTRICT’s approved budget. Such fee, rate, and/or unit pricing adjustment(s), if any, shall not exceed the value of the change in the Consumer Price Index for the Los Angeles/Orange County area for the preceding one year as published for the month of April of any given year. In no event shall any adjustment of any fee, rate, and/or unit pricing as authorized by this section exceed five percent (5%) per year regardless of CPI or any other cost factors.

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

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

for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in CONTRACTOR's profession.

3.5 Termination. DISTRICT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving ninety (90) days written notice of termination. If the Agreement is terminated by either party, then the provisions of paragraph 3 would apply to that portion of the work completed.

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

4. Insurance requirements.

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

4.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

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

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

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

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

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

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

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

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

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

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

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

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

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

4.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the DISTRICT, its officials, officers, employees, agents and volunteers, or shall specifically allow

CONTRACTOR or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. CONTRACTOR hereby agrees to waive its own right of recovery against the DISTRICT, its officials, officers, employees, agents and volunteers, and CONTRACTOR hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

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

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

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

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

to DISTRICT that the subconsultant or subcontractor has secured all insurance required under this section.

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

A. CONTRACTOR shall provide immediate written notice to DISTRICT if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

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

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

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

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

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

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

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

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

8. **Independent Contractor; PERS Eligibility & Indemnification.**

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

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

(c) No DISTRICT benefits shall be available to CONTRACTOR, its officers, employees, or agents, in connection with the performance of any Work or Services under this

Agreement. Except for professional fees paid to CONTRACTOR as provided for in this Agreement, DISTRICT shall not pay salaries, wages, or other compensation to CONTRACTOR for the performance of any Work or Services under this Agreement. DISTRICT shall not be liable for compensation or indemnification to CONTRACTOR, its officers, employees, or agents, for injury or sickness arising out of performing any Work or Services hereunder. If for any reason any court or governmental agency determines that the DISTRICT has financial obligations, other than pursuant to Section 3 herein, of any nature relating to salary, taxes, or benefits of CONTRACTOR's officers, employees, representatives, agents, or subconsultants or subcontractors, CONTRACTOR shall defend, indemnify, and hold harmless DISTRICT from and against all such financial obligations.

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

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

(CONTRACTOR) _____
Attn: _____

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

(WITH COPY TO) Midway City Sanitary District
Attention: General Counsel

14451 Cedarwood Street
Westminster, CA 92863

10. Schedule of Performance.

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

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

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

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

12. Indemnification. CONTRACTOR agrees to protect, defend, and hold harmless DISTRICT and its elective or appointive boards, officers, agents, and employees from any and all third party claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for

bodily injury or death of any person, or damage to property, or interference with use of property, to the extent caused by negligent acts, errors or omissions or willful misconduct by CONTRACTOR, CONTRACTOR's agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The exception to CONTRACTOR's responsibility to protect, defend, and hold harmless DISTRICT, is due to the active negligence of DISTRICT, or any of its elective or appointive boards, officers, agents, or employees.

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

13. Reports.

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

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

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

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

14. Reserved.

15. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

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

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

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

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

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

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

22. **Corporate Authority.** Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

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

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

“DISTRICT”

“CONTRACTOR”

MIDWAY DISTRICT SANITARY
DISTRICT, a public entity

_____, a

By: _____
Robert Housley
General Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

General Counsel
Midway DISTRICT Sanitary District

Name: _____

Title: _____

Tax ID No. _____

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

**EXHIBIT “A” TO AGREEMENT
CONTRACTOR’S PROPOSAL**

EXHIBIT “B” TO AGREEMENT
SCOPE OF WORK