

Council Meeting of
December 23, 2008

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Approve an Amendment to a Consulting Services Agreement with the West Basin Municipal Water District (WBMWD) for implementation services for enhanced water conservation programs. Expenditure \$75,000.

RECOMMENDATION

Recommendation of the Water Commission and the Public Works Director that City Council approve an Amendment to extend a Consulting Services Agreement (C2006-236) with the West Basin Municipal Water District (WBMWD) through June 30, 2010 to provide implementation and related support services for various commercial, industrial, institutional and residential enhanced water conservation programs. The program will be funded by an additional appropriation of \$75,000 to augment an existing enhanced conservation FEAP-629 project resulting in a new not-to-exceed amount of \$190,000.

Funding

Funding will be derived from an additional appropriation of \$ 75,000 from the balance in the Water Enterprise Fund.

BACKGROUND AND ANALYSIS

The City of Torrance and the West Basin Municipal Water District (WBMWD) are both direct member agencies of the Metropolitan Water District of Southern California (MWD), and collectively furnish approximately 80% of the South Bay area's water requirements. Both agencies have active water conservation and stewardship programs, and have historically worked in a number of partnership arrangements to achieve common goals. In January 2007, the City entered into a partnership agreement with WBMWD for implementation of various water conservation programs primarily targeted to the commercial, industrial and multi-family sectors. These programs were to address gaps in both agencies' conservation programs to meet State mandated best management practices (BMPs).

The current partnership agreement with WBMWD expires at the end of 2008. These programs, most of which are still in progress, have proven to be successful. It is proposed that the City extend the current agreement with WBMWD for the implementation of carryover programs, as well as a number of new programs that address high priority conservation needs. These programs include: a complete restroom program; a large landscape survey program; a high efficiency toilet (HET) retrofit/distribution program; a high efficiency toilet retrofit program in conjunction with a complimentary energy efficient retrofit program; a food service conservation program; an industrial audit program; a new landscape instructional program and other programs that are in the development stage. Participation in jointly sponsored programs with West Basin Municipal leverages the City's ability to offer these programs to its business and residential community.

These enhanced conservation programs will be performed by well qualified implementation vendors, most of which have already been selected and/or are under contract to West Basin Municipal. Torrance Municipal Water's total net cost share (after subsidies) to implement these programs (including carryover programs) is estimated at \$190,000, as shown on Exhibit B of the proposed Amendment to the current Agreement with WBMWD. Since most of the implementation vendors are already in place and project planning is underway, all these programs are expected to be completed by end of fiscal 2009-10.

To date, most of these programs have been underwritten by subsidies provided by the Metropolitan Water District, the Water Replenishment District and/or funding from outside grant sources. Therefore, only a portion of the actual program cost is being paid from Torrance Municipal Water funds. The original partnership program with WBMWD was funded by an \$115,000 appropriation as a FEAP project. Until recently these programs had been implemented almost entirely with outside funding, except for an estimated expenditure totaling approximately \$20,000 late this year, which would reduce the balance in the current FEAP-629 project to approximately \$95,000. The implementation of these high priority partnership conservation programs, in conjunction with West Basin Municipal, will require an additional appropriation of \$75,000 to the FEAP project in order to fully fund the endeavor. The additional appropriation allocated to the Enhanced Conservation Program will increase FEAP-629 from \$115,000 to \$190,000. This funding will be derived from the unencumbered balance in the Water Revenue Enterprise Fund.

The current agreement with WBMWD will expire at the end of December. At the November 20, 2008 regular meeting, the Water Commission considered this matter and unanimously supported a renewal of the conservation partnership program with West Basin Municipal. The Water Commission and the Public Works Director recommend that the City Council approve execution of the Amendment to the existing Agreement with the West Basin Municipal Water District to provide implementation and related services for these high priority conservation programs, in accordance with the revised scope of work.

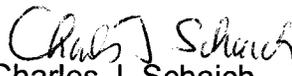
Respectfully submitted,

WATER COMMISSION

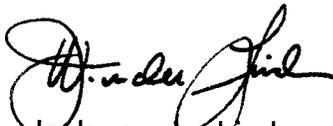


Ken Lew, Chair

ROBERT J. BESTE,
Public Works Director

By: 
Charles J. Schaich
Senior Administrative Analyst

CONCUR:



Jack van der Linden
Deputy Public Works Director



Robert J. Beste
Public Works Director

NOTED:



LeRoy J. Jackson
City Manager

Attachment: A. Amendment to Agreement with West Basin Municipal Water District
B. Agreement C2006-236

AMENDMENT TO AGREEMENT C2006-236

This Amendment to Agreement C2006-236 ("Amendment") is made and entered into as of December 23, 2008 ("Effective Date"), by and between the CITY OF TORRANCE ("CITY") and the West Basin Municipal Water District, a municipal water district ("CONSULTANT").

RECITALS:

- A. The CITY and CONSULTANT entered into an Agreement as of December 19, 2006 whereby the CONSULTANT agreed to provide implementation services and related support services for the development and implementation of business, institutional and residential water conservation programs.
- B. The CITY is satisfied with the work performed by the CONSULTANT.
- C. Both the CITY and the CONSULTANT are agreeable to extending the term of the Agreement through June 30, 2010.
- D. Both the CITY and the CONSULTANT are agreeable to increasing the amount of money paid the CONSULTANT for enhanced conservation implementation services in accordance with EXHIBIT A – REVISED SCOPE OF SERVICES.

AGREEMENT:

- 1. Paragraph 1, entitled "SERVICES TO BE PROVIDED BY CONSULTANT" is amended in its entirety as follows:
 - "1. **SERVICES TO BE PERFORMED BY CONSULTANT**
CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A – Revised. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner."
- 2. Paragraph 2, "TERM" is amended in its entirety as follows:
 - "2. **TERM**
Unless earlier terminated in accordance with Paragraph 4 Below, this Agreement will continue in full force and effect from the Effective Dated through June 30, 2010."

- 3. Paragraph 3 A, "COMPENSATION" – "CONSULTANT'S Fee" is amended in its entirety as follows:

"3 A. COMPENSATION

A. CONSULTANT'S Fee

For services rendered pursuant to the Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B - Revised, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services contemplated by this Agreement, exceed the sum of \$190,000("Agreement Sum"), unless otherwise first approved in writing by CITY."

- 4. In all other respects, the Agreement dated December 19, 2006 between the CITY and CONSULTANT is ratified and reaffirmed and is full force and effect.

CITY OF TORRANCE
A Municipal Corporation

West Basin Municipal Water District
A Municipal Water District

Frank Scotto, Mayor

By: _____
Richard Nagel
General Manager

Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____
Heather K. Whitham
Deputy City Attorney

Attachments:

Exhibit A –Revised
Exhibit B – Revised

Scope of Services
Compensation Schedule

EXHIBIT A - REVISED

SCOPE OF SERVICES

The West Basin Municipal Water District (WBMWD) will provide implementation and related support services for the development and implementation of designated water conservation programs within the City of Torrance (City). The West Basin Municipal Water District will, in consultation with designated representative(s) of the City, retain the services of qualified implementation vendors to perform various designated water conservation programs to meet Best Management Practices (BMPs) and Demand Management Measures (DMMs) incorporated into the City's Urban Water Management Plan. These conservation activities include, but are not limited to the following programs:

1. Complete Restroom Retrofit Program - This program will provide for the retrofit of restrooms within the City of Torrance with high-efficiency (HET) toilets, automatic shut-off faucets and water efficient urinals.
2. Comprehensive Large Landscape Survey Program - This program will provide for the performance of water audits, the development of landscape water budgets, and distribution of device incentives.
3. High Efficiency Toilet Program - This program will provide for the replacement of older, inefficient toilets (3-5 gallon) with new 1.28 gallon or less HET models. The program will consist of distribution and/or direct installations of HETs.
4. Recirculation & Save Program - This program will provide for audits and incentives to assist with the retrofits of commercial cooling tower conductivity controllers and/or commercial and industrial recirculation equipment.
5. Food Facility Program - This program will provide training, education and incentives to the large food facilities such as hospitals, hotels and institutional facilities, where large water savings can be achieved.
6. A Multi-Family Water and Energy Retrofit Program - This program will provide for the retrofit of toilets, showerheads and bathroom/kitchen sink aerators with water efficient units, in conjunction with a energy efficient retrofit program for multi-family units.
7. Landscape Instructional Programs - This program provides for providing water efficient landscaping classes to both the residential and professional sector including the Metropolitan Water District's California Friendly Landscape program and a new Ocean Friendly Gardens Landscape program.
8. Other Opportunities - During the term of this agreement, The City of Torrance and the West Basin Municipal Water District, in consultation with each other, may add or remove programs from the above list, as conditions warrant.

EXHIBIT B - REVISED
COMPENSATION SCHEDULE

Payment for services to West Basin Municipal Water District (WBMWD) will be on a monthly basis within 30 days of submittal of a valid invoice from WBMWD. Payments to WBMWD shall be solely to cover the net costs for services rendered by the implementation vendor(s) for the performance of designated water conservation programs as follows:

1. Complete Restroom Retrofit Program - The total projected net cost is approximately \$26,000 for the retrofit of 10 sites.
2. Comprehensive Large Landscape Program - The total projected net cost is \$20,000 for audits and retrofits of approximately 20 landscaped acres.
3. High Efficiency Toilet Program - the total projected net cost is approximately \$40,000 for the replacement of approximately 800 inefficient toilets.
4. Recirculation & Save Program - The total projected net cost is approximately \$20,000.
5. Food Facility Program - The total projected net cost is approximately \$13,000 for 10 sites.
6. Multi-Family Water and Energy Retrofit Program - The total projected cost is \$40,000.
7. Landscape Instructional Programs - The projected net cost for the Ocean Friendly Gardens program is \$15,000.
8. Other Opportunities - An additional \$ 16,000 is allocated for any unexpected opportunities that may arise during the course of the agreement.

Reallocation in activity levels and funding levels between these designated programs and/or new program opportunities are permitted with the approval of the City's Public Works Director or his designated representative.

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of December 19, 2006 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and West Basin Municipal Water District, a municipal water district ("CONSULTANT").

RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to provide implementation and related support services for the implementation of institutional, business and residential water conservation programs.
- B. CONSULTANT represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through December 31, 2008.

3. COMPENSATION

A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of \$ 115,000 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

C2006-236

ORIGINAL

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:
 - a. cease operations as directed by CITY in the notice;
 - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.
3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. **CITY REPRESENTATIVE**

Robert Beste is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. **CONSULTANT REPRESENTATIVE(S)**

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Richard Nagel, General Manager

9. **INDEPENDENT CONTRACTOR**

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **BUSINESS LICENSE**

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

13. CARE OF WORK

CONSULTANT must 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 other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. **INSURANCE**

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
 - b. Primary Property Damage of at least \$250,000 per occurrence; or
 - c. Combined single limits of \$1,000,000 per occurrence.
2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. **SUFFICIENCY OF INSURERS AND SURETIES**

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed

accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONSULTANT: West Basin Municipal Water District
Attn: Richard Nagel, General Manager
17140 S. Avalon Boulevard
Carson , CA 90746-1296

Fax: 310-516-1576

CITY: City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

22. **INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. **INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. **SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. **TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

26. **GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. **COMPLIANCE WITH STATUTES AND REGULATIONS**

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. **WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. **ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. **EXHIBITS**

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

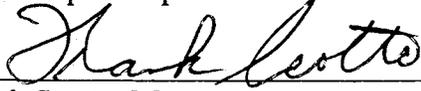
31. **CONSULTANT'S AUTHORITY TO EXECUTE**

The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement;

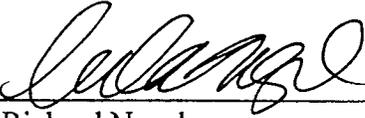
and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE
a Municipal Corporation

West Basin Municipal Water District
A Municipal Water District

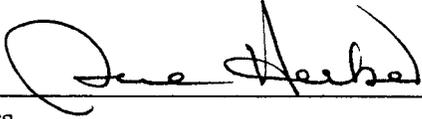


Frank Scotto, Mayor

By: 

Richard Nagel
General Manager

ATTEST:



Sue Herbers
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

JOHN L. FELLOWS III

Steven O'Neill

City Attorney

Legal Counsel

By:



By:



Attachments: Exhibit A Scope of Services
 Exhibit B Compensation Schedule

Revised: 1/30/01

EXHIBIT A**SCOPE OF SERVICES**

The West Basin Municipal Water District (WBMWD) will provide implementation and related support services for the development and implementation of designated Water Conservation Programs within the City of Torrance. The West Basin Municipal Water District will, in consultation with the City, retain the services of implementation vendors to perform various water conservation programs including:

- 1. Public Restroom Retrofit Program - This program will provide for retrofit of 20 restrooms with high efficiency toilets, faucets and waterless urinals for 20 business and institutional customers**
- 2. Commercial Laundromat Retrofit Program - This program will provide for the changeout of 150 conventional clothes washers with high efficiency models (HECW) in commercial laundromats.**
- 3. Landscape Audits and Irrigation Retrofit Program - This program will provide for the retrofit of irrigation systems with water efficient systems, and performance of water audits and water budgets for 20 selected public or commercial landscape sites.**
- 4. High Efficiency Toilet (HET) Retrofits - This program will provide for direct installation of 800 HET toilets in multi-family and senior citizen complexes. Implementation would not occur until outside funding is secured for this program**
- 5. PDA Water Efficient Landscape Classes - This program will provide for joint participation of the City and WBMWD in conducting residential and commercial PDA classes sponsored by the Metropolitan Water District of Southern California.**
- 6. Other Water Conservation Programs - The City and WBMWD will seek to develop other water conservation programs on a partnership basis.**

EXHIBIT B**COMPENSATION SCHEDULE**

Payment for services to West Basin Municipal Water District (WBWMD) will be on a monthly basis within 30 days of submittal of an invoice from WBMWD. Payments to WBMWD shall be solely to cover the costs for services rendered by the implementation vendor for the performance of designated water conservation programs as follows:

1. **Public Restroom Retrofit Program** - The total projected net cost is \$ 32,000 for the retrofit of 20 sites.
2. **Commercial Laundromat Retrofit Program** - The total projected net cost is \$ 23,000 for the retrofit of 150 high efficiency clothes washers.
3. **Landscape Audits and Irrigation Retrofit Program** - The total projected net cost is \$ 20,000 for the retrofits and audits for approximately 20 landscaped acres.
4. **High Efficiency Toilet (HET) Program** - The total projected net cost is \$ 40,000 for the retrofit of 800 conventional toilets.
5. **PDA Water Efficient Landscape Classes** - There are no direct charges for this program.

Reallocation of activity levels and funding between these designated programs are permitted upon the written approval of the City's Public Works Director.