

AGENDA
 IRVINE RANCH WATER DISTRICT
 WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE
 TUESDAY, DECEMBER 5, 2017

CALL TO ORDER 3:00 p.m. Committee Room, Second Floor, District Office
 15600 Sand Canyon Avenue, Irvine, California

ATTENDANCE Committee Chair: Mary Aileen Matheis _____
 Member: Steve LaMar _____

<u>ALSO PRESENT</u>	Paul Cook	_____	Cheryl Clary	_____
	Beth Beeman	_____	Patrick Sheilds	_____
	Mark Tettermer	_____	Christine Compton	_____
	Fiona Sanchez	_____	Amy McNulty	_____
	Paul Weghorst	_____	Kellie Welch	_____
	Ray Bennett	_____	Jo Ann Corey	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

COMMUNICATIONS

1. Notes: Weghorst
2. Public Comments
3. Determine the need to discuss and/or take action on item(s) introduced that came to the attention of the District subsequent to the agenda being posted.
4. Determine which items may be approved without discussion.

INFORMATION

5. 2017 LEGISLATIVE AND REGULATORY UPDATE – COMPTON/COOK

 Recommendation: Receive and file.

ACTION

6. VARIANCE NO. 5 TO SYNERGY COMPANIES AGREEMENT FOR WATER-ENERGY GRANT-RELATED CUSTOMER PROGRAMS – MCNULTY/SANCHEZ/WEGHORST

 Recommendation: That the Board authorize the General Manager to execute Variance No. 5 to the Agreement for Non-Consultant Services Between IRWD and Synergy Companies in the amount of \$169,000 to continue providing funding for the One-Stop Shop for Water and Energy Efficiency Program, which will be fully reimbursed through the California Department of Water Resources Water-Energy Grant.

OTHER BUSINESS

- 7. A. Directors' Comments

- B. Adjourn

Availability of agenda materials: Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the above-named Committee in connection with a matter subject to discussion or consideration at an open meeting of the Committee are available for public inspection in the District's office, 15600 Sand Canyon Avenue, Irvine, California ("District Office"). If such writings are distributed to members of the Committee less than 72 hours prior to the meeting, they will be available from the District Secretary of the District Office at the same time as they are distributed to Committee Members, except that if such writings are distributed one hour prior to, or during, the meeting, they will be available at the entrance of the meeting room at the District Office.

The Irvine Ranch Water District Committee Room is wheelchair accessible. If you require any special disability-related accommodations (e.g., access to an amplified sound system, etc.), please contact the District Secretary at (949) 453-5300 during business hours at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in an alternative format upon written request to the District Secretary at least seventy-two (72) hours prior to the scheduled meeting.

December 5, 2017

Prepared and

submitted by: C. Compton

Approved by: Paul A. Cook

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

2017 LEGISLATIVE AND REGULATORY UPDATE

SUMMARY:

This report provides an update on legislative or regulatory activities related to IRWD priorities since the end of the first year of the 2017-2018 legislative session. As legislation and regulations continue to develop, staff will provide updates and recommendations to the Water Resources Policy and Communications Committee and the Board, as appropriate.

Staff recommends that the Board receive and file this update.

BACKGROUND:

September 15, 2017, was the last day of the 2017 legislative session and the last day for the Legislature to act on regular session bills before the Interim Recess. The Governor had until October 15 to sign or veto legislation passed by the Legislature this year. The State Legislature will reconvene from the Interim Recess on January 3, 2018, unless a special session is called. Legislators will have until the end of January to act upon two-year bills from 2017.

State Budget Update:

October Revenue Numbers:

On November 9, 2017, State Controller Betty Yee released her monthly report on the State's finances. She announced that the State took in \$6.74 billion during the month of October. This was \$38.7 million lower than the projections contained in the FY 2017-2018 Budget Act.

Despite October's lower revenues, the Controller reported:

“For the first four months of the 2017-18 fiscal year, total revenues of \$32.65 billion are outpacing budget projections by \$544.8 million, or 1.7 percent, with all of the “big three”—personal income, retail sales and use, and corporation taxes—in the black.

Sales tax receipts of \$936.1 million for October were \$45.0 million higher than anticipated in the budget. For the fiscal year, sales tax receipts of \$6.86 billion are \$195.3 million above budget estimates.

Personal income tax (PIT) receipts for October totaled \$5.38 billion, falling \$49.8 million short of budget estimates. For the fiscal year to date, total PIT receipts of \$22.97 billion are \$166.4 million above assumptions in the 2017-18 Budget Act.

Corporation tax receipts for October totaled \$285.6 million, \$78.1 million below projections—or 21.5 percent—after beating expectations for three consecutive months.

For the fiscal year, corporation tax receipts of \$1.81 billion are outpacing budget projections by 8.6 percent.”

The State’s outstanding loan balance was \$19.54 billion, which was \$1.26 billion more than budget estimates.

2017 State Legislative Update:

Long-Term Water-Use Efficiency Framework:

Since the beginning of the year, staff has worked with various stakeholders and the Association of California Water Agencies (ACWA) on long-term water use efficiency and drought planning legislation. As reported to the Board, at the end of session there remained two active bills on “Making Water Conservation a California Way of Life”— AB 1668 (Friedman, D-Glendale) and SB 606 (Hertzberg, D-Van Nuys/Skinner, D-Oakland). SB 606 and AB 1668 are two-year bills. SB 606 is currently located on the Assembly Third Reading File and AB 1668 is in the Senate Rules Committee.

As part of the District’s efforts on the “Making Water Conservation a California Way of Life” legislation, IRWD took an “oppose unless amended” position on AB 1668 and SB 606 at the end of session and signed onto the water community’s “oppose unless amended” letter for the two bills, which included amendments being sought by the coalition. Over the legislation recess, staff has continued to meet with various stakeholders on the bills in order to seek amendments requested by the water community that would improve the proposals currently before the Legislature and ensure they can be implemented consistent with the intent of the authors and the Administration. Attached in Exhibit “A” is a list of the amendments being sought by the water community coalition on AB 1668 and SB 606.

Staff will be available to provide an update on the ongoing discussions taking place with regard to the long-term water use efficiency and drought planning legislation.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

RECOMMENDATION:

Receive and file.

LIST OF EXHIBITS:

Exhibit “A” – Summary of Requested Water Community Amendments

EXHIBIT "A"

Summary of Requested Water Community Amendments (as of November 15, 2017)

Issue	Requested Amendment
Indoor Water Use Standard	That the legislation require the evaluation of and report on the impacts of reducing the indoor water use standard below 55 GPCD on water, wastewater and recycling/reuse systems, infrastructure, operations and supplies.
Outdoor Water Use Standard	<p>That the language in the legislation be made clearer so that there is no confusion as to what the principles of MWELO means and what factors the SWRCB shall consider when setting the standards for both outdoor residential and outdoor CII water use.</p> <p>One approach to providing clarification is as follows: <i>"The standards shall incorporate the principles of and be set to provide at least an equivalent level of water use as the evapotranspiration adjustment factors provided in the model water efficient landscape ordinance as adopted by the department pursuant to the Water Conservation in Landscaping Act (Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code) in 2015."</i></p>
Water Loss	<p>That the legislation exclude water loss from the urban retail water use objective as existing law already addresses this issue. Under SB 555, the SWRCB is required to adopt rules requiring urban retail water suppliers to meet performance standards for the volume of water losses.</p> <p>Also, that water use and loss cause by a disaster (e.g. fire or earthquake) be expressly excluded from the compliance calculation.</p>
Variances	That the legislation include language requiring the SWRCB to adopt variances/processes for calculating variances for a variety of anomalous situations, including irrigation with recycled water in areas having high levels of total dissolved solids, seasonal populations, environmental uses, etc. The water community understands that whether a specific variance is applicable to an urban retail water supplier will be a factual determination.
Data	To make retail-level water budgets effective and implementable, that the legislation require DWR to provide the data urban retail water suppliers need to calculate an urban water use objective at regular intervals, and that the data provided be reasonably accurate.
Reporting Compliance	To ease the annual reporting burden on urban retail water suppliers, as has been done in other bills (e.g. SB 555), that the legislation allow suppliers to report water use on either a fiscal or calendar year basis. To allow for this and, if water losses remain a factor in the compliance calculation, to allow for data from water loss audits to be used in the compliance calculation, that the annual reporting deadline be moved to November 1 of each year.

Providing for Unique Situations Affecting Calculation of an Urban Water Use Objectives	That the legislation grant DWR or the SWRCB the authority to develop alternative methods for calculating an urban water use objective where unique conditions make it technically, economically, or administratively infeasible to calculate the objective using the standard method developed.
CII Performance Measures	That feasibility and cost-benefit be listed in the legislation as the key factors DWR and the SWRCB must consider in the development of performance measures that urban water suppliers will be asked to implement for the CII sector.
Separation of Mixed CII Meters	That recommendations related to separating mixed CII meters only be applicable where feasible and cost-effective.
Enforcement	That the legislation be modified to ensure a glide path approach is taken to enforcement and that the enforcement provisions be modified to incorporate remedial actions plans prior to conservation orders and fines. And that conservation orders and fines be a result of a Supplier not taking the actions detailed in any SWRCB approved remedial action plan.
Potable Reuse Credit	That the legislation be amended to include a potable reuse credit cap higher than 10%.
Recycled Water Irrigation Sites	That the legislation include a recognition that the outdoor irrigation standard for site irrigated with recycled water should be set at no less than the standard contained in MWELO.
Drought Resilient Water Supplies	That, in a manner that does not limit the Governor's power and authority to respond to emergencies, the legislation expressly provide that upon proclamation of a drought emergency that the: <ul style="list-style-type: none"> • The SWRCB shall defer to local adopted water shortage contingency plans to the extent practicable and allow suppliers to implement their plans based on the level of shortage being experienced locally; and • Recycled water (including potable reuse), emergency, desalination, and other drought resilient supplies identified in an urban water supplier's water shortage contingency plan not be restricted during a declared drought emergency, but instead used efficiently for beneficial uses.
Drought Planning	That the planning horizons for urban water management plans, water shortage contingency plans, drought risk assessments, and water supply and demand assessments be clearly defined and that vague language, such as "or more", which leaves the planning horizon opened be removed from the legislation.

December 5, 2017

Prepared by: A. McNulty

Submitted by: F. Sanchez / P. Weghorst *FW*

Approved by: Paul Cook *PC*

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

VARIANCE NO. 5 TO SYNERGY COMPANIES AGREEMENT FOR WATER-ENERGY GRANT RELATED CUSTOMER PROGRAMS

SUMMARY:

In October 2015, IRWD was awarded a Water-Energy Grant from the California Department of Water Resources (DWR). The grant provides funding for a program that offers customers the opportunity to upgrade their homes with efficient water and energy fixtures. IRWD entered into an agreement with Synergy Companies to install indoor water efficient fixtures for the program. To fully allocate the remaining DWR funds and to continue providing funding for the program, staff recommends the Board authorize the General Manager to execute Variance No. 5 to the District's agreement with Synergy Companies in the amount of \$169,000. IRWD expenditures through the agreement with Synergy Companies will be reimbursed to IRWD by DWR from the grant funds.

BACKGROUND:

In October 2015, DWR awarded a Water-Energy Grant to IRWD in the amount of \$1,932,621 for the development and implementation of a water and energy efficiency device installation program. Upon receiving the grant, IRWD collaborated with Southern California Edison (SCE) and Southern California Gas Company (SoCalGas) to implement a program that provides customers with the opportunity to upgrade their homes with efficient energy and water fixtures. This program is called the "One-Stop Shop for Water and Energy Efficiency Program."

The DWR grant is being used to reimburse IRWD for the cost of installing toilets, showerheads and faucet aerators. Funding for the energy efficient devices is provided by SCE and SoCalGas. All indoor devices are installed under the District's agreement with Synergy Companies, a full-service energy management organization that assists with controlling energy demands. IRWD, SCE and SoCalGas maintain separate contracts with Synergy Companies for the installation of utility-specific devices under the program.

Services for the outdoor portion of the water efficiency program are provided through a separate agreement with a different contractor in the amount of \$200,000. An additional \$30,000 has been spent for marketing of the One-Stop Shop Program.

Agreement with Synergy Companies:

In August 2015, IRWD entered into an agreement with Synergy Companies to install water efficient toilets, showerheads and aerators as a pilot program for customers in a small mobile home park in the District's service area. The pilot was successful and the participating customers were satisfied with Synergy's installation work. In January 2017, the second phase of the program began and included installing water efficient fixtures in single-family residences. In July 2017, the third

phase of the program expanded the program to multi-family properties and also included clothes washers. The Agreement for Non-Consultant Services Between IRWD and Synergy Companies is attached as Exhibit "A".

Previous Variances:

Variance No. 1 to the agreement with Synergy Companies was executed in October 2016 to extend the program to single-family customers and to accommodate requirements of the DWR grant without increasing costs to the District. Variance No. 2 was approved by the Board in January 2017, which increased the indoor program budget by \$500,000 bringing the total indoor program budget to \$580,000. Variance No. 3 was executed in March 2017 to clarify fixture flow rates without modifying the program budget. Variance No. 4 was executed in July 2017 to increase indoor program funding by \$950,000 bringing the total indoor program budget to \$1,530,000.

Variance Request:

Variance No. 5 has been prepared to allocate the remaining \$169,000 in DWR grant funds to the indoor portion of the program. Based on participation rates, the increase in the indoor program budget of \$169,000 will fully expend the remaining grant funds by the end of 2017. Program funding is fully reimbursable through the DWR Water-Energy Grant. Staff recommends that the Board authorize the General Manager to execute Variance No. 5 with Synergy Companies.

FISCAL IMPACTS:

Funding for the One-Stop Shop for Water and Energy Efficiency Program is included in the FY 2017-18 Operating Budget. The District will be fully reimbursed for Synergy Companies' work through the DWR Water-Energy Grant.

ENVIRONMENTAL COMPLIANCE:

This program is not a project as defined in the California Environmental Quality Act as authorized under the California Code of Regulations, Title 14, Chapter 3, Section 15378.

RECOMMENDATION:

That the Board authorize the General Manager to execute Variance No. 5 to the Agreement for Non-Consultant Services Between IRWD and Synergy Companies in the amount of \$169,000 to continue providing funding for the One-Stop Shop for Water and Energy Efficiency Program, which will be fully reimbursed through the California Department of Water Resources Water-Energy Grant.

LIST OF EXHIBITS:

Exhibit "A" – Agreement for Non-Consultant Services Between IRWD and Synergy Companies
Exhibit "B" – Non-Consultant Services Variance No. 5 to the IRWD Agreement with Synergy
Companies

EXHIBIT "A"

AGREEMENT FOR NON-CONSULTANT SERVICES BETWEEN IRVINE RANCH WATER DISTRICT AND SYNERGY COMPANIES

This AGREEMENT FOR NON-CONSULTANT SERVICES ("Agreement") is made and entered into this 10 day of AUGUST, 2015 by and between the IRVINE RANCH WATER DISTRICT, a California Water District formed and existing pursuant to the California Water District Law ("District"), and SYNERGY COMPANIES ("Contractor"), who agree as follows:

1. Agreement. The following documents (if applicable) are incorporated into this Agreement by this reference:

Certificate(s) of Insurance, Endorsements and Payment Bond

In the event of conflict between any of the terms and conditions contained in the above-listed documents and any of the terms and conditions contained in this Agreement, the parties agree that the terms and conditions contained in this Agreement will control.

2. Services. Subject to the terms and conditions set forth in this Agreement, Contractor agrees to provide District the services described in the Scope of Services, attached hereto as Exhibit 1 ("Services"). Contractor must, at its sole cost and expense, furnish all equipment that may be required for furnishing the Services. Contractor will not be compensated for services outside the scope of the Services as described in Exhibit 1, and in the Contractor's proposal, unless prior to the commencement of such out of scope services: (a) Contractor notifies District and District agrees that such services are out of scope services; (b) Contractor estimates the additional compensation required for such out of scope services; and (c) District, after notice, approves in writing a variance in the form attached hereto as Exhibit 6, specifying such out of scope services and amount of compensation for performing those out of scope services. District does not have any obligations whatsoever under this Agreement and/or any variance unless and until this Agreement and/or any variance is approved by the District's General Manager or authorized designee. Specific authorization to proceed with the Services shall be granted in writing by District. Contractor shall not proceed with the Services unless authorized. If it is specified in the Scope of Services as described in Exhibit 1 that the Services are to be performed in phases as authorized, Contractor shall not proceed with any phase unless it is separately authorized.

3. Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- ___ Exhibit 1 – Scope of Services
- ___ Exhibit 2 – Fee Schedule (including Schedule of Charges for Services)
- ___ Exhibit 3 – Insurance Requirements
- ___ Exhibit 4 – Public Works Requirements
- ___ Exhibit 5 – Special Provisions
- ___ Exhibit 6 – Non-consultant Services Variance

4. Payment. District must pay Contractor for the Services in the manner specified in Exhibit 2. The payments specified in Exhibit 2 are the only payments to be made to Contractor for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, District approves additional compensation for additional services. Contractor must submit all billings for said services to District in the manner specified in Exhibit 2.

5. No Guarantee of Compensation for On-Call Services. If this Agreement is an agreement for “on-call” Services, District makes no guarantee to Contractor as to the amount of Contractor-provided on-call Services will be requested by the District or the amount of compensation that will be provided Contractor pursuant to this Agreement. Under no circumstances, will Contractor or any of its subcontractors be entitled to or compensated for any direct or indirect loss arising from or relating to District’s failure to authorize performance of services under this Agreement. Such direct and indirect loss includes, but is not limited to, loss of expected profits, business overhead, loss of productivity, and loss of opportunity to work on other projects.

6. Standards of Performance. Contractor must perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor’s industry in California. Contractor must prepare all deliverables provided to District pursuant to this Agreement in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor’s industry, and must be provided in accordance with any schedule of performance specified in Exhibit 1. Contractor must assign only competent personnel to perform Services. Contractor must also devote such time and effort to the performance of Services as is necessary for the satisfactory and timely performance of Contractor’s obligations under this Agreement. Neither party will be deemed in default of this Agreement, to the extent that party’s performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

7. Independent Contractor. It is understood and agreed that Contractor (including Contractor’s employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever.

Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of District. District is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement. It is further understood and agreed by the parties hereto that Contractor, in the performance of its obligations hereunder, is subject to the control and direction of District as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use District facilities, space, equipment or support services in the performance of this Agreement, this use is at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the District does not require that Contractor use District facilities, equipment or support services or work in District locations in the performance of this Agreement. If, in the performance of this Agreement, any third persons are employed by Contractor, then Contractor must ensure that such persons are entirely and exclusively under Contractor's direction, supervision, and control.

8. Contractor Not Agent of District. Except as District may specify in writing, Contractor and Contractor's personnel do not have authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor and Contractor's personnel do not have the authority, express or implied, to bind District to any obligations whatsoever.

9. Conflicts of Interest. Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of District or that would in any way hinder Contractor's performance of the Services. Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed by Contractor as an officer, employee, agent or subcontractor, without the written consent of District. Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District at all times during the performance of this Agreement.

10. Licenses and Permits. Except for any licenses, permits, or approvals which are expressly provided by the Scope of Services to be obtained by the District, Contractor represents and warrants that Contractor has all licenses, permits, qualifications, and approvals that are legally required for Contractor to provide the Services. Contractor represents and warrants that Contractor will, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and

approvals that are legally required for Contractor to provide the Services. Without limiting the generality of the foregoing, if Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. Indemnification. Contractor agrees to defend, hold harmless and indemnify District, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably attorney fees and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the negligence or willful misconduct of District.

12. Insurance Requirements. During the entire term of this Agreement, Contractor must maintain the insurance coverage described in Exhibit 3.

13. Public Works Requirements. If the Services include "public work" subject to the requirements of the California Labor Code or other applicable statutes (generally, any of the following paid for by the District, with a contract amount of \$1,000 or more: construction work (including inspection and land surveying), alteration work, demolition work, installation work, street or other improvement work, repair work, certain refuse hauling for disposal, and maintenance work other than routine or recurring janitorial or custodial work), Contractor shall comply with the requirements set forth in Exhibit 4, to the extent applicable to any of the Services.

14. Non-Discrimination. Contractor represents and warrants that it has and adheres to a policy of equal opportunity non-discrimination, and non-harassment of all persons regardless of race, religion, color, national origin, ancestry, disability, medical condition, marital status, gender, age, veteran status, or sexual orientation. Such policy must be in conformance with applicable State and Federal guidelines including the California

Government Code "Section 12940(h), 12940(i)," and the Federal Equal Opportunity Clause "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations" and must apply to all employment practices including recruitment, candidate selection, training, compensation, promotion, demotion, and recreation. Contractor will designate a specific person responsible for assuring nondiscrimination and non-harassment as provided in the Agreement. That named individual will be responsible for investigating all complaints directed to him/her by District. District will refer complaints in writing, and investigations will be deemed concluded only upon submission of a written investigation report from the Contractor to the District. The scope of such investigations includes not only officers, employees, and agents of the Contractor, but also all subcontractors, subcontractors, material, men, and suppliers of the Contractor. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Contractor must take prompt, effective disciplinary action against the offender. Failure to take appropriate action may be considered a material breach of the Agreement.

15. Compliance with Laws. In the performance of this Agreement, Contractor must at all times comply with all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders and other requirements. Upon the District's request, Contractor must provide the District with documentation demonstrating Contractor's compliance with such governmental requirements. After reasonable notice and under reasonable conditions, Contractor agrees that the District has the right to inspect and copy any records of Contractor regarding such compliance. Contractor represents and warrants that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.

16. Term; Suspension; Termination. This Agreement will become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and continues in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein. District must have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If District gives such notice of suspension, Contractor must immediately suspend its activities under this Agreement, as specified in such notice. District may terminate this Agreement at any time by giving at least 10-days prior written notice of termination to Contractor. If District gives such notice of termination, Contractor must immediately cease rendering Services pursuant to this Agreement. If District terminates this Agreement, Contractor must, no later than five days after such notice of termination, deliver to District all Work Product

prepared pursuant to this Agreement. District must pay Contractor the reasonable value of Services rendered by Contractor prior to termination.

17. Confidentiality of District Information. During performance of this Agreement, Contractor may gain access to and use District information regarding personnel, future plans, business affairs, governmental affairs, processes, trade secrets, security of facilities, customer account information, and other sensitive information (hereafter collectively referred to as "District Information"). Contractor agrees to protect all District Information and treat it as strictly confidential, and further agrees not at any time, either directly or indirectly, to divulge, disclose or communicate in any manner any District Information to any third party without the prior written consent of District. A violation by Contractor of this Section is a material violation of this Agreement and must justify legal and/or equitable relief.

18. Ownership of Work Product. Contractor agrees that District has full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor pursuant to this Agreement ("Work Product"). Contractor is not responsible for any unauthorized modification or use of such Work Product for other than its intended purpose by District. Contractor agrees to fully defend, indemnify and hold harmless District, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights.

19. California Public Records Act. All proprietary and other information received from Contractor by District, whether received in connection with Contractor's proposal to District or in connection with any Services performed by Contractor, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to District, District must give notice to Contractor of any request for the disclosure of such information. The Contractor has five (5) days from the date it receives such notice to enter into an agreement with the District, satisfactory to the District Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by District in any legal action to compel the disclosure of such information under the California Public Records Act. The Contractor has sole responsibility for defense of the actual "trade secret" designation of such information. The failure of Contractor to respond to the notice provided by District constitutes a complete waiver by Contractor of any rights regarding

the information designated "trade secret" by Contractor, and such information will be disclosed by District pursuant to the California Public Records Act.

20. Severability. The parties agree that if any portion of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, then the remainder of this Agreement will remain effective and is enforceable to the greatest extent permitted by law.

21. Waiver. Neither District acceptance of, or payment for, any Service or Additional Service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, may be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

22. Choice of Law and Venue. The parties agree that this Agreement is to be governed, construed and enforced in accordance with the laws of the State of California. The parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Orange County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

23. No Assignment. The expertise and experience of Contractor are material considerations for this Agreement. District has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on Contractor under this Agreement. In recognition of this interest, Contractor must not assign any right or obligation pursuant to this Agreement without the written consent of the District. Any attempted or purported assignment without District's written consent is void and of no effect.

24. Survival of Terms. The provisions of Section 5, 7, 8, 9, 10, 11, 15, and 17 through 26, survive termination of this Agreement.

25. Binding Effect. This Agreement is binding on the heirs, executors, administrators, successors and assigns of the parties.

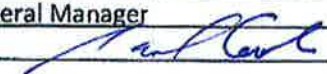
26. Entire Agreement. This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement is valid unless approved in the form of a written variance signed by an authorized representative of Contractor and District.

27. Authority. The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor and to bind Contractor to the performance of its obligations hereunder.

EXECUTED AS OF THE DATE FIRST STATED ABOVE.

IRVINE RANCH WATER DISTRICT

Approved as to form:

Name: Paul Cook
Title: General Manager
Signature: 



Contractor:

Name of Firm: Synergy Companies
Federal I.D. No.: 87-0389611
State I.D. No.: C2420016

Type of Business Entity (check one):

Individual/Sole Proprietor

Partnership

Corporation (i.e. either corporate president must sign or two corporate officers)

Limited Liability Company

Other (please specify: _____)

Name of Firm's Authorized Representative: Steve Shallenberger


Title: President

Signature: 

(If the firm is a corporation and its president did not sign above, then another corporate officer must sign below)

Name of Firm's Authorized Representative: David Shallenberger

Title: Legal Counsel

Signature: 

**EXHIBIT 1
SCOPE OF SERVICES**

1. Representatives.

a. The District Representative for this Agreement is:

Amy McNulty, Water Efficiency Manager
15600 Sand Canyon Avenue
Irvine, CA 92618
(949) 453-5634
mcnulty@irwd.com

All Contractor questions pertaining to this Agreement must be referred to the District Representative or the District Representative's designee.

b. The Contractor Representative for this Agreement is:

Matthew Clark, Project Director
90 Business Park Drive
Perris, CA 92571
(951) 230-6425
matt.clark@synergycompanies.org

All District questions pertaining to this Agreement must be referred to the Contractor Representative. All correspondence to Contractor must be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the District must be addressed to the District Representative.

2. Scope of Services.

The scope of services for the Water-Energy Combined Manufactured Homes_Direct Install Program and One-Stop Shop Program_will consist of the direct installation of high efficiency toilets, low-flow showerheads, and kitchen and bathroom faucet aerators within the manufactured homes and single-family homes of Irvine Ranch Water District customers. The program will consist of multiple phases depending on customer participation rates. Each phase will have a not-to-exceed amount of \$80,000. Each phase requires separate authorization by the District to proceed. Any additional phases will be considered sequentially, when the prior phase is completed, and the determination to authorize each such phase will be at the District's sole discretion. The District's authorization to proceed with a subsequent phase will include a Notice to Proceed for such phase.

Manufactured Homes Direct Install Program

The Contractor will engage in the following activities to acquire customer participation: manufactured housing clubhouse presentations, direct outreach and customer

enrollment. Clubhouse presentations consist of collaboration with manufactured housing community managers to promote the event through flyers, newsletters and manufactured housing television channels. The presentation will be given by trained presenters with audiovisual slide show and video to educate the attendees and answer questions courteously and thoughtfully. Attendees are encouraged to enroll in the program throughout the presentation.

After the presentation, marketing associates politely contact community residents through door-to-door and phone outreach. Interested residents are educated by the marketing associate, enrolled electronically on the program and given an appointment date and time with reminder card. Contractor will work with IRWD to develop a customer participation form.

Contractor replaces the existing 1.6 gallon per flush (gpf) or greater toilet with a more water efficient model. The existing toilet is also removed from the site and recycled. The contractor installs a 0.8 gpf toilet including the toilet seat, wax ring, seal and hose. If site conditions prohibit the installation of the 0.8 gpf toilet model, IRWD staff will be contacted to approve the installation of the 1.28 gpf model as an alternative.

Single-Family One-Stop Shop Program

The Contractor will manage the customer intake process via the program web portal developed by IRWD. The Contractor will be responsible for contacting customers who register via the portal to schedule an on-site appointment to determine customer's eligibility for the direct installation of high efficiency toilets, low-flow showerheads, and kitchen and bathroom faucet aerators within the single-family homes. After performing the installation for qualified customers, the Contractor will leave behind outreach materials for rebates and other programs for additional outdoor direct installation measures as determined by IRWD. The Contractor will provide the names and addresses of customers interested in outdoor measures to IRWD.

The Contractor will replace existing 1.6 gpf or greater toilets with a more water efficient model. The existing toilet is also removed from the site and recycled. The contractor installs a 0.8 gpf toilet including the toilet seat, wax ring, seal and hose. If site conditions prohibit the installation of the 0.8 gpf toilet model, IRWD staff will be contacted to approve the installation of the 1.28 gpf model as an alternative. Showerheads and faucet aerators that do not meet current plumbing code requirements will be replaced with low-flow 1.8 gallon per minute (gpm) or higher efficiency model showerheads, kitchen faucet aerators with 1.5 gpm or higher efficiency model, and bathroom faucet aerators with 0.5 gpm or higher efficiency models. The Contractor will remove the existing showerhead and aerators from the site and recycle if able. The contractor performs post installation tests to ensure the new water efficient toilets, kitchen and bath faucet aerators, and showerheads are functioning properly.

Multi-Family One-Stop Shop Program

The Contractor will manage the customer intake process via the program web portal developed by IRWD. The Contractor will be responsible for contacting customers who register via the portal to schedule an on-site appointment to determine customer's eligibility for the direct installation of high efficiency toilets, low-flow showerheads, kitchen and bathroom faucet aerators, and at the Districts direction, high efficiency clothes washers within multi-family properties. After performing the installation for qualified customers, the Contractor will leave behind outreach materials for rebates and other programs for additional IRWD programs.

The Contractor will replace existing 1.6 gpf or greater toilets with a more water efficient model. The existing toilet is also removed from the site and recycled. The contractor installs a 0.8 gpf toilet including the toilet seat, wax ring, seal and hose. If site conditions prohibit the installation of the 0.8 gpf toilet model, IRWD staff will be contacted to approve the installation of the 1.28 gpf model as an alternative. Showerheads and faucet aerators that do not meet current plumbing code requirements will be replaced with low-flow 1.8 gallon per minute (gpm) or higher efficiency model showerheads, kitchen faucet aerators with 1.5 gpm or higher efficiency model, and bathroom faucet aerators with 0.5 gpm or higher efficiency models. The Contractor will remove the existing showerhead and aerators from the site and recycle if able. The contractor performs post installation tests to ensure the new water efficient toilets, kitchen and bath faucet aerators, and showerheads are functioning properly. High efficiency clothes washers will be installed at qualifying sites as determined by IRWD.

Payment

Invoices will be submitted routinely and include information on the customer name, address, old toilet gpf, new toilet gpf, old bath and kitchen faucet aerator gpm, new bath and kitchen faucet aerator gpm, old showerhead gpm, new showerhead gpm, old clothes washer water factor, new clothes washer water factor, quantity of toilets installed, quantity of bath and kitchen faucet aerators installed, quantity of showerheads installed, quantity of clothes washers installed, installation date, customer water account number, and the signed customer participation agreement.

3. Time of Performance.

The time from the onset of program marketing to complete installation varies depending on customer participation. Payments are made for completed installations only.

4. Additional Services. If the District requests Contractor to provide services in addition to those specified above, Contractor shall develop a scope of work detailing the specific tasks to be completed and the estimated costs to complete those tasks. Contractor shall not perform any additional services unless authorized to provide those additional services are specified in a variance to this Agreement signed by both parties.

EXHIBIT 2

FEE SCHEDULE

1. Contractor's Compensation. The parties agree that the total of all fees paid to the Contractor for the performance of all services set forth in Exhibit 1, including normal revisions (hereafter the "Services"), and for all authorized reimbursable expenses, must not exceed the total sum of ~~\$950,000~~ \$1,699,000.

2. Billable Rates. Contractor must be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in the Schedule of Charges for Services, attached hereto and incorporated by this reference.

3. Contractor's Reimbursable Expenses. Reimbursable expenses are limited to actual expenditures of Contractor for expenses that are necessary for the proper completion of the Services and are only be payable if specifically authorized in writing in advance by District.

4. Payments to Contractor.

a. Undisputed invoices must be paid by the District within 30 days after receipt of such invoices. Contractor must be responsible for the cost of supplying all documentation necessary to verify the invoiced amounts to the satisfaction of District.

b. All invoices submitted by Contractor must contain the following information:

- i. Date of Invoice Issuance
- ii. Sequential Invoice Number
- iii. Purchase Order Number
- iv. Total Agreement Not-to-Exceed Amount
- v. Amount of this Invoice (Itemize all reimbursable expenses, if any)
- vi. Database with customer address, name, water account number, model and gallons per flush of toilet installed, model and gallons per minute of showerhead installed, model and gallons per minute of faucet aerator installed, and the installation date.

c. Billings that do not conform to the format outlined above must be returned to Contractor for correction. District must not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described below.

d. Requests for payment must be sent to the District Representative.

5. Contractor's Accounting Records. During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, Contractor must maintain all accounting and financial records related to this Agreement, including, but not limited to, records of Contractor's costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices, and must keep and make such records available for inspection and audit by representatives of the District upon reasonable written notice.

SCHEDULE OF CHARGES FOR SERVICES FOR IRVINE RANCH WATER DISTRICT

PRICE PER INSTALLATION
(INCLUDES EQUIPMENT, INSTALLATION, TOILET RECYCLING, TAXES AND ANY
ADDITIONAL FEES)

	COST EACH	MaP SCORE
Tank-Style High Efficiency Toilet Make and Model: Niagara Stealth .8 GPF	\$ 487.92	600
Tank-Style High Efficiency Toilet Make and Model: Western Pottery 1.28 GPF	\$ 437.92	900
Handheld Low-Flow Showerhead Make and Models: Earth N2945CH or N2945 1.5 GPM Evolve EV3030-CP150-SB or EV3040-CP150-SB 1.5 GPM Evolve EV3030-CP175-SB or EV3040-CP175-SB 1.75 GPM	\$ 34.95	
Standard Low-Flow Showerhead Make and Models: Evolve EV3010-CP150-SB or EV3020-CP150-SB 1.5 GPM Evolve EV3010-CP175-SB or EV3020-CP175-SB 1.75 GPM	\$ 19.95	
Swivel Kitchen Faucet Aerator Make and Model: Niagara Conservation N3115-P 1.5 GPM	\$ 13.95	
Standard Kitchen Faucet Aerator Make and Models: AM Conservation FA014CPB1 1.0 GPM AM Conservation FA012CPB1 1.5 GPM	\$ 9.95	
Bathroom Faucet Aerator Make and Model: Niagara Conservation N3205N-PC 0.5 GPM	\$ 9.95	
High Efficiency Clothes Washer	Cost	Water Factor
Eligible models (listed below)	Not to exceed \$850 each	≤ 3.7

High Efficiency Clothes Washers Qualified Products List

BRAND	MODEL	BRAND	MODEL
Amana	NFW5800D*+	Crosley	CFWH4084G**
Electrolux	EFLS517****	Electrolux	EFLS617****
Electrolux	EFLW317****	Electrolux	EFLW417****
Electrolux	EIFLS55IIV	Frigidaire	FFFS5115***
Frigidaire	FFFW5000QW	Frigidaire	FFFW5100**
Ge	GFW400S*K***	Ge	GFW450S*K***
Ge	GFW490R*K***	Ge	GFWH1200H***
Ge	GFWN1100H***	Ge	GFWN1300J***
Ge	GFWN1600J***	Ge	GFWR2700H***
Ge	GFWR2705H***	Ge	GFWR4800F***
Ge	GFWR4805F***	Ge	GFWS1600H***
Ge	GFWS1605H***	Ge	GFWS1700H***
Ge	GFWS1705H***	Ge	GFWS2600F***
Ge	GTW810S*J***	Ge	GTW860S*J***
Huebsch	YFNE5BJP113+	Huebsch	YFNE5RSP113+
Huebsch	YTEE5ASP173+	Huebsch	YTEE5ASP283+
Huebsch	YTGE5ASP093+	Huebsch	YTGE5ASP113+
Huebsch	ZFNE9BSP113+	Ipso	BFNE6BJP113+
Ipso	BTEE6ASP173+	Ipso	BTEE6ASP283+
Ipso	BTGE6ASP093+	Ipso	BTGE6ASP113+
Kenmore	3142#	Kenmore	3142#41#
Kenmore	3146#	Kenmore	3146#41#
Kenmore	3155#	Kenmore	4100#
Kenmore	4107#	Kenmore	4107####
Kenmore	4116#	Kenmore	4116####
Kenmore	4126#	Kenmore	4130#
Kenmore	4138#	Kenmore	4138####
Kenmore	4139#	Kenmore	4148#
Kenmore	4148####	Kenmore	4158#
Kenmore	4158####	Kenmore	4168#
Kenmore	417.4112	Kenmore	4196#
Kenmore	4198#	Kenmore	4198####
Lg	WM3050C*	Lg	WM3075C*
Lg	WM3085C*	Lg	WM3170C*
Lg	WM3175C*	Lg	WM3180C*
Lg	WM3270C*	Lg	WM3270H*A
Lg	WM3275C*	Lg	WM3370H*A
Lg	WM3475H*A	Lg	WM3570H*A
Lg	WM3575C*	Lg	WM3650H**
Lg	WM3670H*A	Lg	WM3770H*A
Lg	WM3997H**	Lg	WM4270H*A
Lg	WM4370H*A	Lg	WM5000H*A
Lg	WM5005H*A	Lg	WM8000H**
Lg	WM8100H*A	Lg	WM8500H**
Lg	WM9000H*A	Lg	WM9500H*A
Lg	WT1150C*	Lg	WT1301C*
Lg	WT1501C*	Lg	WT1701C*

BRAND	MODEL	BRAND	MODEL
Lg	WT1801H*A	Lg	WT1901C*
Lg	WT5270C*	Lg	WT5275C*
Lg	WT5480C*	Lg	WT5680H*A
Lg	WT7200C*	Lg	WT7500C*
Lg	WT7600H*A	Lg	WT7700H*A
Lg	WT7710H*A	Lg	WT9000H*A
Lg Electronics	WM1832C*	Maytag	MHW3100D*+
Maytag	MHW3500F**	Maytag	MHW3505F**
Maytag	MHW4100D*+	Maytag	MHW4300D*+
Maytag	MHW5100D*+	Maytag	MHW5400D*+
Maytag	MHW5500F**	Maytag	MHW7100D*+
Maytag	MHW8100D*+	Maytag	MHW8150E**
Maytag	MHW8200F**	Maytag	MVWB955F**
Primus	PFNE3BJP113+	Primus	PFNE3RSP113+
Primus	PTEE3FSP173+	Primus	PTGE3FSP113+
Samsung	WA50K86**A*	Samsung	WA52J806*A*
Samsung	WF42H50**A*	Samsung	WF42H51**A*
Samsung	WF42H52**A*	Samsung	WF42H54**A*
Samsung	WF42H55**A*	Samsung	WF42H56**A*
Samsung	WF42H57**A*	Samsung	WF457A*GS**
Samsung	WF45H61**A*	Samsung	WF45H63**A*
Samsung	WF45K62**A*	Samsung	WF45K65**A*
Samsung	WF45M51**A*	Samsung	WF45M55**A*
Samsung	WF50K75**A*	Samsung	WF56H91**A*
Samsung	WF56H91**C*	Samsung	WV55M96**A*-L
Samsung	WV60M99**A*-L	Speed Queen	AFN50RSP113+
Speed Queen	AFNE8RSP113+	Speed Queen	AFNE9BSP113+
Speed Queen	AFNE9RSP113+	Speed Queen	ATEE9AGP173+
Speed Queen	ATEE9ASP283+	Speed Queen	ATGE9AGP113+
Speed Queen	ATGE9ASP093+	Speed Queen	LFN50RSP113+
Speed Queen	LFNE5BJP113+	Speed Queen	LFNE5BSP113+
Speed Queen	LFNE5RSP113+	Speed Queen	LTE50FSP173+
Speed Queen	LTEA5FSP153**04	Speed Queen	LTEA5FSP153+
Speed Queen	LTEA5FSP173**04	Speed Queen	LTEA5FSP173+
Speed Queen	LTEE5ASP153+	Speed Queen	LTEE5ASP173+
Speed Queen	LTEE5ASP283+	Speed Queen	LTGA5FSP113+
Speed Queen	LTGE5ASP093+	Speed Queen	LTGE5ASP113+
Unimac	UFNE5BJP113+	Unimac	UTEE5ASP173+
Unimac	UTEE5ASP283+	Unimac	UTGE5ASP113+
Whirlpool	WFW7590FW	Whirlpool	WFL98HEB**
Whirlpool	WFW3090G**	Whirlpool	WFW5090G**
Whirlpool	WFW61HEB**	Whirlpool	WFW72HED*+
Whirlpool	WFW7540F**	Whirlpool	WFW7590F**
Whirlpool	WFW75HEF**	Whirlpool	WFW81HED*+
Whirlpool	WFW8540F**	Whirlpool	WFW85HEF**
Whirlpool	WFW8740D*+	Whirlpool	WFW87HED*+
Whirlpool	WFW90HEF**	Whirlpool	WFW9290F**
BRAND	MODEL	BRAND	MODEL
Whirlpool	WFW92HEF**	Whirlpool	WFW95HED*+
Whirlpool	WFW97HED*+	Whirlpool	WTW9500E**

EXHIBIT 3

INSURANCE REQUIREMENTS

- 1. General.** CONTRACTOR shall not commence or continue to perform any Services unless they, at their own expense, have in full force and effect all required insurance. CONTRACTOR shall not permit any Subcontractor to perform Services on this project until the same insurance requirements have been complied with by such Subcontractor.
- 2. Types of Insurance.** CONTRACTOR shall obtain and maintain for the full period of the Agreement are Worker's compensation insurance, commercial general liability insurance, and business automobile liability insurance.
- 3. Insurer Rating.** Insurers shall have financial and size ratings of at least an "A", VIII in accordance with the most current Best's Key Rating Guide, Property Casualty.
- 4. Evidence of Insurance.** As evidence that specified insurance coverage has been obtained for the period of the Agreement, the CONTRACTOR shall provide, on forms satisfactory to District, including endorsements providing that policies cannot be canceled or reduced except on thirty (30) calendar days written notice by the insurance carrier of cancellation or non-renewal (ten (10) calendar days notice for non-payment of premium). Industry standard forms for "certificate on insurance" from ACORD are accepted, provided that appropriate language regarding notice of non-renewal or cancellation is provided on the form. Contractor shall provide proof that policies of insurance required herein expiring or terminated during the term of this Agreement have been renewed or replaced with other policies providing coverage meeting the requirements hereof. Such proof will be furnished at least fourteen (14) calendar days prior to the expiration of termination of the coverages. No alteration or substitution of said forms will be allowed. Certified copies of insurance policies from the insurance company affording coverage shall be provided by CONTRACTOR upon request.
- 5. Noncompliance.** DISTRICT reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with insurance requirements.
- 6. Limitation of Contractor liability.** The requirements set forth herein as to the types and limits of insurance coverage to be maintained by the CONTRACTOR and any approval of said insurance by the DISTRICT or its insurance consultant(s) is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to the Agreement, including but not limited to the provisions concerning indemnification.
- 7. Worker's Compensation Insurance.** CONTRACTOR shall provide worker's compensation insurance coverage for no less than the statutory limits and employer's liability insurance coverage, with limits not less than those listed in 7.A, for all persons

whom CONTRACTOR employs or may employ in carrying out the Services. This insurance shall be in strict accordance with the requirements of the most current and applicable state worker's compensation insurance laws.

- A. Employer's Liability Insurance shall be for not less than:
 - \$1,000,000 Each Accident
 - \$1,000,000 Each Disease – Policy Limit
 - \$1,000,000 Each Disease – Each Employee

B. Notwithstanding the requirements of Section 3, above, DISTRICT will accept Workers Compensation Insurance from the State Compensation Fund (State Fund) that is not rated and that is evidenced on the State Fund's certificate form. Except as provided above with respect to State Fund, all other insurance shall comply with all requirements of this Exhibit.

8. Waiver of right of subrogation. The worker's compensation insurance shall include a waiver of right of subrogation against the DISTRICT, the District Board of Directors, DISTRICT's Representative, the Engineer/Architect, owners of record of all private properties on which entry will be made, and their consultants, and each of their officers, agents, and employees but only while acting in their capacity as such and only in respect to operations of the original named insured, their Subcontractors, agents, officers, and employees in the performance of the Services.

9. Commercial General Liability Insurance. CONTRACTOR shall provide commercial general liability insurance coverage equivalent to Insurance Services Office Form CG 00 01, with limits not less than those specified in 9.A.

- A. Commercial General Liability Insurance shall be for not less than:

Bodily Injury	Products/Completed
Property Damage	Completed
Personal Injury	Operations
<u>(Occur/Aggr)</u>	<u>(Occur/Aggr)</u>
\$1M/\$2M	\$1M/\$2M

B. Included in such insurance shall be blanket contractual liability coverage and severability of interests (no cross suits exclusion).

C. The commercial general liability insurance shall be primary and non-contributory and include as additional insureds: DISTRICT, the District Board of Directors, DISTRICT's Representative, the State of California, its officers, agents, and employees, the Engineer/Architect, owners of record of all private properties on which entry will be made, and their consultants, and each of their officers, agents, and employees but only while acting in their capacity as such and only in respect to

operations of the original named insured, their Subcontractors, agents, officers, and employees in the performance of the Services and shall be evidenced by ISO CG 20 33 07 04 endorsement form or equivalent.

D. Such insurance shall have a deductible or self insured retention not to exceed \$25,000.

10. Automobile Liability Insurance. CONTRACTOR shall provide business automobile liability insurance coverage equivalent to Insurance Services Office Form CA 00 01, with limits not less than those specified in 10 A. Business automobile liability insurance coverage shall be provided for all owned, non-owned and hired vehicles.

A. Automobile liability insurance shall be for not less than:

\$2,000,000 Bodily injury and property damage each occurrence.

B. The same requirements stated in 9.C shall apply to the automobile liability insurance.

11. CONTRACTOR's Responsibility Not Limited by Insurance. Nothing contained in these insurance requirements is to be construed as limiting the extent of the liability of CONTRACTOR or CONTRACTOR's sureties.

12. Maintaining Insurance. The maintenance of proper insurance in conformity with the Contract Documents is a material element of this Agreement. If at any time during the life of the Agreement, including the guarantee period, or any extension, CONTRACTOR fails to maintain the required insurance in full force and effect, the Services shall be discontinued immediately and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by DISTRICT that the required insurance has been restored to full force and effect and that the premiums have been paid for a period satisfactory to DISTRICT. Failure to maintain or renew coverage or to provide evidence of renewal upon request of DISTRICT may be treated by DISTRICT as a material breach of contract.

EXHIBIT 4

SUPPLEMENTARY CALIFORNIA PUBLIC WORKS REQUIREMENTS

If the Scope of Work includes construction work to be performed during the construction phase or design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, or work to be performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite, or any other work that has been determined by the California Director of Industrial Relations to constitute "public work," that portion of the Scope of Work is subject to the following provisions which amend and supplement the contract, or to the extent of any inconsistency supersede and take precedence over the contract.

SECTION 1. Bidding Requirements. The requirements of this Section apply to the public work portion of the Scope of Work if the contract is to be obtained by competitive bidding.

1.01 *Additive and Deductive Bid Items.* (applicable if a bid contains additive or deductive items – Public Contract Code 20103.8)

If a schedule of work items includes bid items or schedule(s) of bid items that may be added to ("Additive Items") or deducted from ("Deductive Items") the bids, the lowest responsible bidder will be determined by adding all Additive Items to, and deducting all Deductive Items from, the total of the base bid, unless another method is provided in the bid documents. IRWD reserves the right to award the Work to the lowest responsible bidder based on any single schedule or combination of schedules of bid items deemed by IRWD, in its sole discretion, to be in IRWD's best interest.

1.02 *Listing of Subcontractors.* (applicable if bids are taken – Public Contract Code 4104)

The name, State of California license number, and location of place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the Work, or improvements, in an amount in excess of 1/2 of 1 percent (0.5%) of the bidder's total Bid, and the portion of the Work which will be done by each subcontractor shall be set forth in the bid. CONTRACTOR agrees that except to the extent that subcontractors were set forth in its bid, that all work in excess of one-half of one percent shall be performed by CONTRACTOR. It is agreed and acknowledged that should CONTRACTOR fail to conform hereto or with any of the requirements of Section 4100 through and inclusive of Section 4114 of the Public Contract Code, Contractor shall be subject to the requirements and penalties of Section 4106 of the Public Contract Code.

1.03 *Registration.* (applicable if bids are taken – Labor Code 1725.5)

Qualification to bid on this project or to be listed as a subcontractor (if required by Section 1.02), or to engage in the performance of any of the work requires proof of the contractor's or subcontractor's current registration and qualification to perform public work pursuant to Labor Code Section 1725.5. A bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor's or subcontractor's current registration.

1.04 *Non-Collusion Affidavit.* (applicable if bids are taken – Public Contract Code 4104)

SECTION 2. Bonding. This Section applies to the direct contractor awarded a public works contract exceeding \$25,000. This requirement does not apply to a design professional.

2.01 *Payment and Performance Bond.* Before commencing performance of the work, CONTRACTOR shall furnish a payment bond and a faithful performance bond approved by IRWD, each in an amount not less than one hundred (100%) percent of the Contract Price, from a surety company satisfactory to IRWD and who is authorized to transact business in California. CONTRACTOR shall use the bond forms provided by IRWD. A certified copy of power of attorney must be attached to each bond.

SECTION 3. Labor. The requirements of this Section apply to the public work portion of the Scope of Work, if more than \$1,000 (Labor Code 1771).

3.01 *Compliance Monitoring; Registration; Notices.* The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Qualification to engage in the performance of any of the work requires that CONTRACTOR and subcontractors maintain their current registration to perform public work pursuant to Labor Code Section 1725.5.

CONTRACTOR shall post on the jobsite all notices as prescribed by law or regulation.

3.02 *Prevailing Wage Requirements.* Under the provisions of the California Labor Code, the Director of the Department of Industrial Relations has determined the prevailing rate of wages for the locality in which the Work is to be performed and IRWD has adopted said prevailing rate of wages. A copy of these prevailing rates is on file at the office of IRWD and shall be made available to any interested party on request. A copy of such prevailing wage rates shall be posted on the jobsite by CONTRACTOR.

CONTRACTOR shall comply with Labor Code Section 1775. In accordance with said Section 1775, CONTRACTOR shall forfeit as a penalty to IRWD, up to two hundred dollars (\$200), as determined by the Labor Commissioner, for each calendar day or

portion of a day for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done under the contract by them or, except as provided by the Labor Code, by any Subcontractor under them in violation of the provisions of the Labor Code, and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between the stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion of a day for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by CONTRACTOR.

CONTRACTOR shall forfeit as a penalty to IRWD \$25 for each worker employed in the execution of the Work by CONTRACTOR or any Subcontractor under them for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of CONTRACTOR in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one half (1 1/2) times the basic rate of pay as provided in said Section 1815.

3.03 *Payroll Records.* CONTRACTOR and each of their Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work. The records shall be in a format prescribed by the Labor Commissioner. The records may consist of printouts of payroll data maintained as computer records, if the printouts are in a format prescribed by the Labor Commissioner and are verified as required under this paragraph. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that (1) the information contained in the payroll record is true and correct, and (2) CONTRACTOR (or the Subcontractor, as the case may be) has complied with the requirements of Sections 1771, 1811 and 1815 of the Labor Code for any of the work performed by their employees. The payroll records shall be submitted monthly to IRWD and directly to the Labor Commissioner and shall be available for inspection at all reasonable hours at the principal office of CONTRACTOR (or the Subcontractor, as the case may be) to the employee or their authorized representative on request, to the Division of Labor Standards Enforcement on request, and the public, provided that requests by the public must be made through IRWD or the Division of Labor Standards Enforcement in accordance with the requirements of Labor Code Section 1776. Copies shall be provided to the requesting entity within ten (10) days after receipt of a written request. Any copy of a payroll record made available to the public or any public agency by IRWD shall be marked or obliterated to prevent disclosure of individual workers' names, addresses and social security numbers. CONTRACTOR shall inform IRWD of the location address of payroll records of CONTRACTOR and each Subcontractor and notify

IRWD of a change in any such location within five (5) working days. In the event CONTRACTOR or a subcontractor fails to comply with the above-specified 10-day period, CONTRACTOR or the subcontractor shall forfeit as a penalty to IRWD one hundred dollars (\$100) for each calendar day or portion of a day for each worker until strict compliance is effectuated. CONTRACTOR is not subject to a penalty under this paragraph due to the failure of a subcontractor to comply with this paragraph.

3.04 *Apprentices.* (applicable if contract is \$30,000 or more) CONTRACTOR and any Subcontractor under them shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Department of Industrial Relations. Willful violations of Section 1777.5 will result in forfeiture of one hundred dollars (\$100) for each calendar day of noncompliance, or up to three hundred dollars (\$300) for each calendar day of noncompliance for second and subsequent violations within a three-year period that result in apprenticeship training not being provided as required by the Labor Code, and may also result in debarment sanctions in the case of violations, as determined by the Labor Commissioner pursuant to Section 1777.7. Section 1777.7 also imposes requirements that, if not observed by CONTRACTOR, will result in CONTRACTOR's liability for Subcontractor violations of Section 1777.5.

3.05 *Subcontracting.* CONTRACTOR is prohibited from performing any of the work with a subcontractor who is ineligible to perform such Work pursuant to Section 1777.1 or 1777.7 of the Labor Code. CONTRACTOR agrees that in accordance with Public Contract Code Section 6109, a subcontract with an ineligible subcontractor is void as a matter of law, amounts paid to the subcontractor shall be returned to IRWD, and CONTRACTOR is responsible for paying wages of the subcontractor's employees if the subcontractor is allowed to perform any part of the work.

3.06 *CONTRACTOR'S Certificate Regarding Workers' Compensation* (Labor Code Section 1861): I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

SECTION 4. Site Conditions. The requirements of this Section apply to the public work portion of the Scope of Work, subject to the applicability further specified below.

4.01 *Utilities* (applicable if the contract with IRWD is made pursuant to an invitation for bids and includes removal, relocation or protection of main or trunkline utility facilities – Government Code Section 4215)

CONTRACTOR shall be compensated by IRWD for the costs of locating, repairing damage not due to the failure of CONTRACTOR to exercise reasonable care, and removing, relocating, protecting, or temporarily maintaining main or trunk line utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the project necessarily idled during such work. Alternatively IRWD may change the project grade or alignment to avoid such removal, relocation or protection or make arrangements with the owner of the utility for such work to be done at no cost to CONTRACTOR. No forfeiture due to delay shall be made because of any delays in the completion of the Work due to the failure of IRWD or the owner of a utility to provide for removal or relocation of main or trunk line facilities not indicated in the plans or specifications with reasonable accuracy.

IRWD is not responsible for removal, relocation or temporary maintenance of (i) main or trunk line utilities or other structures which are in the position shown on the plans, or (ii) service connections, and CONTRACTOR shall bear all expenses incidental thereto. Such work shall be done in a manner satisfactory to the owner of the utility or service connection, it being understood that the owner has the option of doing such work with their own forces or permitting the work to be done by CONTRACTOR. It shall be the responsibility of CONTRACTOR to investigate to find out whether or not this cost is required to be borne by the owner of the utility.

4.02 *Excavation Plans for Worker Protection* (applicable if the public work portion is over \$25,000, and involves excavation of any trench five (5) feet or more in depth – Labor Code Section 6705)

CONTRACTOR shall submit to IRWD for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. The plan shall be prepared specifically for the work by a registered civil or structural engineer who is licensed by the State of California. The plan shall be in an original format, not a reproduced copy, and shall include the engineer's original signature and seal. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the safety orders.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads and spoil bank. The submittal shall indicate the minimum horizontal distance from the top of trench to the edge of all surcharge loads for all cases of shoring and side slopes.

The detailed plan showing the design of shoring, etc., which CONTRACTOR is required to submit to IRWD for acceptance in advance of excavation, will not be accepted if the plan

is based on subsurface conditions which are more favorable than those revealed by the investigations made by IRWD or the Engineer/Architect or their consultants; nor will the plan be accepted if it is based on soils related design criteria that are less restrictive than the criteria set forth in the report on the investigations of subsurface conditions.

Nothing contained in this paragraph shall be construed as relieving CONTRACTOR of the full responsibility for providing shoring, bracing, sloping, or other provisions which are adequate for worker protection.

4.03 Differing Physical Conditions. (applicable if the public work portion involves excavation more than four (4) feet in depth – Public Contract Code Section 7104)

CONTRACTOR shall promptly notify IRWD of the following work site conditions (hereinafter called differing physical conditions), in writing, upon their discovery and before they are disturbed: (1) any material that CONTRACTOR believes may be material that is a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; (3) unknown physical conditions of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character being performed.

IRWD will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the Contract.

In the event that a dispute arises between IRWD and CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

CONTRACTOR shall not be required to resume work in connection with a condition involving hazardous waste until after IRWD has obtained any required permits related thereto and delivered to CONTRACTOR written notice specifying any special conditions under which such work may be resumed safely.

SECTION 5. Materials. The requirements of this Section apply to the public work portion of the Contract, pursuant to Public Contract Code §3400.

5.01 *Substitutions.* Whenever materials or equipment are specified or described in the Plans or specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, the name shall be deemed to be followed by the words “or approved equivalent” and materials or equipment of other suppliers may be accepted by IRWD if sufficient information is submitted by CONTRACTOR to allow IRWD to determine that the material or equipment proposed is equivalent to that named. Approval of proposed equivalent materials or equipment is at the sole discretion of IRWD. No substitute shall be ordered or installed without IRWD’s prior written acceptance.

CONTRACTOR assumes sole responsibility for verifying the proposed substitute items are in accordance with the requirements of the contract documents, and that the dimensions, arrangement, design and construction details and all other features of substitute items are suitable for their intended purpose.

In the event that a substitute item, and said difference was not expressly identified in CONTRACTOR’s request for the substitution, or the incorporation of the substitute into the work results in a change(s) to the work or in the function or general design of the project, which was not expressly identified in CONTRACTOR’s request for the substitution, IRWD may require the removal and replacement of the substitute at CONTRACTOR’s sole expense.

CONTRACTOR may submit data substantiating requests for substitutions of equivalent items at any time after notice of award. Under no circumstances shall CONTRACTOR be entitled to an increase in Contract Time as a result of the submission or review of a substitution request.

SECTION 6. Claims. The requirements of this Section apply to the public work portion of the Contract, pursuant to Public Contract Code §20104.

6.01 *Resolution of Construction Claims.* (applicable to a claim meeting the below-described criteria – Public Contract Code Section 20104)

This Section is intended as a summary of the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (“Claims Resolution Statute”) and is subject to the actual provisions of the Claims Resolution Statute. This Section shall govern the resolution of any claim of \$375,000 or less which may be made by CONTRACTOR.

“Claim” is defined as CONTRACTOR’s demand for (i) a time extension, (ii) money or damages arising from the work, payment for which is not otherwise expressly provided for or CONTRACTOR is not otherwise entitled to, or (iii) an amount disputed by IRWD.

CONTRACTOR shall make all claims in writing and include the necessary substantiating documents. Any claim which is intended to invoke the procedures under the Claims Resolution Statute shall specify that the claim is being made pursuant to the Claims Resolution Statute. All claims by CONTRACTOR must be filed on or before the date of final payment.

IRWD shall respond in writing, within forty-five (45) days of receipt of a claim less than \$50,000 and within sixty (60) days of receipt of a claim over \$50,000 and less than \$375,000, or IRWD may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims IRWD may have against CONTRACTOR. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of IRWD and CONTRACTOR. If IRWD requests additional documentation, IRWD’s written response to the claim shall be submitted to CONTRACTOR, (i) within fifteen (15) days after receipt of the additional documentation for a claim less than \$50,000 and within thirty (30) days after receipt of the additional documentation for a claim over \$50,000 and less than \$375,000, or (ii) within the same time period as used by CONTRACTOR in producing the additional documentation, whichever is greater.

If CONTRACTOR disputes IRWD’s written response, or IRWD fails to respond within the time prescribed, CONTRACTOR may, by giving written notice to IRWD within fifteen (15) days of receipt of IRWD’s response (or within fifteen (15) days of IRWD’s failure to respond), demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, IRWD shall schedule a “meet and confer” conference within thirty (30) days.

If after the “meet and confer” conference, any portion of the claim remains in dispute, CONTRACTOR may file a claim pursuant to Government Code Section 900 et seq. If a court action is thereafter filed to resolve the claim, the court must, within the time specified by law, submit the matter to nonbinding mediation unless waived by mutual stipulation of IRWD and CONTRACTOR. If after the mediation process, the matter remains in dispute, the case must then be submitted to judicial arbitration pursuant to the applicable law.

6.02 *Third Party Claims.* In accordance with Public Contract Code Section 9201, IRWD shall timely notify CONTRACTOR if IRWD receives any third-party claim relating to the Work. IRWD shall be entitled to recover from CONTRACTOR the reasonable costs incurred by IRWD in providing such notification.

SECTION 7. Payment and Retention. The requirements of this Section apply to construction contracts.

7.01 *Progress Payments.*

The following is a summary of the provisions of Article 1.7 of Chapter 1 of Part 3 of Division 2 (commencing with Section 20104.50) of the Public Contract Code, regarding progress payments, and is subject to the actual provisions of that statute. For purposes of this Section, a “progress payment” includes all payments due CONTRACTOR, except that portion of the final payment designated under this Agreement as retention.

If IRWD fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted progress payment request from CONTRACTOR, IRWD shall pay interest to CONTRACTOR equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Civil Code of Procedure.

Upon receipt of a progress payment request, IRWD shall (i) review each payment request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request, and (ii) return to CONTRACTOR, as soon as practicable but not later than seven (7) days after receipt, any payment request determined not to be a proper payment request suitable for payment. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing why the payment request is not proper. The number of days available to IRWD to make a payment without incurring interest shall be reduced by the number of days by which IRWD exceeds the seven (7) day return requirement.

7.02 *Progress Payment Retention.* (Applies if performance retention will apply.) IRWD shall retain five (5) percent of such estimated value as part security for fulfillment of the Contract by CONTRACTOR and shall pay to CONTRACTOR the balance of such estimated value after deducting all previous payments and all sums to be kept or retained under the terms of the Contract. Nothing herein shall require payment of a disputed amount or limit IRWD’s ability to withhold an amount in respect of a disputed amount as provided for in Section 7107 of the Public Contract Code. The retention payment shall not be due and payable until the expiration of thirty-five (35) days from the date of IRWD’s recording of a notice of completion of the work in the office of the County Recorder.

7.03 *Substitution of Securities for Amounts Withheld.* Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR may substitute securities for any monies withheld by IRWD to ensure performance of the Work. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with IRWD or with a state or federally chartered bank in California as the escrow agent. Such securities shall be released to CONTRACTOR at the same time as amounts retained would be released upon satisfactory completion of the work, to the extent such

securities have not previously been utilized or are not then being held by IRWD or the escrow agent for purposes as provided in this Contract. Alternately, CONTRACTOR may request, and IRWD shall make, payment of retention earned directly to the escrow agent at the expense of CONTRACTOR.

If the securities are deposited with IRWD, IRWD shall determine their value. IRWD shall also be entitled in their discretion to sell, redeem, or otherwise convert them or portions thereof to cash in order to apply them to any of the purposes set forth in the Contract for which amounts may be withheld from CONTRACTOR and used. CONTRACTOR shall furnish such documents as are deemed necessary by IRWD to enable IRWD to make such sales, redemptions, or conversions. If the securities are deposited with an escrow agent, CONTRACTOR, escrow agent and IRWD shall execute IRWD's form entitled "Escrow Agreement for Security Deposits in Lieu of Retention."

SECTION 8. Miscellaneous. The requirements of this Section apply as specified.

8.01 *Audit.* (applicable if the contract exceeds \$10,000 – Government Code 8546.7)

Pursuant to Government Code Section 8546.7, this contract, and CONTRACTOR and IRWD as the contracting parties, are subject to the examination and audit of the California State Auditor, at the request of IRWD or as part of any audit of IRWD, for a period of three years after the final payment under the contract.

8.02 *Notice of Taxable Possessory Interest.*

The terms of this contract may result in the creation of a possessory interest. If such a possessory interest is vested in CONTRACTOR, CONTRACTOR may be subjected to the payment of property taxes levied on such interest.

8.03 *Antitrust Claims Assignment.* (applicable if contract is awarded by competitive bidding)

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

8.04 *License.*

CONTRACTOR shall possess a State of California license for the contracting class(es) applicable to the work.

8.05 *Delays.* (Applies if contract documents specify damages for failure to complete work by applicable contract times.)

No forfeiture due to delay shall be made because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR (including but not restricted to acts of God or of the public enemy, acts of the government, acts of IRWD, or acts of another contractor in the performance of a contract with IRWD, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays caused by the failure of IRWD, or the owner of a utility to provide for removal or relocation of main or trunk line facilities not indicated in the plans or specifications with reasonable accuracy). Any such delays shall not entitle CONTRACTOR to any additional compensation, and the sole remedy of CONTRACTOR shall be an extension of time obtained in accordance with the contract; the only exception shall be if the delay has been caused solely by acts for which IRWD is responsible and which delay is unreasonable under the circumstances involved, is not within the contemplation of the parties, and continues after CONTRACTOR's notice to IRWD of such acts.

8.06 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing the Agreement For Non-Consultant Services Between Irvine Ranch Water District and Synergy Companies, dated August 10, 2015 ("Agreement"), Contractor, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - i) The dangers of drug abuse in the workplace,
 - ii) Contractor's policy of maintaining a drug-free workplace,
 - iii) Any available counseling, rehabilitation, and employee assistance programs, and
 - iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide, as required by Government Code Sections 8355(a)(3), that every

employee, contractor, and/or subcontractor who works under this Grant Agreement:

- i) Will receive a copy of Contractor's drug-free policy statement, and
- ii) Will agree to abide by terms of Contractor's condition of employment, contract or subcontract.

8.07 Right to Inspection

The State of California shall have the right to inspect the work being performed under this Agreement and any subcontracts at any and all reasonable times during the term of the District's agreement with the State to obtain grant funding for the Services. This right shall extend to any subcontracts entered into pursuant to this Agreement.

EXHIBIT 5

SPECIAL PROVISIONS

(e.g., project schedule, form of customer participation releases and other items not covered elsewhere)

EXHIBIT "B"

IRVINE RANCH WATER DISTRICT NON-CONSULTANT SERVICES VARIANCE

Project Title: DWR Water-Energy Grant 4600011091 File No.: _____
Water-Energy Combined Customer Programs Date: December 5, 2017
 Project No.: 6703 (DWR Grant) Variance No.: 5
 Purchase Order No.: _____ Project No. _____
 Originator: IRWD ENGINEER/CONTRACTOR Other (Explain) _____

Description of Variance (*attach any back-up material*): Increase to agreement amount of \$169,000 to allocate remaining grant funds by extending the One-Stop Shop for Water and Energy Efficiency Program to additional customers.. Funding is provided by a grant from the Department of Water Resources (DWR).

Engineering & Management Cost Impact:

Classification	Manhours	Billing Rate	Labor \$	Direct Costs	Subcon. \$	Total \$
Agreement Increase Amount for Program Continuation				\$169,000		\$169,000
Total \$ =						\$169,000

Schedule Impact:

Task No.	Task Description	Original Schedule	Schedule Variance	New Schedule

Required Approval Determination:

Total Original Contract <u>\$80,000</u> Previous Variances <u>\$ 1,450,000</u> This Variance <u>\$ 169,000</u> Total Sum of Variances <u>\$ 1,619,000</u> New Contract Amount <u>\$ 1,699,000</u> Percentage of Total Variances to Original Contract <u>2123</u> %	<input type="checkbox"/> General Manager: Single Variance less than or equal to \$30,000. <input type="checkbox"/> Committee: Single Variance greater than \$30,000, and less than or equal to \$60,000. <input type="checkbox"/> Board: Single Variance greater than \$60,000. <input checked="" type="checkbox"/> Board: Cumulative total of Variances greater than \$60,000, or 30% of the original contract, whichever is higher.
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ENGINEER/CONTRACTOR: Synergy Companies
Company Name

IRVINE RANCH WATER DISTRICT

Project Engineer/Manager Date

Department Director Date

Engineer's/Contractor's Management Date

General Manager/Comm./Board Date

**IRVINE RANCH WATER DISTRICT
NON-CONSULTANT SERVICES VARIANCE REGISTER**

Project Title: DWR Water-Energy Grant 4600011091 Water-Energy Combined Customer Programs

Project No.: 6703 Project Manager: Amy McNulty

Variance No.	Description	Dates		Variance Amount
		Initiated	Approved	
1	Changes to Exhibit 1	10/20/16	10/25/16	\$0; extend eligibility to single-family homes
1	Changes to Exhibit 2	10/20/16	10/25/16	\$0; include pricing for installation and materials of showerheads and aerators
1	Changes to Exhibit 3, Section 9.C and 10.B	10/20/16	10/25/16	\$0; extend liability insurance coverage to State and make conforming change to auto liability coverage requirements
1	Changes to Exhibit 4, Section 8.06	10/20/16	10/25/16	\$0; add drug-free workplace certification
1	Changes to Exhibit 4, Section 8.07	10/20/16	10/25/16	\$0; add State right of inspection
2	Program Expansion to approximately 350 single-family homes	1/12/17	01/23/16	\$500,000
3	Changes to Exhibit 1	03/08/17	03/08/17	\$0; extend eligibility to 1.6 or greater gpf toilets
4	Program Expansion to include additional single-family customers and expand to include multi-family customers.	07/06/17		\$950,000;
4	Changes to Exhibit 1	07/06/17		\$0; extend eligibility to multi-family homes
4	Changes to Exhibit 2	07/06/17		\$0; addition of high efficiency clothes washers
5	Changes to Exhibit 2	12/05/17		\$169,000; increase to expend remaining grant funds on additional program participants