

# CARBON CAPTURE AND SEQUESTRATION FOR WESTLANDS WATER DISTRICT

## REQUEST FOR PROPOSAL

### OBJECTIVE AND DESCRIPTION

Westlands Water District (District) is requesting proposals to advise the District on developing Carbon Capture and Sequestration (CCS) on the lands owned by the District (Project).

The District is evaluating the possibility of CCS on District owned land and is seeking a consultant to advise on feasibility, methodology, possible partnerships, potential value, geologic requirements, permits, risks, and funding opportunities. **Figure 1** shows the location of the proposed Project study area and the District owned land (approximately 94,000 acres).

The successful consultant will develop a CCS Plan and advise the District on how and whether the District should develop its own CCS project(s), entertain private offers, or form public private partnerships to maximize the value of District owned land.

**Deadline to submit proposal is January 13, 2023 at 5:00 pm.**

### PROPOSAL CONTENTS

The proposal should provide adequate detail to indicate how the proposed tasks fulfill the Scope of Work. The District's standard contract is provided as **Appendix A**. Please review to ensure that your firm can meet the terms of the contract. The proposal should include the sections detailed below and shall be a maximum of 10 pages\* (page limit only applies to sections 1 through 4) and contain the following format:

<u>Sections</u>	<u>Contents</u>
Cover Letter	Transmittal and basis for selection (2 page maximum)
1.	Firm Qualifications, Project Team, and References
2.	Project Understanding, Approach, and Scope
3.	Deliverables
4.	Staffing Resources by Task and Proposed Fee
5.	Resumes (2 page maximum per person)

\*Excessive or generic company information will not be reviewed or considered in the evaluation and selection process.

### SECTION 1: FIRM QUALIFICATIONS, PROJECT TEAM, AND REFERENCES

**Firm Qualifications:** Provide the history, qualifications, examples, and experience of the firm, comparable in scope to this Project. For each example, indicate whether your firm was lead or a subcontractor, members of the team that worked on the project, and the year completed.

**Project Team:** Include an organization chart for the project team showing the proposed principal in charge, project manager, key project staff, and subcontractors along with their proposed responsibilities. Include resources available

to support the firm's project team. Identify all staff and any sub-contractors working on this project and their past roles in the example projects and how they will be utilized on this Project. Provide the following information for each project team member: (1) role in project (2) qualification and experience specific to this project (3) statement of availability to fulfill their role in the project. Resumes may be included for the staff shown on the organization chart. A point of contact (POC) for the project should be identified, along with contact information. POC should be available for contact by the District during regular business hours. Organization chart should assign a percentage next to each project team members indicating the anticipated level of effort to the Project.

References: Provide references and contact information (address, phone number and email address) for each of the projects listed.

## SECTION 2: PROJECT UNDERSTANDING AND APPROACH, AND SCOPE

Project Understanding and Approach: Provide a detailed discussion of the understanding and anticipated approach to the Project and other factors that are pertinent to this Project. Discussion should include, but not limited to assumptions, permitting, deliverables, QA/QC methodology, and challenges along with potential solutions.

Scope: Describe the scope of services for the Project. Project includes but is not limited to:

- Develop a CCS Plan for the District owned land shown in Figure 1, (that includes the District's boundary, location, waterways and major streets)
- Identify potential risks associated with CCS
- Permitting requirements/procedures
- Identify local sources/emitters of carbon that would be interested capturing/sequestering
- Feasibility of transporting carbon for sequestration to District owned land
- Feasibility of direct air capture for sequestration on District owned land
- Advise the District on CCS opportunities for geologic sequestration.
- Identify factors that increase the District owned land value including but not limited to capital costs, Operation and Maintenance, acquisition, credit development, trading opportunities, etc.
- Determine the District's eligibility for State and Federal incentives programs
- Assist the District with review of CCS proposal(s) on District owned land.

## SECTION 3: PROJECT DELIVERABLES AND SCHEDULE

Project Deliverables: In this section, the proposer should include a discussion on the deliverables. All digital deliverables shall be ADA compliant (Assembly Bill 434 in addition to the requirements of Section 508 (29 U.S.C. 794d)).

Project Schedule: Provide a preliminary schedule for the completion of the Project. The proposer shall provide a timeline outlining time required to complete the CCS Plan and typical timeline to evaluate a developer's proposal. Show critical path elements of the Project and discuss any constraints that would affect the CCS Plan timeline. Assume two weeks for District staff review time of deliverables. Include the submission of deliverables, meetings, and additional milestones needed for completion. Provide a realistic timeline to complete this project. The schedule shall include a kick-off meeting and meetings via an electronic platform. Assume a start date of March 1, 2023.

## SECTION 4: STAFFING RESOURCES BY TASK AND PROPOSED FEE

Staff Time and Fee: Provide a detailed fee breakdown including the classification of each team member working on each task, billing rate, total hours/days projected for each task. This breakdown shall include fees for each individual task, total amount of labor hours, and total project cost. Fees shall not increase for the duration of the contract.

## DISTRICT SERVICES

The District will:

- Provide a list of District owned land APNs and maps;
- Available geotechnical information;
- Perform timely review, comments, directions, or approval of documents submitted by consultant; and
- Upon request and availability, provide readily available data.

## PROPOSAL SUBMISSION AND EVALUATIONS

### SUBMISSION DEADLINE

Submissions for this Request for Proposal (RFP) must be delivered no later than:

**Friday, January 13, 2023**  
**5:00 pm**

### NUMBER OF COPIES

Submit one (1) pdf electronic file, (hard copy optional).

### DELIVERY OR MAIL ADDRESS

The delivery address for all submissions is:

**Katarina Campbell**  
[kcampbell@wwd.ca.gov](mailto:kcampbell@wwd.ca.gov)  
**Westlands Water District**  
**3130 N. Fresno Street, P.O. Box 6056**  
**Fresno, CA 93703-6056**

### SUBMISSION, QUESTIONS, AND CLARIFICATIONS

You may contact the following staff if you have any questions or clarification on any topics covered in this RFP. Deadline to submit questions is **Friday, December 30, 2022**. Questions after this date may not be addressed. Note to proposers that the discussion in the RFP is preliminary and the District assumes no contract obligation with the proposer until a contract is executed.

**Katarina Campbell**  
**Supervisor of Resources**  
**Phone: 559-241-6226**  
**Email: [kcampbell@wwd.ca.gov](mailto:kcampbell@wwd.ca.gov)**

### PROPOSAL EVALUATIONS

**Proposal will not be accepted after the deadline, January 13, 2023.**

Successful proposal will be well organized adhering to the primary objectives, and overall scope of work while providing sufficient and concise detail. The proposal shall be clearly marked with the firm's name and project

description "Carbon Capture and Sequestration for Westlands Water District– Proposal" on the subject line and the outside envelope (if applicable).

The proposal shall be signed by an official authorized to bind the firm and shall contain a statement to the effect that the proposal is valid for 120 days. The District reserves the right to reject any or all proposals at their sole discretion. The final award will not necessarily be made to the lowest proposal. Other factors will be considered in awarding this project including experience with CCS planning and development.

Selection will depend on the degree to which the proposal provides the required information. Firm and project team's qualifications include the firm's team experience and success in implementing projects similar in nature and scope to this project.

The District will award the contract to the firm based on: (not listed in order of importance)

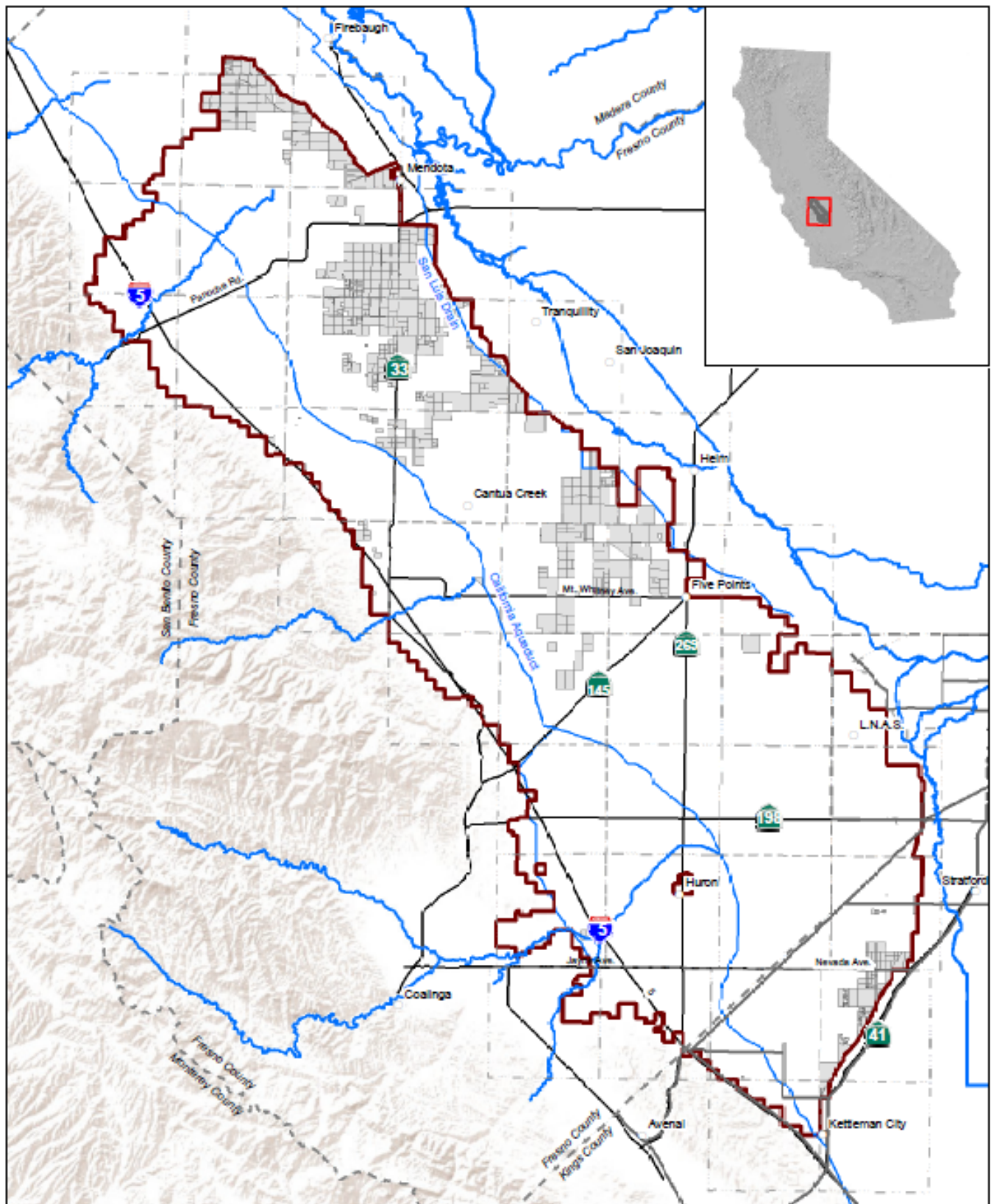
- Qualifications and Experience
- Technical Merit
- CCS Planning and Rationalization
- Price
- Schedule
- Adherence to project objectives in a timely matter
- Understanding of the project

#### FINAL SELECTION

Following the initial review and screening of all proposals submitted by the deadline, District staff may negotiate fees and scope with the highest ranked firm.

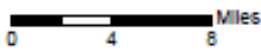
#### COST INCURRED

This RFP does not commit the District to pay for costs incurred by the firm or its staff in the submission of a proposal.



**Legend**

- City
- County Boundary
- Major Road
- Waterway
- Township / Range
- ▭ WWD Boundary
- ▭ WWD Acquired Lands



**Westlands Water District  
Acquired Lands Map  
(8/30/22)**

**WESTLANDS WATER DISTRICT**  
 3130 N. FRESNO ST.  
 FRESNO, CALIFORNIA 93703  
 559.224.1523 FAX 559.241.6277

# APPENDIX A

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WESTLANDS WATER DISTRICT STANDARD CONTRACT

## *Westlands Water District*

### **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into effective , 2022, between Westlands Water District, hereinafter referred to as the “District”, and , hereinafter referred to as “Consultant”, for professional services as set forth herein.

The following Exhibits are incorporated fully into and made a part of the Agreement:

Exhibit A – Scope of Services

Exhibit B – General Terms and Conditions for Professional Services

Exhibit C – Fees, Hourly Rates and Reimbursable Costs/Expenses

IT IS MUTUALLY AGREED, as follows:

#### **1. SCOPE OF SERVICES**

Consultant shall provide the professional services described in Exhibit A, Scope of Services, and in accordance with Exhibit B, General Terms and Conditions for Professional Services, and Exhibit C, Fees and Charges, all in accordance with all terms of the Agreement and applicable laws and regulations.

The District reserves the right to negotiate, and add or delete items to this Agreement as deemed necessary (“Change(s)”). No Changes or other modifications shall be binding on the District unless set forth in writing signed by the District.

#### **TERM OF AGREEMENT AND PERFORMANCE SCHEDULE**

The Agreement shall become effective as of the date indicated above and shall continue until the earlier of the completion of all required services or \* years from the effective date of the Agreement, subject to periodic rate adjustments.

#### **2. PARTY REPRESENTATIVES AND NOTICES**

Each party’s representative for administration of the Agreement and receipt of notices is designated below. All notices or other communications provided for by the Agreement shall be in writing and shall be sent by 1) personal delivery, 2) nationally-recognized overnight delivery service (such as Federal Express) which provides evidence of delivery, 3) first class United States mail (postage prepaid), registered or certified, return receipt requested, or 4) e-mail. Notice shall be deemed received on the date actually delivered if delivered by personal delivery, overnight delivery, or U.S. Mail with return receipt requested and delivered during normal business hours on a business day. Notice by e-mail shall be deemed delivered on the date of transmission, unless the same is after 5:00 p.m. or on a weekend or holiday, in which event delivery shall be on the next business day. A party may change its address for notices under the Agreement by giving notice as provided herein. Notices shall be sent to the

following party representatives at the following addresses:

<u>District</u>	<u>Consultant</u>
Jose Gutierrez Westlands Water District 3130 N. Fresno Street Fresno, CA 93703 JGutierrez@WWD.Ca.Gov 559-241-6215	

**IN WITNESS WHEREOF**, the Agreement has been executed by and on behalf of the parties hereto, the day, month and year so indicated above. Consultant shall provide documentation that the person signing below for Consultant has the authority to do so and to so bind Consultant to the terms of the Agreement.

<u>District</u>	<u>Consultant</u>
By: _____  Jose Gutierrez Chief Operating Officer Westlands Water District	By: _____



## EXHIBIT A

### SCOPE OF SERVICES

Consultant will provide program and project management services for the \_.

It is anticipated that the program will be delivered in phases as described below. The district will authorize the work in writing by \_\_\_\_.

Insert fees and costs for \*\*

## **EXHIBIT B GENERAL CONDITIONS**

### **ARTICLE 1. BASIC SERVICES OF CONSULTANT**

A. **Consultant's Skills and Compliance with Professional Standards:** Consultant represents and warrants that it is skilled in the professional calling necessary to perform all services, duties and obligations required by the Agreement; that it will perform its Services with the degree of skill and diligence normally practiced in the same industry by consultants performing the same or similar services. Consultant shall comply with all Federal, State, County, local and other governing laws, rules and regulations applicable to the performance of the Services. Consultant accepts the relationship of trust and confidence established between District and Consultant by the Agreement.

B. **Independent Contractor:** Consultant shall be an independent contractor, and neither Consultant nor any employee of Consultant or its sub-consultants shall be deemed to be an employee of the District.

C. **No Relation with Sub-consultants:** Nothing in the Agreement shall create any contractual relation between the District and any sub-consultants, or their agents and employees, employed by Consultant. No sub-consultants, agents, employees or other parties are third party beneficiaries of the Agreement. Consultant shall be responsible to the District for the acts and omissions of its employees, sub-consultants, and their agents and employees, and other persons performing any of the work under the Agreement.

### **ARTICLE 2. SCHEDULE**

A. Consultant shall perform in accordance with the time specified in the Agreement.

B. To the extent Consultant is entitled to claim relief from delay or breach under the provisions of this Agreement due to events arising from factors unanticipated at the time of making this Agreement and reasonably outside of the parties' control, which include, but are not limited to, acts of God, pandemic (including COVID-19), insurrection, war, fires, explosions, flooding, or other natural disasters, contamination or hazard, threats or acts of terrorism, embargo, acts or orders of a government agency made in response thereto, including travel restrictions, or applicable laws becoming effective during the Term that render a portion of the Services illegal and/or impossible ("Event of Force Majeure"), Consultant shall to that same extent be entitled to claim an Event of Force Majeure hereunder, when and if applicable. Neither party shall be considered in breach of this Agreement to the extent that the performance of the party's respective obligations (excluding payment obligations) is delayed or rendered impossible by an Event of Force Majeure which arises following the effective date of this Agreement.

### **ARTICLE 3. CONFLICTS OF INTEREST**

Consultant shall not have a familial, financial, or investment interest in any of the persons, contractors or companies with responsibilities related to the Services. A familial interest exists if any of Consultant's officers, directors, employee(s) providing professional services to the District, or owners of 10% or more of the business is the spouse, sibling, parent, child, grandparent, grandchild, aunt/uncle or niece/nephew of any of the officers, directors, project managers, or owners of 10% or more of the business of any of the persons, contractors or companies with responsibilities related to the work described in Exhibit A.

Consultant affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of Consultant and the District. Consultant agrees to advise the District of any actual or potential conflicts of interest that may develop subsequent to the date of execution of the Agreement.

#### ARTICLE 4. ASSIGNMENT AND SUBCONTRACTING

Except as expressly authorized herein, Consultant shall neither assign its rights nor delegate its duties under the Agreement without prior written consent of the District. This prohibition of assignment and delegation extends to all assignments and delegations that lawfully may be prohibited by agreement. Except as expressly allowed in the Agreement, Consultant shall not subcontract any of the work to be performed or services to be rendered without the prior consent of the District.

#### ARTICLE 5. NON-DISCRIMINATION

Consultant shall not discriminate against any employee or potential employee on the basis of prohibited criteria, as defined in Government Code section 12940. Without limiting the foregoing in any way, during the performance of the Agreement, Consultant and its sub-Consultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant and sub-Consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and sub-Consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the Agreement by reference and made a part hereof as if set forth in full. Consultant and its sub-Consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### ARTICLE 6. COMPENSATION; TAXES

A. Professional Services: Consultant agrees to perform the Services, and the District agrees to pay Consultant for the Services in accordance with Exhibit C to the Agreement. Notwithstanding any other provision of this Agreement, Services expenses shall not exceed \$ through and \$ for Phase 1 as described in the Scope of Services. [Compensation for subsequent Phases to be negotiated and mutually agreed upon by District and Consultant].

B. Reimbursable Consultant Costs/Expenses: The District recognizes that certain costs and expenses associated with the Services may be reimbursable to Consultant. Categories of costs/expenses that may be considered for reimbursement are included in Exhibit C. Payments to Consultant for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and invoicing has been verified by submission of substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred by Consultant.

Notwithstanding any other provision of this Agreement, costs and expenses shall not exceed \$.00 for Phase 1 and to be mutually agreed upon by the District and Consultant for subsequent phases.

C. Invoicing: Consultant shall submit by electronic mail one (1) invoice monthly to the District, including applicable time records and identification of any deliverables submitted during the billing period, for the work performed the prior month at rates not to exceed those stated in Exhibit C. Each invoice shall be submitted to Jose Gutierrez at JGutierrez@WWD.Ca.Gov and Invoices@WWD.Ca.Gov. If applicable, Consultant's invoice also shall include reimbursable costs/expenses incurred for the billing period. As referenced in subsection (B) above, invoices requesting reimbursement for costs/expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (e.g. receipts, invoices).

D. Payment: Invoices received by the District on or before the 15th day of a given month and subsequently approved by the District will be paid by the District before the end of the following month. All other properly invoice amounts shall be paid not more than sixty (60) days after delivery of an invoice. Disputed invoices shall be returned to Consultant within ten (10) working days of receipt.

E. Payment Disputes: The District may dispute any invoice or portion thereof which is not properly documented and in accordance with the Agreement. For any disputed payment, the District shall provide written notice describing its dispute to Consultant.

F. Taxes: Any and all taxes imposed or assessed on Consultant's income by reason of the Agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of the District.

## ARTICLE 7. DISTRICT'S OBLIGATIONS

The District shall cooperate with Consultant to facilitate the conduct of Consultant's performance of the Services, including for purposes of the exchange of information and consultation. Consultant's primary source of contact with the District shall be the contact designated in the Agreement.

## ARTICLE 8. CONFIDENTIAL INFORMATION

A. Confidential Information shall be (a) any and all information provided by the District (the "Disclosing Party") to Consultant (the "Receiving Party") that is labeled and/or marked confidential, and if disclosed orally, summarized in written format within (30) calendar days of disclosure and identified as "confidential", "trade secret", or "proprietary", and (b) information that is not labeled as "confidential", "trade secret", or "proprietary" but after which the District notifies Consultant as being "confidential", "trade secret", or "proprietary", the District shall retain all ownership rights over its Confidential Information.

B. The Confidential Information will be kept confidential, and will not, without the District's prior written consent, be disclosed by Consultant, in any manner whatsoever, in whole or in part, and shall not be used in any manner directly or indirectly by Consultant, other than in connection with providing services under the Agreement.

C. Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of the Agreement by Consultant; (ii) has been known or independently developed by and is currently in the possession of Consultant prior to disclosure or receipt hereunder; (iii) was or is acquired by Consultant from a third party (other than a Member customer contacted by Consultant through the operation of the Agreement) who did not to Consultant's knowledge breach an obligation of confidentiality by disclosing it to Consultant.

D. Consultant will retain the Confidential Information only so long as it is necessary to perform Consultant's tasks under the Agreement, and after such time, the Confidential Information will be returned to the District (or at the District's written option, destroyed), and Consultant will retain no copies of the Confidential Information.

E. The parties acknowledge that District is a public entity and may be the recipient of requests under the provisions of the California Public Records Act, Government Code Section 6250 et seq. and which may have an effect on the records set forth herein or which may be generated under this Agreement. In such an event the parties will cooperate in good faith to facilitate District's compliance therewith.

#### ARTICLE 9. INSURANCE

A. Required Policies: Consultant and any sub-consultants shall procure and maintain insurance on all of its operations during the progress of its work described in Exhibit A, with reliable insurance companies approved by the State of California Department of Insurance and with a Bests' rating of no less than (B+) Level VII, on forms acceptable to the District, for the following minimum insurance coverages, which may be increased or expanded by the Agreement:

1. Workers' Compensation insurance and occupational disease insurance, as required by law, with limit of no less than \$1,000,000 per accident for bodily injury or disease;

2. Employer's liability insurance, with minimum limits of \$1,000,000, covering all workplaces involved in the Agreement.

3. Commercial General Liability Insurance in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Consultant's obligations under the Agreement, products and completed operations, and coverage for independent contractors with limits of not less than one million dollars (\$1,000,000) for each occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

4. Commercial Automobile Insurance for all owned, non-owned and hired vehicles used by Consultant in the performance of its services under the Agreement with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

5. Professional Liability Insurance, written on a "Claims Made Basis," with limits of liability in amounts not less than \$1,000,000 per claim and \$2,000,000 aggregate, insuring Consultant, for its own acts and for the acts of all persons for whose acts Consultant may be liable, against liabilities arising out of or in connection with negligent acts, errors, or omissions in connection with the carrying out of their

professional responsibilities under the Agreement. Consultant shall provide the District proof of professional liability insurance coverage for two years following final completion of the Agreement.

B. Additional Terms:

1. All general liability policies shall name the District, its elected or appointed officers, officials, agents, authorized volunteers and employees as additional insureds (“Additional Insureds”), include a severability of interest provision, and shall provide that such policy is primary and not contributory with any insurance carried by the District or its Members.

2. The insurance to be provided by Consultant under the Agreement shall not include any of the following: except for Professional Liability Insurance, any claims-made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by the District; any endorsement limiting coverage available to the District that is otherwise required by this Article 9; and any policy or endorsement language that (i) negates coverage to the District for the District’s own negligence; (ii) limits the duty to defend the District under the policy; (iii) provides coverage to the District only if Consultant is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under the Agreement shall not contain any restrictions or limitations which are inconsistent with the District’s rights under the Agreement.

3. Consultant shall provide Certificates of Insurance, or other evidence of insurance as requested by the District, to the District within ten (10) days after receipt by Consultant of the executed Agreement. The certificates shall provide that there will be no cancellation, suspension, voiding or change of coverage without thirty (30) days’ prior written notice to the District. There shall be no reduction or modification of coverage of insurance required by the Agreement without the written consent of the District. Consultant shall provide the District with a new or renewed certificate of insurance upon any changes or modifications to coverage, including any extension or renewal of required insurance coverage; provided that any changes or modifications to coverage shall be consistent with the Agreement.

4. The insurer(s) issuing the required policies shall, by separate endorsement, agree to waive all rights of subrogation against the “Additional Insureds” for losses arising in any manner from the products or work provided or performed by or on behalf of Consultant for the District, but this provision applies regardless of whether or not the District has received the waiver of subrogation.

ARTICLE 10. INDEMNITY; NO LIABILITY FOR CONSEQUENTIAL DAMAGES

A. Consultant shall, with respect to all work which is covered by or incidental to the Agreement, defend, indemnify, and hold harmless the District, its officers, directors, agents, representatives and employees (collectively “District”), from and against any and all liens and claims asserted by firms or individuals claiming through Consultant, and claims, liability, loss, damage, civil fines, penalties, costs, or expenses, including reasonable attorneys’ fees, expert’s fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, other loss, damage, or expense to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, willful misconduct or breach of the Agreement by Consultant or anyone acting under its direction or control or on its behalf in the course of its performance under the Agreement. Consultant’s duty shall include the duty to defend the indemnitees as required by Civil Code section 2778, which duty shall arise from the need for defense and is not contingent upon a finding of liability for indemnification, and Consultant shall employ counsel

reasonably acceptable to the District for this defense obligation. Consultant shall not be obligated under the Agreement to indemnify the District to the extent that the damage is caused by the active or sole negligence or willful misconduct of the District or its agent or servants other than Consultant.

B. The District shall defend, indemnify, and hold harmless Consultant, its officers, directors, agents, representatives and employees (collectively “Consultant”) from and against any and all claims, liability, loss, damage, civil fines, penalties, costs, or expenses, including reasonable attorneys’ fees, expert’s fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, other loss, damage, or expense to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, willful misconduct or breach of the Agreement by the District or anyone acting under its direction or control or on its behalf in the course of its performance under the Agreement other than Consultant. The District’s duty shall include the duty to defend the indemnitees as required by Civil Code section 2778, which duty shall arise from the need for defense and is not contingent upon a finding of liability for indemnification, and the District shall employ counsel reasonably acceptable to Consultant for this defense obligation. The District shall not be obligated under the Agreement to indemnify Consultant to the extent that the damage is caused by the active or sole negligence or willful misconduct of Consultant or its agent or servants.

C. Where any claim results from the joint negligence, gross negligence, willful misconduct or breach of any provision of the Agreement by the District and Consultant, the amount of such claim for which the District or Consultant is liable as indemnitor under this Article shall equal (i) the proportionate part that the amount of such claim attributable to such indemnitor’s negligence, gross negligence, willful misconduct or breach of any provision of the Agreement bears to, and (ii) the amount of the total claim attributable to the joint negligence, gross negligence, willful misconduct or breach of any provision of the Agreement at issue.

D. Consultant and the District each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims.

E. The acceptance by the District or its representatives of any certificate of insurance providing for coverage of any kind shall in no event be deemed a waiver of any of the provisions of this Article. None of the foregoing provisions shall deprive the District of any action, right or remedy otherwise available by law.

F. Except to the extent of any insurance coverage, neither Consultant nor the District shall be responsible to the other for any form of consequential damages, including, but not limited to losses of use, sale, profits, financing, business and reputation, and attorney fees thereon. Nothing in these provisions or in the Agreement shall waive, release or compromise any insurance requirements or coverages required in Article 9.

#### ARTICLE 11. INTELLECTUAL PROPERTY INFRINGEMENT

Consultant shall defend, indemnify and hold the District free and harmless from and against, any loss, cost and expense that the District incurs because of a claim that any deliverables, materials or equipment (hereinafter “Product”) provided pursuant to the Agreement infringes on the intellectual property right of others.

## ARTICLE 12. LIMITATION OF LIABILITY

Except as otherwise set forth in Article 10 of the Agreement, in no event will Consultant be liable to the District for any incidental, indirect, special, consequential or punitive damages or lost profits of the District. The aggregate total liability of Consultant arising from or related to the District's engagement of Consultant shall not exceed the recoveries from insurance provided or, if none, an amount equivalent to the fee paid by the District to Consultant for its services under the Agreement.

## ARTICLE 13. USE AND OWNERSHIP OF WORK PRODUCT

As used in the Agreement, the term "Work Product" means any and all deliverables or materials fixed in a tangible medium of expression, including data, software code, written procedure, written documents, abstracts and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected or designed in connections with the services provided under the Agreement. The District shall retain all rights, title and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements and derivative works thereof, and Consultant obtains no rights therein.

## ARTICLE 14. TERMINATION OF AGREEMENT

The Agreement may be terminated by either party upon 30 days' written notice, with or without cause, upon written notification to the other party. Following such termination, the District shall pay Consultant all unpaid sums due for Services and costs/expenses incurred prior to termination, plus reasonable expenses for winding down the Services. Following such payment, the District shall have the right to immediate possession of all documents, files (including electronic files), and other Work Product. No termination of the Agreement shall excuse or otherwise relieve Consultant of its responsibilities under the Agreement, including, without limitation, the standard of care for its work and services and its indemnity obligations. All of such responsibilities under the Agreement with respect to work and/or services performed prior to the date of termination shall survive any termination.

## ARTICLE 15. RECORDS AND AUDIT

The District or the District's authorized representative shall have access, upon reasonable notice and during normal business hours during the term of the Agreement and for a period of two (2) years thereafter, to Consultant's books and records and all other documentation pertaining to Consultant's services under the Agreement for the purpose of auditing and verifying the cost of such services or for any other reasonable purpose. Such access includes the right to make excerpts, transcriptions and photocopies at the District's expense.

## ARTICLE 16. DISPUTE RESOLUTION

Consultant and the District shall attempt to resolve conflicts or disputes that arise under the Agreement or that relate in any way to the Agreement or the subject matter of the Agreement in a fair and reasonable manner. The parties agree to attempt to mediate through a professional mediator any conflicts or disputes not otherwise resolved by the parties, with the costs of mediation shared equally by the parties. If the mediation does not settle the conflict or dispute, the parties may agree in writing to binding arbitration, or the matter may proceed in litigation before a court of competent jurisdiction.



Neither party shall commence or pursue arbitration or litigation prior to: (1) the completion of mediation proceedings, and (2) prior to completion of Consultant's Services. In the event of mediation, arbitration or litigation, neither party shall be entitled to the recovery of attorney's fees.

#### ARTICLE 17. ADDITIONAL PROVISIONS

A. Successors and Assigns: The District and Consultant each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Agreement. Consultant shall not assign the Agreement or sublet it in whole or part without the written consent of the District, nor shall Consultant assign any moneys due or to become due to it hereunder without the prior written consent of the District.

B. Unenforceability of any Clause: If any clause or provision of the Agreement is held to be unenforceable or invalid, then that provision of the Agreement shall be stricken and all other provisions of the Agreement shall remain in full force and effect and shall not be effected thereby.

C. Waiver of Breach: Failure by one party to notify the other of a breach of any provision of the Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under the Agreement shall not constitute a waiver of those rights. The waiver by either Party of a breach or violation of any provision of the Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

D. Entire Agreement: The Agreement, including all exhibits, represents the entire and integrated agreement between the District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. No changes, amendments, alterations or modifications to the Agreement will be effective unless in writing and executed in the same manner as the Agreement.

E. Interpretation: The Agreement shall be construed and interpreted in accordance with the laws of the State of California.

Headings: The titles of sections of these General Conditions are for convenience only and no presumption or implication of the intent of the parties as to the construction of the Agreement shall be drawn therefrom.

**EXHIBIT C**  
**FEES AND CHARGES**

CLASSIFICATION	RATE

These annual charges are inclusive of all overhead and administrative expenses.  
Upon request, \* may provide a cost proposal for additional staff that may be required to support the client.  
Other costs will be determined throughout the agreement, as requested by upon final scope requirements and approved by the client.