

REQUEST FOR PROPOSALS
for
DESIGN OF AN INTERCONNECTED SURFACE
WATER MONITORING NETWORK
FOR THE
DELTA-MENDOTA SUBBASIN



DELTA-MENDOTA SUBBASIN
COORDINATION COMMITTEE
842 6th Street
Los Banos, CA 93635

DELTA-MENDOTA SUBBASIN COORDINATION COMMITTEE
REQUEST FOR PROPOSALS

I. INTRODUCTION

The State of California enacted the Sustainable Groundwater Management Act (SGMA) in response to continued overdraft of California’s groundwater resources. The Delta-Mendota Subbasin (Subbasin) (5-022.07) is one of 21 alluvial basins and subbasins identified by the California Department of Water Resources (DWR) as being in a state of critical overdraft.

The Subbasin includes 23 groundwater sustainability agencies (GSAs) that are coordinating to implement six groundwater sustainability plans (GSPs). The six GSPs were developed in a coordinated process with the goals of achieving water supply reliability and sustainability for the Subbasin as a whole. The GSPs were developed for the following GSP regions: Aliso Water District, Farmers Water District, Fresno County Management Areas A and B, Grassland Water District, Northern & Central Delta-Mendota Region, and San Joaquin River Exchange Contractors.

As set forth in the Delta-Mendota Subbasin Coordination Agreement, for purposes of SGMA, the San Luis & Delta-Mendota Water Authority (SLDMWA) is serving as the plan manager. In this role, SLDMWA facilitates the SGMA coordination efforts within the Subbasin. Activities pertaining to SGMA in the Subbasin are coordinated through the Delta-Mendota Subbasin Coordination Committee and the Delta-Mendota Subbasin Technical Working Group (TWG).

The Subbasin covers an area of approximately 765,000 acres. The Subbasin economy relies predominantly on agriculture, with water supplied from both surface water and groundwater sources. Depending upon water supply contracts and annual availability, groundwater comprises a significant proportion of the water supply in some areas of the Subbasin.

Understanding how groundwater pumping affects interconnected surface water systems is important for the proper management of groundwater resources in order to achieve the Delta-Mendota Coordination Committee’s Subbasin-wide goal to achieve sustainability.

II. PROJECT DESCRIPTION

The SLDMWA, on behalf of the six Subbasin GSP Groups, GSAs, and member agencies, seeks to contract with an interested consultant or firm knowledgeable in technical work efforts related to preparing a *Design of an Interconnected Surface Water Monitoring Network* (Network). This work will be funded by a Sustainable Groundwater Management Act (SGMA) Implementation Grant from DWR. The available budget is approximately \$25,000. All work must be completed by July 15, 2023.

The following are the anticipated dates in connection with the selection of a consultant or firm for the technical work, but are subject to change:

- February 16, 2023 – RFP released

- February 23, 2023 – Deadline to submit questions via email
- February 28, 2023 – Addendum issued, if necessary, addressing questions
- March 10, 2023 – Proposals due by email
- March 21, 2023 – Anticipated selection of successful proposer

This RFP does not commit SLDMWA to contract for any supply or service. Responders are advised that SLDMWA will not pay any cost incurred in response to this RFP. All costs associated with responding to this RFP will be solely at the interested consultant's or firm's expense.

III. PROJECT APPROACH AND METHODOLOGY

The purpose of this project is to meet grant requirements for the design of an Interconnected Surface Water Monitoring Network for the Delta-Mendota Subbasin. The Network is part of a larger grant component to fill data and monitoring gaps identified in the Subbasin. As specified in the grant agreement, the design will be used to confirm a minimum of one (1) and up to five (5) nested and paired monitoring well site locations with representatives from the Farmers, Grassland and Northern & Central Delta-Mendota GSP regions, and coordinate with existing monitoring sites in other Subbasin GSP regions to create a Subbasin-wide Network. Access agreements and/or easements as needed for new monitoring network well installation must be included. In addition, preparation of 60% and 100% design plans for all monitoring sites showing property boundaries, proposed monitoring well locations, and monitoring well design.

The project will involve the completion of the tasks identified below in a cost-effective and timely manner. Additional detail on tasks is included in Attachment 1. The consultant or firm will coordinate and conduct all tasks under the direction of SLDMWA staff and representatives from the Delta-Mendota Subbasin Coordination Committee and the Technical Working Group.

- ***Task 1: Coordinate with adjacent GSP groups and other agencies and entities on existing monitoring sites.*** These groups may include:
 - GSP groups/GSAs within the Delta-Mendota Subbasin
 - GSP groups/GSAs in neighboring subbasins
 - DWR
 - The San Joaquin River Restoration Program
 - Other entities or agencies with relevant monitoring sites within or adjacent to the Delta-Mendota Subbasin.
- ***Task 2: Acquire Access Agreements and/or Easements as Needed for Installation of Monitoring Well(s) and/or other monitoring equipment to fulfill grant requirements,*** including assisting GSAs in reaching out to landowners for permission to drill, install, and monitor new Interconnected Surface Water Monitoring wells and stream gauges.

- **Task 3: Prepare a Basis of Design Report** that lists alternatives considered and reasons for selected design features. Complete 60% design plans for submittal to DWR and 100% design plans and specifications based on DWR feedback as deliverables for the Grant.
- **Task 4: Project Management, Meetings and Communication** including invoicing, monthly progress meetings, and a minimum of two meetings with the Subbasin Coordination Committee, Technical Working Group, and/or individual GSAs.

IV. PROJECT REVIEW AND PROPOSAL REQUIREMENTS

The following information shall be provided in each proposal and will be utilized in evaluating each proposal submitted. The complete submittal shall not exceed eight (8) pages in length, excluding cover letter, schedule, budget, and resumes of key personnel. Please provide the following information (Proposal) in the following order:

1. **Cover letter**
2. **Entity Contact Information:** Name, mailing address, telephone number, and e-mail address of the entity's primary contact
3. **General Information:** Introduce the firm or team and provide information on the location, number of employees, years in business, etc. The team identified in the RFP should be the team dedicated to the contract work.
4. **Experience:** Provide a description of the firm or team's specific experience with design of data gathering networks, especially for gathering data from natural systems and experience with interconnected surface water monitoring. Include at least one (1) relevant project description and reference(s) if applicable. The work must have been performed in the last five (5) years and the description of each project should include:
 - When the work was performed, including the duration of the project;
 - The client for whom the work was performed (unless confidential);
 - A general description of the scope of work;
 - Outcome of the project; and,
 - A contact person, including contact information for the client project manager and key team members associated with the project.
5. **Project Team Information:** Identify the personnel that will be directly involved in the project (i.e., organizational chart). Provide resumes (via appendix) with relevant experience. The consultant may be a team of different firms; if so, identify the firms in the team and principal point of contact. Consultants may also utilize sub-consultants; if so, identify the sub-consultants. If the proposal involves a team approach and/or includes sub-consultants, provide the estimated percentage of the overall effort in terms of projected costs for each team member or sub-consultant.
6. **Project Approach and Scope of Work:** Provide a discussion of the firm's plan with respect to implementing the project scope in a cost-effective and timely manner. Present the perspective on key priorities, and potential risk factors and their mitigation.

7. **Project Budget:** Provide a budget for completion of the tasks listed above and described more fully in Attachment 1. Assumptions employed in developing the budget shall be identified. Please provide estimated level of effort for each task, and the Schedule of Charges applicable to the proposed services. The available budget is approximately \$25,000.
8. **Project schedule:** Provide a preliminary project schedule that identifies the critical path and milestones for the specified tasks. Please note that the project must be completed no later than June 15, 2023 so the Subbasin may move forward to install the Network prior to conclusion of the grant term.
9. **Conflicts:** Proposers shall verify that they have no personal or organizational conflicts of interest, as prohibited by law.
10. **Other Information:** A brief description of any other information that would be useful in evaluating the level of interest including perspectives not covered in this RFP.

Please limit the size of the proposal to eight (8) pages, excluding cover letter, schedule, budget, and resumes. Proposals shall be prepared with 8.5" x 11" paper format, Times New Roman, 12 pt. font, single or 1.15-spaced, justified with 1" margins. Pages should be numbered in the page footer including the first page. Tables and figures must be included in the text. Responses should be emailed in PDF document format.

V. GENERAL ADMINISTRATIVE INFORMATION

Proposal Evaluation: Proposals will be evaluated relative to criteria provided in Attachment 2.

Questions: Potential proposers may submit questions on this RFP by the deadline specified above. SLDMWA shall not be obligated to respond to any question unless it is submitted in writing to John Brodie at john.brodie@sldmwa.org SLDMWA will reply regarding substantive issues by addenda posted to the Delta-Mendota Subbasin SGMA website at deltamendota.org. Proposers are responsible to check the website for any addenda. Questions received after the deadline may not be answered. Only questions answered by formal written addenda will be binding. Oral responses, or email responses, shall not be binding on SLDMWA.

Timing: The deadline for receiving proposals is Friday, March 10, 2023 at 5:00 p.m., Pacific Standard Time. Proposals not received by that time will not be considered. Please submit your proposal via email to John Brodie at john.brodie@sldmwa.org Hardcopies will not be accepted. Applicants should feel free to send questions prior to the submittal deadline.

Insurance: In a table, confirm the consultant's and sub-consultant's (if applicable) ability to secure insurance coverage (including comprehensive general liability, automotive liability, workers' compensation, and errors and omissions).

Agreement for Professional Services: The proposal must also provide Consultant's response to the Agreement for Professional Services (Attachment 3), noting exceptions and/or requested revisions to the terms and conditions.

All proposals, whether selected or rejected, shall become the property of the Delta-Mendota Subbasin Coordination Committee and SLDMWA.

VI. EVALUATION AND SELECTION PROCESS

All packages will be reviewed for completeness and will then be forwarded to the Delta-Mendota Subbasin Coordination Committee and Technical Working Group representatives for review (Review Subgroup) based on the required information contained in this notice and as outlined in the criteria provided in Attachment 2.

Prior to award of a contract, SLDMWA may schedule a meeting with selected consultants to provide the consultant(s) an opportunity to present their submittal and answer questions in person to the Review Subgroup.

Upon completion of the evaluation process, additional discussions may be conducted between SLDMWA, the Review Subgroup, and consultants to clarify the scope of services, staffing schedules, level of effort, and contract costs. SLDMWA will then enter final negotiations with the selected consultant(s) with the intent of agreeing on a mutually acceptable contract.

The submitter understands and agrees to the following:

- A. SLDMWA reserves the right to reject any and all submittals;
- B. SLDMWA reserves the right to issue a new RFP;
- C. SLDMWA reserves the right to amend this RFP;
- D. SLDMWA reserves the right to cancel or withdraw the entire RFP, or any part hereof;
- E. SLDMWA reserves the right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP to assure a successful project.
- F. That a submittal constitutes acknowledgement and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this RFP.
- G. All submittals in response to this RFP will become the exclusive property of the Delta-Mendota Coordination Committee and SLDMWA.

The RFP does not commit SLDMWA to enter into a contract. SLDMWA assumes no obligations, responsibilities, and/or liabilities, financial or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP.

VII. ANTICIPATED SCHEDULE

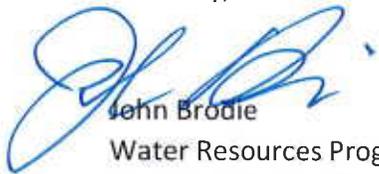
Task	Date Expected
Issue Request for Proposals	February 16, 2023
Deadline to submit questions via email	February 23, 2023
Addendum issued, if necessary, addressing questions	February 28, 2023
Proposal Package Due	March 10, 2023

Begin Final Ranking of Consultants	March 13, 2023
Notify Consultants of Ranking Results	March 22, 2023
Negotiate Contract with Consultant	March-April 2023
Consultant Agreement Signed (following SLDMWA Board approval)	April 2023
Attend Subbasin Technical Working Group Meeting	April 2023
Conclude Project	July 15, 2023*

* Extensions may be allowed depending on the time required for DWR to review and approve 60% and 100% Design Plans.

Consultants are encouraged to notify SLDMWA of their interest to respond to this request.

Sincerely,



John Brodie
Water Resources Programs Manager
San Luis & Delta-Mendota Water Authority

Attachment 1: DWR SGMA Implementation Grant Agreement Language

COMPONENT 8: DATA GAPS AND MONITORING

Component 8 includes tasks to address data gaps and improve subbasin monitoring. Component 8 includes constructing a minimum of one dedicated nested monitoring well for Interconnected Surface Water (ISW) monitoring to pair with stream gages; installing a minimum of one multi-layer compaction monitoring well near Mile Post 110 of the DMC and installing a minimum of two continuous Global Positioning System (CGPS) monitoring stations for Subbasin-wide monitoring for subsidence; installation of a minimum of one dedicated nested monitoring well with two completions to fill spatial data gaps and installation of two pressure transducers in the Aliso Water District; installation of two streamflow monitoring facilities up and down gradient of the Farmers Water District's (FWD) boundary of the San Joaquin River; and installation and equipping monitoring wells at two sites in Fresno County Management Area B GSA east and south of Mendota Wildlife Area.

The proposed ISW network would consist of wells spaced approximately four to six miles apart beginning at the Highway 132 bridge crossing and moving upstream within the Northern & Central Delta-Mendota and Grassland GSP regions, as well as two sites within the Fresno County Management Areas A and B GSP region located east and south of Mendota Wildlife Area. The final ISW monitoring network would be coordinated with ISW monitoring occurring in other Subbasin GSP regions.

Task 1: Design of the ISW Monitoring Network

Confirm a minimum of one (1) and up to five (5) nested and paired monitoring well site locations with representatives from the Farmers, Grassland and Northern & Central Delta-Mendota GSP regions, coordinate with existing monitoring sites in other Subbasin GSP regions to create a Subbasin-wide ISW monitoring network. Acquire access agreements and/or easements as needed for new monitoring network well installation. Prepare preliminary design plans for all monitoring sites showing property boundaries, proposed monitoring well locations, and preliminary monitoring well design.

Prepare a Basis of Design Report that lists alternatives considered and reasons for selected design features. Complete the 60% design plans and specifications and submit them to the DWR Grant Manager for review and concurrence prior to finalizing the design plans and specifications. Ensure the design plans and specifications include any necessary mitigation measures identified in the CEQA documentation into the design documents. Conduct any necessary follow-up onsite investigations to complete the design (e.g., geotechnical investigation) as determined by the design engineer. Complete the 100% design plans and specifications and submit them to the DWR Grant Manager for review and concurrence prior to advertising the Component for bids. Include the design drawings, technical specifications, general requirements, an engineer's opinion of probable construction cost, and a construction schedule in the 100% design plans and specifications.

Deliverables:

- Access agreements and/or easements, if needed.
- 60% design plans and specifications
- 100% design plans and specifications
- Basis for design report
- Geotechnical investigation reports, if needed.

Attachment 2: Criteria for Evaluation of Proposal

Item Number	Proposal Evaluation	Maximum Points	Score
1	Completeness of the submittal package	10	
2	Understanding of work to be completed	10	
3	Knowledge of and experience with evaluation of land subsidence data relative to amounts of groundwater pumping.	10	
4	Professional qualifications of staff for work to be completed	10	
5	Cost of the proposal	20	
6	Ability to proactively manage proposed activities and ensure successful completion of project within schedule and budget	20	
7	Demonstrated technical ability and competence	10	
8	References	10	
Total	Total	100	

Attachment 3: Template Consultant Master Services Agreement

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into effective _____, 2023, between the San Luis & Delta-Mendota Water Authority, hereinafter referred to as "SLDMWA" and _____, hereinafter referred to as "Consultant" for professional services as set forth herein.

Task Order Contract: Yes

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

- Exhibit A - Scope of Services
- Exhibit B - General Terms and Conditions for Professional Services
- Exhibit C - Fees, Hourly Rates and Reimbursable Costs/Expenses
- Exhibit D - Task Order Format, applicable to Task Order Contracts

IT IS MUTUALLY AGREED, as follows:

1. SCOPE OF SERVICES

Consultant shall provide the professional services described in the Scope of Services set forth in Exhibit A as may be amended or augmented from time to time, and in accordance with this Agreement, any Task Orders applicable to the Agreement, and the General Terms and Conditions for Professional Services set forth in Exhibit B, and for the compensation set forth in Exhibit C, Fees, Hourly Rates, and Reimbursable Costs/Expenses.

Any change in the Scope of the Services, budget or schedule set forth therein, or to any other matter materially affecting the performance of or nature of the professional services will not be paid for or accepted unless such change, addition or deletion be approved in advance, in writing, by SLDMWA.

2. TERM OF AGREEMENT AND PERFORMANCE SCHEDULE

This Agreement shall become effective as of the date indicated and shall continue until the earlier of the completion of all required services or one (1) year from the effective date of the Agreement.

3. PARTY REPRESENTATIVES AND NOTICES

Each party's designated representative for administration of this 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 with a copy by first class U.S. 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:

SLDMWA	Consultant
Federico Barajas San Luis & Delta-Mendota Water Authority 400 Capitol Mall, 28th Floor Sacramento, CA 95814 federico.barajas@sldmwa.org	
209-826-9696	

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto, the day, month and year so indicated above. If Consultant is a corporation, partnership or limited liability company, documentation must be provided that the person signing below for Consultant has the authority to do so and to so bind Consultant to the terms of this Agreement.

EXHIBIT A SCOPE OF SERVICES

Consultant will provide advocacy services to SLDMWA, as directed.

Scope of Services:

The following activities will be carried out for SLDMWA:

I.

EXIDBIT B GENERAL CONDITIONS

ARTICLE 1. SCOPE OF SERVICES OF CONSULTANT

A. Services: Consultant's Services consist of the Scope of Services described in **Exhibit A** to the Agreement, all in accordance with all terms of the Agreement and applicable laws and regulations.

B. Changes/Amendments: Consultant's Services may be changed or amended only by written amendment executed by SLDMWA and Consultant. No claim for any additional compensation or time shall be valid unless authorized by a written amendment.

C. Trust and Confidence: Consultant accepts the relationship of trust and confidence established between SLDMWA and Consultant by the Agreement.

D. 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 under this Agreement 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.

E. 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 SLDMWA.

F. No Relation with Sub-consultants: Nothing in the Agreement shall create any contractual relation between SLDMWA 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 SLDMWA 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.

Note: See Article 18 for additional terms applicable to Task Order Contracts.

ARTICLE 2. SCHEDULE

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

B. Any delays in or failure of performance by either party under this Agreement (except payment of compensation under Article 6) shall not constitute default hereunder and neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from force majeure which shall be defined to be causes or occurrences beyond the control of the party affected, including, but not limited to, acts of governmental authority, acts of God, strikes or other concerted acts of workmen, unavailability of labor or materials and operating equipment, fires, floods, explosions, riots, war, rebellion, insurrection and sabotage; provided, however, that the party whose performance is delayed shall have given notice and full description of the cause of the delay in writing to the other party as soon as possible after the occurrence of the cause relied on by it.

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 work described in Exhibit A or any Task Orders. A familial interest exists if any of Consultant's officers, directors, employee(s) providing professional services to SLDMWA, 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 or any Task Orders. 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 SLDMWA. Consultant agrees to advise SLDMWA 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 SLDMWA. 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 SLDMWA.

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 this 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 this 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 Basic Services and any authorized Extra Services, and SLDMWA agrees to pay Consultant for such services in accordance with **Exhibit C** to the Agreement, or such other rates for Extra Services as may be expressly agreed upon in writing between SLDMWA and Consultant.

B. Reimbursable Consultant Costs/Expenses: SLDMWA recognizes that certain costs and expenses associated with the services performed 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.

C. Invoicing: Consultant shall submit one (1) invoice monthly to SLDMWA, 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**, with email copy to Felicia Luna, San Luis & Delta-Mendota Water Authority, at felicia.luna@sldmwa.org or via U.S. Mail at P.O. Box 2157, Los Banos, CA 93635. If applicable, Consultant's invoice also shall include reimbursable costs/expenses incurred for the billing period. 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 SLDMWA on or before the 15th day of a given month and subsequently approved by SLDMWA will be paid by SLDMWA before the end of the following month. All other properly invoice amounts shall be paid not more than forty-five (45) days after delivery of an invoice. Disputed invoices shall be returned to Consultant within ten (10) working days of receipt.

E. Payment Disputes: SLDMWA may dispute any invoice or portion thereof which is not properly documented and in accordance with the Agreement. For any disputed payment, SLDMWA shall provide written notice describing its dispute to Consultant. 1

F. Taxes: Any and all taxes imposed or assessed on Consultant's income by reason of this 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 SLDMWA.

ARTICLE 7. SLDMWA'S OBLIGATIONS

SLDMWA shall cooperate with Consultant to facilitate the conduct of Consultant's performance of its services under this Agreement, including for purposes of the exchange of information and consultation, as well as to provide access as required to any SLDMWA facilities that are the subject of the services. Consultant's primary source of contact with the SLDMWA shall be the contact designated in the Agreement.

ARTICLES. CONFIDENTIAL INFORMATION

A. Confidential Information shall be (a) any and all information provided by SLDMWA (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 SLDMWA notifies Consultant as being "confidential",

"trade secret", or "proprietary", SLDMWA shall retain all ownership rights over its Confidential Information.

B. The Confidential Information will be kept confidential, and will not, without SLDMWA'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 this Agreement.

C. Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of this 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 this 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 this Agreement, and after such time, the Confidential Information will be returned to SLDMWA (or at SLDMWA's written option, destroyed), and Consultant will retain no copies of the Confidential Information.

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 or any Task Orders, 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 SLDMWA, 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 \$2,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Consultant's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than two million dollars (\$2,000,000) 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 this 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 SLDMWA 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 SLDMW A, 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 SLDMWA or its Members.
2. The insurance to be provided by Consultant under this 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 SLDMWA; any endorsement limiting coverage available to SLDMWA that is otherwise required by this Article 9; and any policy or endorsement language that (i) negates coverage to SLDMW A for SLDMWA's own negligence; (ii) limits the duty to defend SLDMWA under the policy; (iii) provides coverage to SLDMWA only if Consultant is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with SLDMWA's rights under this Agreement.
3. Consultant shall provide Certificates of Insurance, or other evidence of insurance as requested by SLDMWA, to SLDMWA 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 SLDMWA. There shall be no reduction or modification of coverage of insurance required by the Agreement without the written consent of SLDMW A. Consultant shall provide SLDMWA 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 this 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 SLDMWA, but this provision applies regardless of whether or not SLDMW A 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 SLDMWA, its officers, directors, agents, representatives and employees (collectively "SLDMWA"), 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 this Agreement by Consultant or anyone acting under its direction or control or on its behalf in the course of its performance under this 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 SLDMW A for this defense obligation. Consultant shall not be obligated under the Agreement to indemnify SLDMW A to the extent that the damage is caused by the active or sole negligence or willful misconduct of SLDMWA or its agent or servants other than Consultant.

B. SLDMWA 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 this Agreement by SLDMWA or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement other than Consultant. SLDMWA'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 SLDMW A shall employ counsel reasonably acceptable to Consultant for this defense obligation. SLDMWA 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 this Agreement by SLDMW A and Consultant, the amount of such claim for which SLDMWA 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 this 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 this Agreement at issue.

D. Consultant and SLDMWA 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 SLDMWA 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 SLDMWA of any action, right or remedy otherwise available by law.

F. Except to the extent of any insurance coverage, neither Consultant nor SLDMWA 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 this 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 SLDMWA free and harmless from and against, any loss, cost and expense that SLDMWA incurs because of a claim that any deliverables, materials or equipment (hereinafter "Product") provided pursuant to this Agreement infringes on the intellectual property right of others.

ARTICLE 12. LIMITATION OF LIABILITY

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

ARTICLE 13. USE AND OWNERSHIP OF WORK PRODUCT

As used in this Agreement, the term "Work Product" means any and all deliverables or materials fixed in a tangible medium of expression, including 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 this Agreement. All reports and other documents prepared by Consultant pursuant to this agreement shall become the property of SLDMWA. SLDMWA is entitled to full and unrestricted use of such reports and other documents for this project. SLDMWA may also retain the original of the reports and other documents upon request. SLDMWA agrees that Consultant shall own the software work product, including source code, developed specifically for this application and completed project. SLDMWA may modify such source code for its own internal use and at its own risk. Consultant shall retain a perpetual right to use and modify the source code in future client projects or for commercial sale, provided, however, the right to use the source code shall not include any client-specific or project-specific information and Consultant shall sanitize the source code with respect to such information in any of its future use, modification, or sale.

ARTICLE 14. TERMINATION OF AGREEMENT

This 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, SLDMWA shall pay Consultant all unpaid sums due for services performed under this Agreement to the date of termination, plus reasonable expenses for winding down the services. Following such payment, SLDMWA 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

SLDMWA or SLDMWA'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 this 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 SLDMWA's expense.

ARTICLE 16. DISPUTE RESOLUTION

Consultant and SLDMWA shall attempt to resolve conflicts or disputes that arise under this Agreement or that relate in any way to this Agreement or the subject matter of this 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 under this Agreement.

ARTICLE 1*i*. ADDITIONAL PROVISIONS

A. Successors and Assigns: SLDMW A 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 SLDMWA, nor shall Consultant assign any moneys due or to become due to it hereunder without the prior written consent of SLDMW A.

8. 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 this 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 this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either Party of a breach or violation of any provision of this 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 SLDMWA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. No changes, amendments, alterations or

modifications to this 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.

F. **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 this Agreement shall be drawn therefrom.

ARTICLE 18. ADDITIONAL PROVISIONS FOR TASK ORDER CONTRACTS

In addition to all of the foregoing provisions, the following apply when this Agreement is designated as a "Task Order Contract".

A. Where this Agreement is indicated to be a Task Order Contract, the Agreement will consist of the individual projects defined by Task Orders entered into by the Parties during the term of and pursuant to this Agreement. Each Task Order will be numbered sequentially and will be similar in format to **Exhibit D**, entitled "Task Order Format," attached hereto and incorporated herein by this reference. Each Task Order will specifically define the scope of work for each specific project on which SLDMWA desires to retain Consultant's services. Each Task Order will also specify (1) the date on which the work covered by the Task Order is to begin; (2) the date on which the work covered by the Task Order is to be completed; (3) the estimated charges that SLDMWA can expect to pay to Consultant for Consultant's services pursuant to such Task Order; and (4) the names of the persons who will be SLDMWA's and Consultant's respective principal representatives for the management and performance of the specific services covered by said Task Order.

B. The specific services covered by each separate Task Order will be undertaken by Consultant only upon receipt of a Task Order signed by an authorized representative of SLDMWA and accepted by an authorized representative of Consultant.

C. Consultant will commence performing the services specified by each Task Order on the commencement date specified in the Task Order, and will complete such services within the time and monetary limitations specified in the Task Order. If Consultant, in the course of performing its services under any given Task Order, determines it will be unable to complete the services within the time schedule or authorized limit of charges specified in the Task Order, it will promptly so notify SLDMWA of such determination. Within fourteen (14) days of said notification, SLDMWA will inform Consultant as to how SLDMWA chooses to proceed.

D. All invoices for services shall identify the Task Order number.

E. SLDMWA will have the right to terminate Consultant's services under any specific Task Order at any time by giving notice in writing to Consultant. Consultant will not be entitled to payment for any cost related to the terminated part of services covered by the Task Order and incurred after the effective date of termination except for costs directly related to work performed by Consultant in terminating; provided that such work is authorized in advance by SLDMWA's representatives under such Task Order. SLDMWA also will reimburse Consultant for all expenses incurred by Consultant in satisfying commitments for materials, equipment and services for use in the terminated work which were

made by Consultant prior to such termination. Such expenses may include the cost of returning or disposing of unused materials and equipment and terminating agreements for services by third parties. Consultant, however, will use its best efforts to minimize such costs. This paragraph provides the full and exclusive compensation to Consultant in the event of a terminated Task Order or termination of a Task Order Contract.

F. The limitation of liability in Article 12 is modified such that, if the conduct by Consultant giving rise to the loss occurs under one or more Task Orders, the aggregate total liability of Consultant arising from or related to SLDMWA's engagement of Consultant shall not exceed the recoveries from insurance provided or, if none, an amount equivalent to the fee paid by SLDMWA to Consultant for its services under the applicable Task Orders.

EXHIBIT C

FEES, HOURLY RATES AND REIMBURSABLE COSTS/EXPENSES

SLDMWA-EKI ENVIRONMENT & WATER, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

TASK ORDER F24-____ - ____ -TO2023-____ - ____

Title:

Detailed Scope of Work

TASK 1 –

TASK 2 –

Subtask 2.A As-Needed

TASK 3 –

Online Document Accessibility: Consultant will provide electronic copies of documents and materials designated for public access on the Authority’s public website consistent with Web Content Accessibility Guidelines (WCAG) 2 Level AA Conformance and/or current state and federal standards for accessibility. If Consultant has any question as to whether a deliverable is subject to these requirements, Consultant shall confirm with the Authority whether the deliverable is anticipated to be posted to the Authority website. Consultant may reference the California Department of Technology’s Web Accessibility Assessment Checklist at <https://dor.ca.gov/Home/Ab434> to help Consultant comply with State and WCAG standards and requirements. Consultant should ensure documents and materials created for the Authority are compatible with most major Internet browsers, including Chrome, Firefox, and Safari. The Authority reserves the right to return to Consultant for correction any deliverable that is required to be website accessible, and that the Authority determines not be compliance, in accordance with these standards. Any such modification shall be done at Consultant’s cost and without further charge to the Authority.

Additional Agreement Provision: Consultant will adhere to the following contract provision, now being added into all SGMA-related Professional Services Agreements:

This is a “Not to Exceed” Task Order. Consultant will not exceed its submitted budget estimate for the scope of work and tasks as detailed below without prior approval from SLDMWA. Consultant may request to amend and add to the submitted budget of \$ _____ prior to the end of the fiscal year. If such a request is made, Consultant agrees to reimburse reasonable expenses incurred by SLDMWA in preparation of the Task Order Budget Amendment, including but not limited to: staff time, legal review, and scheduling and conducting special meetings and consultations with LPSs and GSAs.

Basis of Payment: Time and materials

Budget Maximum: Not to exceed \$ _____

Estimate of Time Schedule: April 15, 2023 – July 15, 2023

SLDMWA Project Lead: John Brodie, john.brodie@sldmwa.org

Consultant Project Lead:

Special Instructions: (1) All invoices should be sent to pursuant to Article 6 of Exhibit B to the Agreement; (2) All invoices shall reference: “**Task Order F24-__ - __-TO2023-__ - __**”

Accepted:

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Federico Barajas Executive Director San Luis & Delta-Mendota Water Authority Date: _____	By: _____ Date: _____

Table 1: Budget Estimate for Proposed Scope of Work