**STATE AND FEDERAL CONTRACTORS WATER AGENCY**

**Consulting Services Agreement With**

**(Consultant)**

**Contract #**

This Consulting Services Agreement, hereafter referred to as “Agreement,” is entered into effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between the **State and Federal Contractors Water Agency**, hereafter referred to as “SFCWA,” and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** hereafter referred to as “Consultant.”

**Recitals**

1. SFCWA is a joint powers agency formed pursuant to California Government Code section 6500 et seq. to pursue ecosystem and water supply projects and to carry out research and studies concerning the State Water Project and the Central Valley Project, and to pursue any and all activities related or incidental thereto.

2. The SFCWA members are Metropolitan Water District of Southern California, Kern County Water Agency, State Water Project Contractors Authority, San Luis & Delta Mendota Water Authority, Westlands Water District, and Santa Clara Valley Water District. The SFCWA members are third party beneficiaries of this Agreement.

3. SFCWA requires the services of Consultant to provide [BRIEF DESCRIPTION OF SERVICES].

4. SFCWA desires to retain Consultant, and Consultant desires to perform the services required by SFCWA according to the terms set forth hereinafter.

**Terms of Agreement**

1. **Scope of Work**

a. SFCWA retains Consultant to provide consulting services necessary to complete the tasks set forth in Attachment A, Scope of Work, in a professional, technically competent, and timely manner. In the event of any inconsistency between Attachment A and the other terms and conditions of this Agreement, Exhibit A shall control. Any proposed amendment to the Scope of Work must be submitted by Consultant in writing for prior review and approval by SFCWA. Approval shall not be presumed unless such approval is made by SFCWA in writing.

b. Consultant shall provide SFCWA with monthly progress reports, as outlined in Section 9(b). Consultant will also hold regular status briefings in person, by phone, or by email depending on the topics to be addressed.

2. **Time and Term**

Time is of the essence in the performance of services under this Agreement. This Agreement is in effect from \_\_\_\_\_\_\_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, subject to earlier termination pursuant to Section 24 below, or extension by written agreement of the parties.

3. **Agreement Administrator**

a. In performing services under this Agreement, Consultant shall coordinate all contact with SFCWA through its Agreement Administrator. For purposes of this Agreement, SFCWA designates [\_\_\_\_\_\_\_\_] as the Agreement Administrator. SFCWA reserves the right to change this designation upon written notice to Consultant.

b. The acceptability of all services performed for this Agreement shall be determined by SFCWA’s Agreement Administrator. To the extent not otherwise established herein, SFCWA’s Agreement Administrator will establish the scope of services, timetable for completion of services, and any due dates for preliminary work or reports submitted to SFCWA.

4. **Key Personnel**

It is the intent of both parties to this Agreement that Consultant shall make available the professional services of [\_\_\_\_\_\_], who shall administer all work under this Agreement and shall coordinate directly with SFCWA. Any substitution of key personnel must be approved in advance by SFCWA’s Agreement Administrator and the Agreement shall be amended to reflect the changes.

5. **Independent Contractor**

Consultant agrees to furnish consulting services in the capacity of an independent contractor and neither Consultant nor any of its employees shall be considered to be an employee or agent of SFCWA.

6. **Sub-consultants**

a. Consultant shall be responsible to SFCWA for all services to be performed under this Agreement. All sub-consultants and their billing rates shall be approved by the Agreement Administrator in writing. Consultant shall be liable and accountable for any and all payments or other compensation to all sub-consultants performing services under this Agreement. SFCWA shall not be liable for any payment or other compensation for any sub-consultants.

b. Consultant’s contracts with sub-consultants shall require sub-consultant to maintain Workers’ Compensation, unemployment insurance and disability insurance as required by law, Automobile Liability insurance as required by the State of California, and liability insurance in an amount reasonable to compensate any person, firm, or corporation who may be injured or damaged as a result of the work performed under this Agreement, and shall require the subconsultant to comply with the following sections of this Agreement: Intellectual Property, Nonuse of Intellectual Property of Third Parties, Use of Materials, Confidentiality and Release of Information, Audit and Indemnity.

7. **Compensation**

a. For the services performed and the costs incurred by Consultant under this Agreement, and with approval of Agreement Administrator, SFCWA will compensate Consultant in accordance with the Budget and Fee Schedule, attached hereto as Attachment B. This Budget and Fee Schedule shall include the rates and allowable expenses of sub-consultants and shall remain in effect for the duration of this Agreement, unless amended in writing.

b. SFCWA will only pay Consultant’s expenses to the extent allowable expenses are identified in this Agreement. SFCWA shall pay Consultant for allowable expenses, including work and expenses of any sub-consultant, only at Consultant’s actual cost, unless an approved mark-up is specifically provided in the Budget and Fee Schedule. No payment will be made for expenses or other charges not included in this schedule, including other directs costs, sub-consultants’ fees and expenses.

8. **Maximum Amount**

The maximum amount payable under the terms of this Agreement, including expenses, will not exceed $000,000, unless expressly authorized in writing by SFCWA. Consultant shall promptly notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached $000,000(75% of maximum amount allowable). Consultant shall concurrently inform the Agreement Administrator of Consultant’s estimate of total expenditures required to complete its current assignments, and when the remaining work would exceed the maximum amount payable, shall await direction from the Agreement Administrator before proceeding with further work.

9. **Billings and Payments**

Consultant shall submit an invoice on the 7th day of each month to SFCWA to the mailing or email address provided in Section 26. The individual listed in the Agreement as Consultant’s key personnel or other identified designee shall sign and certify the invoice to be true and correct to the best of his/her knowledge. Consultant’s invoices shall include the following information:

a. Consultant’s name and mailing address, SFCWA’s project name, the beginning and ending billing dates, the maximum amount payable, a summary of costs for the current invoice, amount due for this invoice, and total amount previously invoiced.

b. A brief description of the work performed under the Agreement, appropriate for briefing the SFCWA Board of Directors and Member Agencies. This description shall provide an explanation of any delay or other fundamental changes in Consultant achieving the Scope of Work as set forth herein.

c. Invoices with Consultant and sub-consultant labor charges shall be itemized by date of service, employee name, title/classification, corresponding labor rate, number of hours worked, description of work performed, total amount due for labor charges, and shall include the following affirmation:

*“By signing this invoice, consultant certifies that the billing hours and work described herein is an accurate and correct record of services performed for SFCWA under this Agreement and these hours have not been billed on any other client invoices.”*

d. Invoices shall itemize allowable expenses and include receipts for which reimbursement is sought. Attached receipts should itemize each cost and provide descriptive information so that expenses are separately identified.

e. Consultant shall attach a copy of each sub-consultant invoice for which reimbursement is sought. Sub-consultant’s invoices shall set forth the actual rates and expenses charged to the Consultant.

f. Subject to the approval of the Agreement Administrator, SFCWA shall make payment to Consultant 30 days after date of the invoice. Consultant’s invoices submitted more than 90 days after completion of work, may be delayed or not otherwise timely paid.

10. **Successors and Assignment**

This Agreement covers professional services of a specific and unique nature. The parties understand that SFCWA entered into this Agreement based on the professional expertise and reputation of Consultant. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement in whole or in part without the prior written consent of SFCWA.

11. **Amendments**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

12. **Change in Ownership or Control**

Consultant shall notify the Agreement Administrator, in writing, of any change in ownership or control of Consultant’s firm or sub-consultant. Change of ownership or control of Consultant’s firm will require an amendment to the Agreement.

13. **Use of Materials**

a. SFCWA will make available to Consultant such materials from its files as may be required by Consultant to perform services under this Agreement. Such materials shall remain the property of SFCWA while in Consultant’s possession. Upon termination of this Agreement and payment of outstanding invoices of Consultant, or completion of work under this Agreement, Consultant shall turn over to SFCWA any property of SFCWA in its possession and any calculations, notes, reports, electronic files, or other materials prepared by Consultant in the course of performing the services under this Agreement upon request.

b. Consultant agrees that all work products, materials, calculations, notes, data, studies, reports, electronic files, or other documents prepared or developed by Consultant pursuant to this Agreement, including but not limited to, computer software, shall be the sole property of SFCWA. Consultant further agrees that SFCWA is free to use, reuse, publish, or otherwise deal with all such materials or work products. Consultant shall have no responsibility or liability for any revisions, changes, or corrections made by SFCWA, or any use or reuse inconsistent with the use contemplated in this Agreement, unless Consultant accepts such responsibility in writing.

14. **Intellectual Property**

All right, title and interest in all intellectual property conceived or developed in the course of Consultant’s work for SFCWA under this Agreement shall be the property of SFCWA. As used herein, the term “intellectual property” includes, but is not limited to, all inventions, patents, copyrightable subject matter, copyrights, test data, trade secrets, other confidential information and software.

a. Consultant shall not use or disclose any intellectual property conceived or developed in the course of Consultant’s work for SFCWA, except: (i) intellectual property in the public domain through no fault of Consultant, (ii) intellectual property which Consultant can prove was received by him or her from a third party owing no duty to SFCWA, and (iii) intellectual property for which Consultant has received express, written permission from the General Counsel for SFCWA, or from the General Counsel’s designated agent, or is authorized or required to use or disclose under the terms of this Agreement.

b. Consultant shall promptly notify SFCWA, in writing, of all intellectual property conceived or developed in the course of Consultant’s work for SFCWA under this Agreement.

c. Consultant shall assign and does hereby assign to SFCWA all right, title and interest to intellectual property conceived or developed by Consultant in the course of Consultant’s past and future work for SFCWA.

d. Consultant shall cooperate in the execution of all documents necessary to perfect SFCWA’s right to intellectual property under this Agreement.

e. When requested by SFCWA, or upon the completion of each work assignment or upon termination of this Agreement, Consultant shall provide to SFCWA all documents and other tangible media containing intellectual property developed by Consultant during the course of this Agreement, including all prototypes and computer programs.

f. When requested by SFCWA, or upon the delivery of intellectual property to SFCWA pursuant to subsection e. of this Section, Consultant shall promptly erase any and all copies of all SFCWA intellectual property from Consultant’s computers.

15. **Nonuse of Intellectual Property of Third Parties**

Consultant shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this Agreement, except for intellectual property for which Consultant has a license. Consultant shall indemnify, defend, and hold SFCWA harmless against all claims raised against SFCWA based upon allegations that Consultant has wrongfully used intellectual property of others in performing work for SFCWA, or that SFCWA has wrongfully used intellectual property developed by Consultant pursuant to this Agreement.

16. **Legal Requirements**

Consultant, at its own cost and expense, shall secure and maintain all licenses or permits required by law to practice its profession and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to the work. SFCWA is not responsible or liable for Contractor's failure to comply with any or all of the requirements contained in this Section.

17. **Guarantee and Warranty**

a. Consultant guarantees and warrants that the work shall be performed and completed in accordance with generally accepted industry standards, practices, and principles applicable to the work. Among other things, and without waiver of SFCWA’s other rights or remedies, SFCWA may require Consultant to re-perform any of said services which were not performed in accordance with these standards. Consultant shall perform the remedial services at its sole expense.

b. SFCWA’s representatives shall at all times have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement.

18. **Indemnity**

All work covered by this Agreement shall be at the risk of Consultant alone. Consultant shall defend (with counsel selected by SFCWA, in its sole discretion), indemnify and hold harmless, SFCWA, its officers, officials, employees, agents, invitees, and volunteers (the “Indemnitees") from and against any claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from Consultant’s performance of this Agreement, however caused, regardless of any negligent act of an Indemnitee, whether active or passive, excepting only such claims as may be the sole active negligence or willful misconduct of an Indemnitee, Consultant shall pay all costs and expenses that may be incurred by SFCWA in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this section shall survive the expiration, termination, or assignment of this Agreement.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Agreement, there must be an indemnification provision requiring the subcontractor to assume the defense, indemnify and save harmless, SFCWA, to the same extent as Consultant. Consultant’s failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Agreement.

[For contracts with “Design Professionals,” including architects, landscape architects, professional engineers, or land surveyors, use the following Alternate paragraph 1:

All work covered by this Agreement shall be at the risk of Consultant alone. Consultant shall defend (with counsel selected by SFCWA, in its sole discretion), indemnify and hold harmless, SFCWA, its officers, officials, employees, agents, invitees, and volunteers (the “Indemnitees”) from and against any claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from Consultant’s performance of this Agreement, but only to the extent caused by the negligent acts or omissions of Consultant or its employees, agents, affiliates or representatives or anyone for whose acts they may be liable. The parties agree that SFCWA will reimburse Consultant for that portion of the reasonable costs incurred by Consultant in the defense of SFCWA which is attributable to SFCWA’s active negligence, recklessness, or willful misconduct, as determined through settlement, arbitration, or litigation. Consultant shall pay all costs and expenses that may be incurred by SFCWA in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this section shall survive the expiration, termination, or assignment of this Agreement.

19. **Minimum Insurance Requirements**

a. Consultant hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the following described insurance coverage as outlined below:

|  |  |
| --- | --- |
| **POLICY** | **MINIMUM LIMITS OF LIABILITY** |
| (1) Workers’ Compensation; Employer’s Liability. | Statutory requirements for Workers’ Compensation; $ 1,000,000 Employers’ Liability. |
| (2) Comprehensive Automobile: Insurance Services Office, form #CA 0001 covering Automobile Liability, code 1 (any auto). | Bodily Injury/Property Damage $1,000,000 each accident. |
| (3) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). | $1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| (4) Errors and Omissions/Professional Liability | Level 1: $1,000,000 for each incidence and $3,000,000 in aggregate  Level 2: $2,000,000 per claim. |

b. Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions over $5,000 must be declared to and approved by SFCWA.

c. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

* 1. For any claims related to this Agreement, Consultant’s insurance coverage shall be primary insurance as respects SFCWA, its directors, officers, employees and agents. Any insurance or self-insurance maintained by SFCWA, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.
  2. Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to SFCWA, its directors, officers, employees or agents.
  3. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

d. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise approved by SFCWA.

e. If any of the above-required insurance coverages contain annual aggregate limits, Consultant must give SFCWA notice of any pending claim or lawsuit which may diminish the aggregate. Consultant must take steps to restore the impaired aggregates or provide replacement insurance protection. SFCWA has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect SFCWA’s protection are allowed, without SFCWA’s prior written consent.

f. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to SFCWA an original Certificate of Insurance on a standard ACORD form, or other form acceptable to SFCWA, substantiating the required coverages and limits set forth above and also containing the following statement with respect to the Commercial General Liability and Comprehensive Auto policies: “SFCWA and its directors, officers, agents, employees, and volunteers are made additional insureds, but only insofar as the operations under this Agreement are concerned.”

g. Certified Copies of Policies: Upon request by SFCWA, Consultant shall allow SFCWA to view a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

h. In addition to any other remedy SFCWA may have, if Consultant fails to maintain the insurance coverage as required in this Section, SFCWA may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and SFCWA may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Agreement.

i. Consultant’s Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant’s operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude SFCWA from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant’s indemnity obligations.

j. The required insurance coverage outlined herein shall not be suspended, voided, canceled or terminated, reduced in coverage, or in limits, by Consultant, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to SFCWA.”

20. **Audit, Retention, and Inspection of Records**

a. Consultant shall be responsible for ensuring the accuracy and propriety of all billings and shall maintain all supporting documentation for the period specified below.

b. SFCWA will have the right to review, obtain, and copy all books, records, computer records, accounts, invoices, documentation, and any other materials pertaining to performance of this Agreement (collectively “Records”), including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise examining the Records. Consultant agrees to maintain such Records during the term of this Agreement and for a period of three years after final payment under the Agreement or three years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later.

c. Upon reasonable notice from SFCWA, Consultant shall cooperate fully with any audit of its billings conducted by SFCWA and shall permit access to its books, records and accounts as may be necessary to conduct such audits.

d. If so directed by SFCWA upon the expiration of this Agreement, Consultant shall cause all Records to be delivered to SFCWA as depository.

21. **Conflict of Interest and Gift Restrictions**

a. Consultant represents that it has advised SFCWA in writing prior to the date of signing of this Agreement of any known relationships with a third party, SFCWA’s Board of Directors, or employees which would (1) present a conflict of interest with the rendering of services under this Agreement or the appearance of a conflict of interest, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

b. Consultant agrees not to accept any employment during the term of this Agreement from any other person, firm or corporation where such employment is a conflict of interest or where such employment is likely to lead to a conflict of interest between SFCWA’s interest and the interests of such person, firm or corporation or any other third party. Consultant shall immediately inform SFCWA, throughout the term of this Agreement, if any employment contemplated may develop into a conflict of interest, or potential conflict of interest.

c. Consultant is hereby notified that the California Political Reform Act (“PRA”) and regulations of the Fair Political Practices Commission (“FPPC”) prohibit SFCWA Board members, officers and employees from receiving or agreeing to receive, directly or indirectly, any compensation, reward or gift from any source except from his or her appointing authority or employer, for any action related to the conduct of SFCWA’s business, except as specifically provided in the PRA and FPPC regulations. Consultant agrees not to provide any prohibited compensation, reward or gift to any SFCWA Board member, officer or employee.

22. **Political Reform Act Compliance**

Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by SFCWA, as provided for in the Conflict of Interest Code for SFCWA, shall promptly file economic disclosure statements for the disclosure categories determined by SFCWA, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

23. **Confidentiality and Release of Information**

Consultant shall not make public information releases or otherwise disclose any information obtained, developed, or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the Agreement Administrator.

24. **Termination**

SFCWA may terminate this Agreement with or without cause by providing written notice to Consultant not less than ten days prior to an effective termination date. The notice shall be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Consultant at the address indicated in Section 26, below.

SFCWA’s only obligation in the event of termination will be payment of fees and expenses incurred in conformity with this Agreement up to and including the effective date of termination, less any compensation to SFCWA for damages suffered as a result of Consultant’s failure to comply with the terms of this Agreement. If this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then SFCWA shall be obligated to compensate Consultant only for that portion of Consultant’s services which is of benefit to SFCWA.

25. **Force Majeure Events**

a. Excuse of Performance.

In addition to specific provisions of the Agreement, lack of performance by any Party shall not be deemed to be a breach of this Agreement, where delays or defaults are due to acts of God, or the elements, casualty, strikes, lockouts, or other labor disturbances, acts of the public enemy, orders or inaction of any kind from the government of the United States, the State of California, or any other governmental, military or civil authority (other than SFCWA, or another party to this Agreement), war, insurrections, riots, epidemics, landslides, lightning, droughts, floods, fires, earthquakes, civil disturbances, freight embargoes, or any other inability of any Party, whether similar or dissimilar to those enumerated or otherwise, which are not within the control of the Party claiming such inability or disability, which such Party could not have avoided by exercising due diligence and care and with respect to which such Party shall use all reasonable efforts that are practically available to it in order to correct such condition (such conditions being herein referred to as "Force Majeure Events").

b. Responding to Force Majeure Events.

The Parties agree that in the event of a Force Majeure Event which substantially interferes with the implementation of this Agreement, the Parties will use their good faith efforts to negotiate an interim or permanent modification to this Agreement which responds to the Force Majeure Event and maintains the principles pursuant to which this Agreement was executed.

26. **Notices**

a. With the exception of notice pursuant to Section 24 above, any notice or communication given under this Agreement shall be effective when deposited, postage prepaid, with the United States Postal Service by first-class mail and addressed to the contracting parties as follows:

Consultant:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention:\_\_\_\_\_\_\_\_\_\_\_\_\_

SFCWA:

State and Federal Contractors Water Agency

1121 L St., Suite 806

Sacramento, CA 95814

Attention: Byron Buck

Accounting Email:

accounting@sfcwa.org

b. Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

27. **National Labor Relations Board Certification**

Consultant, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant’s failure to comply with an order of a federal court which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

28. **Americans with Disabilities Act (ADA) of 1990**

By signing this Agreement, Consultant assures SFCWA that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

29. **Non-discrimination**

a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status. Consultant and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 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 subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

30. **Drug-Free Certification**

By signing this Agreement, Consultant hereby certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The person’s or the organization’s policy of maintaining a drug-free workplace;

(3) Any available counseling, rehabilitation, and employee assistance programs; and

(4) Penalties that may be imposed upon employees for drug abuse violations.

c. Every employee of Consultant who works under this Agreement shall:

(1) Receive a copy of Consultant’s Drug-Free Workplace Policy Statement; and

(2) Agree to abide by the terms of Consultant’s Statement as a condition of employment on this Agreement.

31. **Union Organizing**

By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

a. Contractor will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

b. Consultant will not meet with employees or supervisors on SFCWA or state property if the purpose of the meeting is to assist, promote or deter union organizing, unless the property is equally available to the general public for meetings.

32. **Severability**

If any provision of this Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

33. **Jurisdiction and Venue**

This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that any action arising out of this Agreement shall be brought in Sacramento County, California, regardless of where else venue may be proper.

34. **Waiver**

No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party’s right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver, to be valid, shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

35. **Entire Agreement**

a. This writing contains the entire agreement of the parties relating to the subject matter hereof. The parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal written amendment thereto.

b. Notwithstanding the foregoing, and to realize the purpose of this Agreement, the Agreement Administrator may issue a written modification to the Scope of Work, if this modification will not require a change to any other term of this Agreement.

36. **Joint Drafting**

Both parties have participated in the drafting of this Agreement.

37. **Successors**

This Agreement shall be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives

38. **Authority**

Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

39. **Headings**

The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

40. **Campaign Contribution Disclosure**

Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Attachment “C.”

41. **Counterparts**

This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, and all counterparts shall be deemed the same instrument with the same effect as if all parties hereto had signed the same signature page.

IN WITNESS THEREOF, SFCWA and Consultant have executed this Agreement on the date set forth below.

SFCWA:

By:

Byron Buck

Executive Director

Date:

Consultant:

By:

Name:

Title:

Date:

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jason Peltier

Board Secretary

**ATTACHMENT A**

**Scope Of Work For Consultant**

# Consultant will provide technical services to the SFCWA in the following areas:

**ATTACHMENT B**

**SCHEDULE OF FEES AND BUDGET**

**For Professional Services by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Schedule of Fees**

|  |  |
| --- | --- |
| **Name** | Hourly Rate |
|  |  |
|  |  |

**Budget**

##### Maximum Amount Payable: $00,000

**Attachment C**

**Levine Act DISCLOSURE Statement**

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than $250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current members of the SFCWA Board of Directors are: (check for current list)

|  |  |  |
| --- | --- | --- |
| Metropolitan Water District | Director: Brenda Burman (Vice President) | Alternate: Vacant |
| Kern County Water Agency | Director: Don Marquez | Alternate: Vacant |
| State Water Project Contractors Authority | Director: Dan Charlton | Alternate: Vacant |
| State Water Project Contractors Authority | Director: Jill Duerig | Alternate: Dan Flory |
| San Luis & Delta Mendota Water Authority | Director: Dan Nelson (President) | Alternate: Chris Hurd |
| San Luis & Delta Mendota Water Authority | Director: Jason Peltier (Secretary/Treasurer) | Alternate: Martin McIntyre |
| San Luis & Delta Mendota Water Authority | Director: William Harrison | Alternate: Earl Perez |
| Westlands Water District | Director: Jose Gutierrez | Alternate: Vacant |
| Santa Clara Valley Water District | Director: Beau Goldie | Alternate: Cindy Kao |

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than $250 to any SFCWA Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

\_\_\_ YES \_\_\_ NO

If yes, please identify the Director(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than $250 to any SFCWA Director(s) in the three months following the award of the contract?

\_\_\_ YES \_\_\_ NO

If yes, please identify the Director(s):

Answering yes to either of the two questions above does not preclude SFCWA from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| date |  | (signature of authorized official) |
|  |  |  |
|  |  | (type or write appropriate name, title) |
|  |  |  |
|  |  | (type or write name of company) |

California Government Code Section 84308

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars ($250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars ($250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars ($250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars ($250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars ($250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814, (916) 322-5660.