

# Delta Diablo



## REQUEST FOR PROPOSAL (RFP) FOR

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**Bond, Disclosure and Tax Counsel Services**  
**RFP# DDJP\_Bond, Disclosure and Tax Counsel Services\_091923**  
**Date Issued: September 19, 2023**

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**It is the Bidder's responsibility to read the entire document, any addendums and to comply with all requirements listed herein. Any addenda to this Request for Proposal will be directed to all participating Bidders. It is the Bidders responsibility to watch their e-mail/Periscope Application for any addendums, notices, or changes to the RFP or process.**

<b>Issued By:</b>	Delta Diablo
<b>RFP Administrator:</b>	Judy Phan, Purchasing Supervisor Delta Diablo 2500 Pittsburg-Antioch Hwy Antioch, CA 94509

The information contained in this Request for Proposal (RFP) is confidential and proprietary to Delta Diablo and is to be used by the recipient solely for the purpose of responding to this RFP.

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## **I. ABOUT THE DISTRICT**

Delta Diablo (District) is a California special district that provides wastewater resource recovery services for over 215,000 customers in the cities of Antioch and Pittsburg, and the unincorporated Bay Point community in east Contra Costa County. These services include wastewater collection, conveyance, and treatment; recycled water production and distribution; energy conservation and production; beneficial biosolids reuse; pretreatment and pollution prevention; street sweeping; and household hazardous waste collection.

As a “Utility of the Future,” the District embraces innovative approaches and sustainable solutions to benefit the environment, lower operating costs, increase revenues, and serve as responsible stewards of the public’s resources and trust.

Website: <https://www.deltadiablo.org/>

## **II. INTRODUCTION TO THE REQUEST FOR PROPOSAL**

The Delta Diablo (“the District”) is soliciting statements of qualifications and proposals from legal firms to serve in the role of bond and/or disclosure counsel and/or tax counsel in connection with the proposed bond funding and other financing source to fund its capital improvement program.

## **III. SCOPE OF WORK**

Provide Bond, Disclosure and Tax Counsel services as requested which may include, but are not limited to assisting the District to:

### **A. Bond Counsel**

Bond Counsel will be expected to provide complete legal representation on all issues of state and federal law, including taxation, with respect to the issuance of Revenue Bonds, Clean Water Fund/Drinking Water Fund debt, Tax Credit Funded debt, State Revolving Loan Fund Debt, and the Association Bonding Program.

Bond Counsel services will include, but not be limited to, the following:

1. Advise the District in structuring general obligation and revenue debt issuances including tax-exempt and taxable financings, credit-enhanced financings, financings incorporating derivative structures, and other forms of debt financings.
2. Draft or review legal documentation necessary to issue debt including, as appropriate, bond resolutions, board materials, preliminary and final official statements, notice of sale and bid forms, bond purchase agreements, Indentures, Supplemental Indentures, and tax regulatory agreements.
3. Render unqualified legal opinions concerning the validity and the tax-exempt status of the District’s debt issuances.
4. Prepare and distribute closing documentation and coordinate and conduct the closing of bond, note, or other financing transactions.
5. Draft or review legislation relating to the issuance of District debt.
6. Seek, on behalf of the District, any necessary opinions, letter rulings, or other documentation from the Internal Revenue Service or other bodies.
7. Provide sophisticated legal advice on federal tax matters including, but not limited to, reimbursement, arbitrage, and private activity.
8. As necessary, assist the District in resolving issues regarding the District’s debt that are raised by bondholders, rating agencies, or public officials.

## B. Disclosure Counsel

Disclosure Counsel will be expected to prepare, on an ongoing basis, disclosure information in connection with the District's issuance of general obligation debt. In this capacity, Disclosure Counsel will be responsible for preparation of the District's official statements relating to its debt offerings. Disclosure Counsel will be expected to work with Bond Counsel assigned to those other programs and to provide the specific District disclosure information required for their disclosure documents.

Disclosure Counsel will be expected to work with appropriate regulatory agencies, to ensure that the District's disclosure document is updated on a timely basis. Disclosure Counsel will be expected to conduct and manage all necessary due diligence activities with respect to preparation of the District's annual disclosure information and will be expected to render an opinion. Disclosure Counsel will advise and assist the District in complying with all appropriate state and federal securities laws.

## C. Tax Counsel

Tax Counsel will be expected to prepare tax regulatory agreements for the debt issues and advise the District in complying with state and federal laws relating to tax-exempt financing. Tax Counsel will be expected to consult with and lead other Counsel on the analysis of tax matters for both new money and refunding bond issues. Tax Counsel will respond and consult with the State and Federal regulatory agencies on tax issues and current developments on the use of proceeds, private activity, arbitrage, and other matters related to the federal tax exemption. Tax Counsel will provide full tax analysis and opinions on District debt issues.

## IV. RFP TIMELINE

Event	*Date
RFP Issue Date	9/19/2023
Vendor RFP Questions Deadline to Judy Phan <a href="mailto:judyp@deltadibalo.org">judyp@deltadibalo.org</a>	9/26/2023
Delta Diablo Response to Vendor Questions	9/30/2023
RFP Responses Due	<b>10/6/2023 by 5:00pm (PDT)</b>
Anticipated Award Date	October 2023

*\*Delta Diablo does not guarantee the above schedule and reserves the right to modify this schedule at its discretion.*

## V. VENDOR REQUIREMENTS

The requirements shown below are essential to Delta Diablo for proposal consideration. Vendor's failure to provide or be in compliance with any one or more of the following requirements will negatively impact the evaluation of Vendors proposal and may result in disqualification.

- a) The District's Terms and Conditions of Services, as referenced in ***Attachment A-Professional Services Contract Draft to this RFP***, will be incorporated into any Agreement that may result from this RFP.
- b) The District's Certificate of Insurance Requirements, as referenced in ***Attachment A-Professional Services Contract Draft to this RFP***, will be incorporated into any Agreement that may result from the RFP.
- c) All proposals shall remain available for Delta Diablo acceptance for a minimum of 120 days following the RFP close date.
- d) No late proposals will be accepted. Any proposals received after the specified deadline for submission shall result in automatic disqualification.

## VI. VENDOR QUALIFICATIONS AND EXPERIENCE

To assist in selecting Bond and Disclosure Counsel, please provide the following information:

- a. **Assigned personnel.** Identify your firm's team for the financing, specifically identifying the individual who would serve as the overall lead for the engagement and the primary service provider(s) for the Bond and Disclosure Counsel roles, as well as the attorney responsible for the tax analysis and opinion. Include only those persons who are expected to work on the financing. Provide resumes for each participating team member, highlighting relevant experience in the development of bond and disclosure documents for redevelopment credits. Resumes can be included in an appendix.
- b. **Experience.** Briefly describe the firm's experience as Bond and/or Disclosure Counsel in California over the past 2 years in refunding's or new issuances. Indicate whether the proposed primary service providers(s) contributed to the firm's experience, and whether you served as bond or disclosure counsel, or both.

List in an appendix your firm's experience in lease financing, equipment financing, and other experience over the past 5 years that you believe may be relevant to future appointments by the District.

- c. **Scope of appointments.** Please comment on the relative benefits and disadvantages of combining or separating the appointment for the roles of bond and disclosure counsel. If proposing for both, please be sure to clarify how those roles would be handled.

- d. **Additional information.** Please comment on any other key aspects that your firm believes to be critical to the legal structure and/or disclosure document. Also comment on how your firm is best qualified to assist in developing the financing documents for the Refunding Bonds. Provide any other information you believe may be useful in making decisions regarding this appointment.

## **VII. LEGAL ISSUES AND POTENTIAL CONFLICT OF INTEREST**

The proposal must provide the following information:

1. Conflict of Interest: Disclose any existing or contemplated relationship with any other person or entity, including relationships with any parent, subsidiary or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFQ. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
2. Any pending investigations of the firm and any enforcement, settlements, or disciplinary actions taken within the past five years by any regulatory body.
3. The firm's affiliation or relationship, if any, with any labor organizations.

## **VIII. GENERAL INFORMATION**

### **A. ISSUING OFFICE AND COMMUNICATIONS REGARDING THE RFP**

This RFP, and any subsequent addenda to it, is being issued on behalf of Delta Diablo. The Purchasing Division is the sole point of contact regarding all procurement and contractual matters relating to the requirements described in this RFP. The Purchasing Division is also the only office authorized to change, modify, clarify, etc., the specifications, terms, and conditions of this RFP and any Agreements(s) awarded as a result of this RFP.

Any requests for clarification concerning this RFP must be submitted via e-mail to Judy Phan, Purchasing Supervisor, [judyp@deltadiablo.org](mailto:judyp@deltadiablo.org).

The submission of RFP response, pricing proposal, and attachments must be submitted to Judy Phan, Purchasing Supervisor, [judyp@deltadiablo.org](mailto:judyp@deltadiablo.org).

Vendors are advised that failure to adhere to the above communications requirements may result in disqualification.

## **B. INSTRUCTIONS FOR SUBMITTING PROPOSALS**

Proposals in response to this RFP must be submitted by email to [judyp@deltadiablo.org](mailto:judyp@deltadiablo.org) no later than **October 6, 2023 5:00 PM (PDT)**.

Vendors must provide a complete, straightforward, concise response to all prerequisites, questions and information in the RFP as detailed. Submission of a proposal via email confirms Vendor's understanding and acceptance of all requirements, terms, and conditions of the RFP.

Vendor must not provide superfluous materials such as marketing materials or website links in response to, or in lieu of, specific responses to the questions herein, and may be disqualified for providing superfluous materials.

## **C. ADDENDA TO THE REQUEST FOR PROPOSAL**

Any changes, additions, or deletions to this RFP will be in the form of written Addenda issued by the Delta Diablo via email. The District will not be responsible for failure of any prospective Vendor to receive such Addenda. All Addenda so issued shall become part of this RFP.

## **D. VENDOR QUESTIONS**

An opportunity to submit questions will be allowed until September 26, 2023 5:00 PM PDT. Please send all questions to Judy Phan, Purchasing Supervisor, [judyp@deltadiablo.org](mailto:judyp@deltadiablo.org).

## **E. PROPOSAL ACCEPTANCE**

The proposal must be completed and submitted via email to Judy Phan, Purchasing Supervisor, [judy@deltadiablo.org](mailto:judy@deltadiablo.org) on the forms provided or in the format indicated herein.

Delta Diablo reserves the right to withdraw this RFP at any time. All documents submitted to the Delta Diablo on behalf of this RFP will become the exclusive property of Delta Diablo and will not be returned.

Delta Diablo reserves the right to accept or reject any or all Proposals, make more than one Award, or no Award, as the best interests of Delta Diablo may appear. Any Agreement(s) awarded pursuant to this RFP will be in writing and incorporate the Requirements and Specifications contained in the RFP, as well the applicable contents of the Vendor's Proposal as accepted by Delta Diablo.



## **F. PROPOSAL FORMAT**

Provide a cover letter for the response (please limit your proposal to 8 pages excluding cover letter and appendices), which contains:

- The following text: Response to Delta Diablo REQUEST FOR PROPOSAL –RFP #DDJP\_Bond, Disclosure and Tax Counsel Services\_091923
- Company legal name and address for primary headquarters.
- Authorized contact information and signature of a representative of the company who is duly authorized to enter into agreements. The submission of a signed response will confirm understanding and acceptance of all requirements, terms, and conditions of the Request for Proposal.

In addition, proposals should demonstrate a clear understanding of the project and contain a comprehensive discussion of how the Vendor will fulfill the requirements of the Scope of Services, including a discussion of the important features and Vendors attributes, highlighting any aspects, which separate it from its competitors. The proposal should be submitted using the following categories:

1. Cover Letter
2. Table of Contents
3. Executive Summary
4. Approach to managing Delta Diablo's Bond, Disclosure and Tax Counsel Services as outlined in the Scope of Services
5. Requirement Responses
6. Qualification Responses
  - Minimum qualifications
  - Company Overview and Experience: Briefly describe the firm's experience as Bond and/or Disclosure Counsel in California over the past 2 years in refunding's or new issuances. Indicate whether the proposed primary service providers(s) contributed to the firm's experience, and whether you served as bond or disclosure counsel, or both.
  - Organizational Chart, Background description, locations, and Experience
  - Transmittal Letter: The proposal must include a transmittal letter signed by an official authorized by the firm to solicit business and enter into contracts. The letter should include the name, address, email address, and phone number of the firm's primary contact person.

- References: Please provide at least three (3) references for the individuals to be assigned to this assignment. Include name and title of the individual, issuer, email and phone number.
- Latest Audited Financial Statements

## 7. Legal Issues and Potential Conflict of Interest

8. Pricing shall include Fee Proposal: Please indicate your firm's fees for Bond Counsel, Disclosure Counsel, and both Bond and Disclosure Counsel roles. Flat fees contingent on closing are strongly preferred, however, to the extent hourly fees are proposed, please include an estimate of the total fee and/or expected range, and not-to-exceed amount if feasible. Also, please indicate what expenses the firm would bill in addition to the fee and a proposed cap.

## **PROPOSAL PREPARATION COSTS**

Vendor will bear all costs incurred in the preparation and submission of the Proposal and related documentation, including Vendor's presentation to Delta Diablo. If Vendor is apparent awardee, Vendor will bear its own costs in negotiating and finalizing an agreement with the District.

## **G. AGREEMENT TERM**

It is anticipated that the initial term of any Agreement awarded pursuant to this RFP will be for a period of one-year. Delta Diablo may, at its option, extend or renew the Agreement for two additional one-year periods on the same terms and conditions.

## **H. SELECTION CRITERIA**

The District will select counsel based on its evaluation of the proposer's experience (40%), response to the questions asked in the RFP (40%), and fees (20%).

## **I. BEST VALUE AWARD**

Delta Diablo intends to select the responsive and responsible Vendor(s) whose proposal(s) contain the combination of solution features, Vendor attributes, and best overall value.

A responsive Vendor is one whose offer satisfies the requirements of this RFP, including the requirements of the Terms and Conditions. A responsible Vendor is one that is considered capable of performing and is otherwise eligible and qualified to perform the proposed Requirements Scope.

The District will determine the best overall value by comparing differences in solution features and Vendor attributes offered with differences in related factors, striking the most advantageous balance between expected performance and the overall requirements of the District. Vendors, therefore, must be persuasive in describing their

solution features and Vendor attributes and their value in enhancing the likelihood of successful performance and achievement of the District's requirements.

The District's selection may be made on the basis of the initial Proposals, or the District may elect to negotiate with Vendors who are selected as finalists. The Evaluation Team may utilize Vendor's Oral Presentations, additional material information, or References from the Vendor and others to come to a determination of award(s).



**DELTA DIABLO**  
2500 Pittsburg-Antioch Highway, Antioch, CA 94509  
**CONSULTING SERVICES CONTRACT**

**PROJECT NAME AND NUMBER:**

THIS CONTRACT SHALL BE BINDING ON THE DISTRICT ONLY IF IT IS SIGNED BY AN AUTHORIZED DESIGNEE

This Contract ("Contract") is made by and between Delta Diablo ("District") and, ("Consultant"). The parties agree as follows:

CONSULTANT DATA

**Full Business Name:**

**Address:**

**City, State, ZIP:**

**Business Telephone:**

**Business Fax:**

**Email:**

**Federal Tax Identification Number ("TIN"):**

**Consultant Contact/Title:**

**District Contact/Title:**

**Consultant certifies under penalty of perjury that Consultant is a**

☐ Sole Proprietor

☐ Corporation

☐ Limited Liability Company

☐ Partnership

☐ Nonprofit Corporation

☐ Government Agency

☐ Other [describe: ]

**CONTRACT TERMS**

**Effective Date:**

**Completion Date:**

**Payment Limit: \$**

**Liquidated Damages: \$ per day**

Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided above by Consultant.

1. Scope of Service. District hereby contracts with Consultant, and Consultant accepts such, to perform the professional services as described in Appendix B (Scope of Services), upon the terms and in consideration of the payments stated herein.
2. Report Disclosure Section. Pursuant to Government Code Section 7550, Consultant shall include in all documents or written reports completed and submitted to District in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section only applies if the Payment Limit of this Agreement exceeds \$5,000. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.
3. Insurance. Consultant may not commence work under this Agreement until it has furnished evidence of the insurance prescribed in Appendix A and may not continue to perform any work under this Agreement if the insurance required herein is no longer in effect.
4. Payment. District shall pay Consultant for professional services performed at the rates shown in Appendix C, which include all overhead and incidental expenses, for which no additional compensation will be allowed. Notwithstanding the foregoing, District shall reimburse those incidental expenses specifically itemized in Appendix C, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to the District. In no event may the total amount paid to



Consultant exceed the Payment Limit specified on page 1, **Payment Limit**, without District's prior written approval.

- a. **Billing Statements:** Consultant shall submit billing statements in the manner and form prescribed by the District detailing the work performed and listing, for each item of services, the employee categories, hours and rates. Except as otherwise provided in the Scope of Services, Consultant shall submit the billing statements no later than 30 days from the end of the month in which the services described in the billing statement were actually rendered. Except as provided in subsections (b) - (d) below, District will endeavor to pay Consultant within 30 days after receipt of each statement.
  - b. **Documentation:** Consultant shall furnish progress reports with each billing statement at no additional charge. Consultant shall include sufficient detail in each progress report, and shall furnish to the District whatever additional information is necessary, to enable the District to determine whether Consultant is performing all tasks described in the Scope of Services pursuant to the schedule set forth in the Scope of Services.
  - c. **Penalty for Late Submission:** If District is unable to obtain reimbursement from the state or federal government as a result of Consultant's failure to submit to District a timely billing statement as set forth above, District will not be obligated to pay Consultant for the services included in the late billing statement.
  - d. **Right to Withhold:** District may withhold payment to Consultant following written notice to Consultant that: (i) Consultant has failed to fully perform its obligations under this Agreement (including, without limitation, any failure to submit required deliverable items according to the schedule set forth in the Scope of Services); (ii) Consultant has neglected, failed, or refused to furnish information or cooperate with any inspection, review, or audit of its work or records; or (iii) Consultant has failed to sufficiently itemize or document its billing statement.
  - e. **Audit Exceptions:** Consultant accepts responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Agreement. Within 30 days of demand, Consultant shall pay District the full amount of District's obligation to the state and/or federal government resulting from any audit exceptions that are attributable to Consultant's failure to properly perform any of its obligations under this Agreement.
5. **Extra Work.** Any work or services in addition to the work or services described in the Scope of Services that District deems necessary to properly complete the work or services described in Scope of Services shall be performed by Consultant at the direction of District according to the rates or charges listed in Appendix C. In the event that no rate or charge is listed for a particular type of extra work, Consultant will be paid for the extra work at a rate to be mutually agreed on prior to the commencement of the extra work. In no event will Consultant be entitled to compensation for extra work unless, prior to commencement of the extra work, District has executed a written amendment describing the extra work and payment terms in accordance with Section 25. **Amendments.**
6. **Time for Completion.** Consultant shall complete all services covered by this Agreement no later than the end of the term as set forth above. Notwithstanding the foregoing, to the extent the Scope of Services provides for the phasing of services, Consultant shall complete all services for each phase of the project by the deadlines stated in the Scope of Services.
7. **Termination by District.** At its option, District may terminate this Agreement at any time by written notice to Consultant, whether or not Consultant is then in default. Upon such termination, Consultant shall, without delay, deliver to District all materials and records prepared or obtained in the performance of this Agreement, and District shall pay Consultant, without duplication, all amounts due for the services rendered up to the date of termination.
8. **Abandonment by Consultant.** If Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, Consultant shall, without delay, deliver to District all materials and records prepared or obtained in the performance of this Agreement. District shall pay Consultant the amount it determines to be the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which District incurs as a result of such cessation or abandonment.

9. Ownership of Documents. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of District. Consultant shall retain, and make available to District in accordance with Section 10. Record Retention and Auditing, all materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement.
10. Record Retention and Auditing. Except for materials and records delivered to District, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment under this Agreement. Upon request by District, Consultant shall promptly make such materials and records available to District, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by the District, at no additional charge and without restriction or limitation on their use.
11. Independent Contractor Status. The parties intend that Consultant, in performing the services specified herein, is acting as an independent contractor and that Consultant will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association. Additionally, Consultant is not entitled to participate in any pension plan, workers' compensation plan, health plan, insurance, bonus or similar benefits District provides to its employees. In the event that District exercises its right to terminate the Agreement, Consultant expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances or laws applicable to employees.
12. Breach. If Consultant fails to perform any of the services described in this Agreement in the manner and time frame set forth in the Scope of Services or otherwise breaches this Agreement, District may pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement are not subject to non-judicial arbitration.
13. Compliance with Laws. In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulations, whether federal, state, or local in origin, including, but not limited to, licensing and purchasing practices, and wages, hours and conditions of employment, including nondiscrimination and prevailing wage rates and their payment in accordance with California Labor Code Section 1775. If any federal or state regulations or laws touching upon the subject of this Agreement are adopted or revised during the term hereof, this Agreement will be deemed amended and Consultant will comply with such federal or state requirements.
14. Assignment. Consultant may not assign or transfer this Agreement, in whole or in part, whether voluntarily, by operation of law or otherwise; provided, however, Consultant may, subject to any required state or federal approval, enter into subcontracts for the portion of the services for which Consultant does not have the facilities to perform so long as Consultant obtains the District's written consent to such subcontracting prior to execution of this Agreement. The District may withhold consent to any proposed subcontract in his or her sole and absolute discretion. Any purported assignment, transfer or subcontract that does not comply with the terms hereof is void.
15. Endorsement on Plans. Consultant shall endorse all plans, specifications, estimates, reports and other items described in Scope of Services prior to delivering them to District, and, where appropriate, indicate his or her registration number.
16. Works Made for Hire. All reports, original drawings, graphics, plans, studies, and other data and documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C.A., Sections 101 *et seq.*, as amended) for District, and Consultant unconditionally and irrevocably transfers and assigns to District all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Consultant shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without District's prior express written consent. If any of the works made for

hire is subject to copyright protection, District reserves the right to copyright such works and Consultant agrees not to copyright such works. If any works made for hire are copyrighted, District reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.

17. **Indemnification.** Consistent with California Civil Code section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless District, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties or costs imposed as a result of an administrative proceeding, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by District, Consultant shall defend any such suits at its sole cost and expense. If District elects to provide its own defense, Consultant shall reimburse District for any expenditures, including reasonable attorneys' fees and costs. Consultant's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of District or any other person; provided, however, that Consultant will not be required to indemnify, including the cost to defend, District for the proportion of liability a court determines does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This indemnification clause will survive the termination or expiration of this Agreement.
18. **Endorsements.** Consultant may not, in its capacity as a Consultant with District, (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of District's governing body, (b) publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of District's governing body or (c) participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Consultant is not publicly endorsing a product, as long as Consultant's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of District. Notwithstanding the foregoing, Consultant may express its views on products to other consultants, to District's governing body or its officers, or to others who may be authorized by District's governing body or by law to receive such views.
19. **Project Personnel.** Consultant may only make changes in project personnel and authorized subconsultants with the District's prior written consent, and Consultant shall notify the District in writing at least thirty (30) days in advance of any proposed change. Any person proposed as a replacement shall possess training, experience, and credentials comparable to those of the person being replaced.
20. **Inspection.** Authorized representatives of District, the State of California and the United States Government may monitor, inspect, review and audit Consultant's performance, place of business and records pertaining to this Agreement.
21. **Conflicts of Interest.** Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, Consultant will employ no person having any such interest. If requested to do so by District, Consultant shall complete a "Statement of Economic Interest" form and deliver it to the District and shall require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and deliver it to the District. Consultant covenants that Consultant, its employees and officials, are not now employed by District and have not been so employed by District within 12 months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code Section 1090. In addition to any indemnity provided by Consultant in this Agreement, Consultant shall indemnify, defend and hold District harmless from any and all claims, investigations, liabilities or damages resulting from or related to any and all alleged conflicts of interest.





22. Nonrenewal. Consultant understands and agrees that there is no representation, implication, or understanding that the services provided by Consultant under this Agreement will be purchased by District. Under a new contract following expiration or termination of this Agreement, and Consultant waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Consultant.
23. Professional Competence; Licensure. Consultant represents and warrants that it is (i) professionally competent and able to provide the professional services described in this Agreement by reason of Consultant's personal knowledge and skill, and (ii) currently licensed, and will remain licensed in good standing at all times during the term of this Agreement, as one of the following: (a) an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the California Business and Professions Code; (b) a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the California Business and Professions Code; (c) a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the California Business and Professions Code; or (d) a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the California Business and Professions Code.
24. Notices. All notices under this Agreement must be in writing, and, except as otherwise provided in the Scope of Services, sent by personal delivery (including overnight courier service) or by certified United States Mail, postage prepaid, to the parties at the addresses designated above, unless changed by written notice to the other party. Consultant shall address all notices to District to the District. The effective date of the notice is the date of deposit in the mail or of other delivery, except that the effective date of notice to District is the date of receipt by the District.
25. Amendments. This Agreement may be amended only by written agreement signed by both of the parties.
26. Disputes. Disagreements between District and Consultant concerning the meaning, requirements or performance of this Agreement are subject to final written determination of the District or in accordance with the applicable procedures (if any) required by state or federal government.
27. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement.
28. No Implied Waiver. No waiver of any provision of this Agreement by District is valid unless it is in writing and signed by District. Waiver by District at any time of any breach of this Agreement may not be deemed a waiver of or consent to a subsequent breach of the same or any other provision of this Agreement. If Consultant's action requires the consent or approval of District, that consent or approval on one occasion may not be deemed a consent to or approval of that action on any later occasion or a consent to or approval of any other action. Subject to Section 26. Disputes above, inspections, approvals or statements by any officer, agent or employee of District indicating Consultant's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of Consultant's performance, or payments therefor, or any combination of these acts, does not relieve Consultant of its obligation to fulfill this Agreement as prescribed or prevent District from bringing an action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.
29. Successors and Assigns. Subject to Section 14. Assignment, this Agreement binds Consultant's successors, assigns, heirs, executors and personal representatives.
30. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith.
31. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings,



captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement.

32. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected thereby.
33. Entire Agreement. This Agreement, together with all of the attachments listed below under Attachments, contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement, and supersedes all previous communications, representations, understandings and agreements, whether verbal, written, express or implied, between the parties.
34. Authorization. Consultant, or the representative(s) signing this Agreement on behalf of Consultant, represents and warrants that Consultant has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representatives signing this Agreement have the authority to execute this Agreement on behalf of Consultant and to bind Consultant to its contractual obligations hereunder.

Attachments: Appendix A - Insurance Requirements for Consultant  
Appendix B - Scope of Work  
Appendix C - Rate Schedule

**I HAVE READ THIS CONTRACT, INCLUDING ALL ATTACHMENTS AND EXHIBITS, IF APPLICABLE. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS CONTRACT AND AGREE TO BE BOUND BY ITS TERMS.**

**CONSULTANT**

\_\_\_\_\_  
Signature #1

\_\_\_\_\_  
Consultant Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature #2

\_\_\_\_\_  
Consultant Printed Name and Title

\_\_\_\_\_  
Date

**DISTRICT**

\_\_\_\_\_  
Vincent P. De Lange  
General Manager

\_\_\_\_\_  
Date

Unless corporate resolution delegates an individual to sign contracts, a contract with a corporation shall be signed by the President, Vice President or Chairman of the Board (signature 1) **and** the corporation Secretary, Assistant Secretary, Chief Financial Officer/Treasurer or Assistant Treasurer (signature 2).

## APPENDIX A

### INSURANCE REQUIREMENTS FOR CONSULTANT

Consultant may not commence work under this Agreement until it has furnished evidence of the insurance required herein to the District, and the District has approved it, and may not continue to perform any work under this Agreement if the insurance required herein is no longer in effect. Consultant shall, at no cost to the District, obtain and maintain, for the duration of the contract, the following policies of insurance:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- C. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.
- D. **Worker's Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. If Consultant has no employees, Consultant may sign and file the following certification in lieu of insurance:

*"I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of this contract."*

**Certificate of Insurance:** Prior to the effective date of this Agreement, Consultant shall furnish to the District certificates of insurance evidencing the coverage required herein and requiring 30 days' written notice to the District of policy lapse, cancellation or material change in coverage. If Consultant renews the insurance policy(ies) or acquires a new insurance policy(ies) or amends the coverage through an endorsement to the policy(ies) at any time during the term of this Agreement, then Consultant shall provide current certificate(s) to the District.

**Warranty:** Consultant represents and warrants that, as of the effective date of this Agreement, Consultant is not aware of any situation that has occurred that could reduce the limits of liability set forth above for claims made under this Agreement.

