



Civil Engineering Department  
Water Operations Division  
P.O. Box 4060  
Modesto, California 95354  
209.526.7562

July 23, 2024

**SUBJECT: RFP #24604  
Combined Request for Qualifications (RFQ) and Request for Proposal (RFP)  
#24604 for Consultant Services to Develop a Well Mitigation Plan and  
Management Actions for the Modesto Subbasin Groundwater Sustainability  
Plan**

Dear Consultant:

The Modesto Irrigation District (District) is soliciting both Statement of Qualifications (SOQs), and Request for Proposals (RFPs) from qualified consultants on behalf of the Stanislaus & Tuolumne Rivers' Groundwater Basin Association Groundwater Sustainability Agency (STRGBA GSA) for services to assist with the development and implementation of a Well Mitigation Plan and Management Actions to support the 2022 Groundwater Sustainability Plan (GSP) for the Modesto Subbasin, as revised in July 2024. The GSP is available at <https://strgba.org/>.

**If you wish to be considered for an agreement, please submit one (1) electronic copy, and three (3) hard copies of your SOQ/Proposal and a sealed hard copy of the Cost Proposal by 4:00 pm on Monday, September 23, 2024, to:**

Modesto Irrigation District  
Civil Engineering Department  
1231 11<sup>th</sup> Street  
Modesto, California 95354  
Attention: Jesse Franco, P.E., Civil Engineering Manager

A selection committee will evaluate all SOQs and Proposals submitted; however, the RFQ/RFP does not commit the District to award a subsequent Agreement for Consultant Services, to pay for any costs incurred in preparation, or presentation of the SOQ and Proposal, or to procure a contract for services. Following the selection committee's evaluation of the SOQ's and Proposals, interviews may be conducted, and your firm may be contacted to schedule an interview date. Afterwards, the District may select a consultant to proceed with this project. The selection considerations for evaluating the submitted documents are included in this combined RFQ/RFP.

This RFQ/RFP contains specific instructions and requirements for preparing and submitting an SOQ and Proposal. Carefully review the information provided herein, and any questions shall be directed to Jesse Franco, [jesse.franco@mid.org](mailto:jesse.franco@mid.org), (209) 526-7459.

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**PROJECT BACKGROUND:**

In September of 2014, Governor Edmund G. Brown signed into law the Sustainable Groundwater Management Act (SGMA) of 2014, which requires, among other items, the formation of Groundwater Sustainability Agencies (GSAs), and the preparation of a GSP with a focus on long-term sustainability. The Modesto Subbasin GSP was originally developed and adopted before January 31, 2022, as is required for high and medium priority basins not currently in critical overdraft.

The Stanislaus and Tuolumne Rivers Groundwater Basin Association (STRGBA) member agencies approved the formation of the Stanislaus and Tuolumne Rivers Groundwater Basin Association Groundwater Sustainability Agency (STRGBA GSA). The STRGBA GSA was officially formed on February 16, 2017. The STRGBA GSA is a partnership consisting of the Oakdale Irrigation District, Modesto Irrigation District, Stanislaus County and the cities of Modesto, Oakdale, Riverbank and Waterford.

Additionally, in May of 2017 the Tuolumne County Board of Supervisors elected to become a Groundwater Sustainability Agency (GSA) for that area of the Modesto Subbasin that falls within Tuolumne County's political jurisdiction. The remainder of the Modesto Groundwater Subbasin lies wholly within Stanislaus County. Tuolumne County and Stanislaus County entered into a Cooperation Agreement on May 8, 2018 regarding preparation of the GSP. This agreement recognized the status of Tuolumne County as an independent GSA with jurisdiction over specific lands lying within the Modesto Subbasin and allowed for these lands to be integrated into a single, basin-wide GSP in full compliance with SGMA regulations.

As part of the Sustainable Groundwater Management Act (SGMA) requirements identified in the California Water Code (CWC) and California Code of Regulations, Title 23, Division 2, Chapter 1.5, Subchapter 2 (CCR), the GSA's were required to submit a GSP to the Department of Water Resources (DWR) by January 31, 2022. The GSP for the Modesto Subbasin was submitted as required.

On January 18, 2024, the DWR notified the STRGBA GSA that the GSP was deemed incomplete and required corrective actions and resubmission by July 16, 2024. The revised GSP was submitted to DWR on July 12, 2024.

The goal of a GSP is to identify the basin management objectives, provide a framework for coordinating groundwater management activities between the member agencies of the STRGBA GSA, and ensure the reliability of the subbasin's groundwater as a safe and sustaining water supply. This current request is for supplemental assistance with the development and implementation of a Well Mitigation Plan and Management Actions per the revised GSP as required by DWR, as well as additional items listed in this RFQ/RFP and support with other miscellaneous SGMA related tasks, as directed by the District.

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## **STATEMENT OF QUALIFICATIONS AND REQUEST FOR PROPOSALS:**

The objective of this RFQ/RFP is to obtain an SOQ/Proposal from interested consulting firms with demonstrated experience in providing the services outlined below. Potential firms must also demonstrate adequate resources to provide said professional services.

The SOQ/Proposal should be succinct, and submitted material should focus on technical content that demonstrates the capability, availability, and commitment of the firm and its team to execute the requested services. Do not submit elaborate or glossy SOQ/Proposals. When providing reference contact information, make sure the contact info is correct and up to date. If the District cannot verify references from information provided, qualifications and proposal may be determined as non-responsive.

These SOQs/Proposals will be reviewed and evaluated for the selection of 1 firm, for which negotiation will subsequently ensue for a consultant agreement.

## **SCOPE OF SERVICES:**

### Well Mitigation Plan

The revised Modesto Subbasin GSP included a commitment from the STRGBA GSA towards the development and implementation of a Well Mitigation Plan by January 31, 2026. The Well Mitigation Plan is intended to describe how the GSA can mitigate impacts to water supply wells that failed due to declining groundwater levels caused by overdraft. The services associated with the Well Mitigation Plan and anticipated for this request include, but are not limited to, the following:

- Development of the framework for the Well Mitigation Plan/Program
- Facilitation of and participation in a Plan/Program Development Committee/Workgroup for the Subbasin
- Assistance with and participation in public workshops and outreach efforts associated with the Well Mitigation Plan/Program
- Provide recommendations for a Well Mitigation fund, funding sources and structure of for funding responsibility and disbursement
- Development of a claims process for well owners which:
  - Defines claims eligible for mitigation
  - Develops claims application requirements
  - Implements a Technical Review Committee
  - Implements a claims administrative process including methods for: review, reporting, recommendations, and an appeals process
  - Develops a framework for well owner agreements to accompany mitigation

### Management Actions

The revised GSP also includes a commitment towards the development and implementation of Management Actions Management Actions refer to non-structural programs or policies designed to incentivize or enforce reductions in groundwater pumping, optimize management of the Subbasin, or implement GSA management authorities. The Management Actions have been

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organized into two categories: pumping management framework and demand reduction. The pumping management framework provides a suite of administrative procedures, programs, and policies that describe how the GSAs will manage and monitor groundwater extractions. Implementation activities such as monitoring, annual reporting, and GSP updates are discussed in further detail in Chapter 9 of the GSP. Demand reduction strategies are a broad and strategic set of actions intended to reduce water demand, some of which may be incentivized by State programs or policies, or by a pumping management framework.

The milestones that were committed to by the GSA in the revised GSP include development of Management Actions by January 31, 2026, and implementation by January 31, 2027, allowing a year for the STRGBA GSA, as well as any affected groundwater users, to make any necessary adjustments. The focus of the Management Actions is to develop and prioritize robust actions and procedures that could be readily implemented as needed, along with existing projects, to ensure sustainability regardless of hydrologic uncertainty or project outcome.

The Management Actions included within the revised GSP that are to be considered by the GSA include, but are not limited to the following:

- Pumping Management Framework:
  - Groundwater allocations and pumping management program
  - Groundwater extraction and surface water reporting program
  - Groundwater extractions fees
  - Groundwater pumping, accounting, credit market and trading program
- Demand Reduction:
  - Voluntary conservation, land fallowing programs
  - Conservation Practices
  - Developing incentives for maximizing the use of surface water
  - Developing incentives for on-farm recharge
- Well Mitigation Program (as noted previously)

The services associated with and anticipated for Management Actions include:

- Coordination with the GSA and respective consultants on sustainable yield of the Subbasin to identify necessary or most beneficial Management Actions
- Evaluation of Management Actions to provide recommendations to GSA
- Development of the framework and details associated with the identified or selected Management Actions including:
  - Program descriptions
  - Defining triggering criteria and conditions warranting initiation and escalation
  - Defining milestones and timelines
  - Determining costs and funding requirements
  - Establishing costs associated with actions
  - Evaluation and assigning of appropriate credit market and trading values
  - Monitoring processes
  - Surface water acquisition agreements and potential sources

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- Future management and operation requirements for long-term management actions
  - Evaluation of and recommendations on whether implementation of Management Actions would be Subbasin-wide and/or by Management Area
    - Evaluation of existing authorities and management areas to identify available options and recommendations for GSA governance, administration, and GSP implementation.
  - Facilitation of, assistance with and participation in public workshops, workgroups, and public outreach efforts for each Management Action
  - Recommendations on funding needs, requirements, sources and structure of funding responsibilities and disbursement

### **PROPOSAL AND CONTENTS AND REQUIREMENTS:**

The Proposal is expected to be clear, concise, and responsive to the requirements set forth in this RFQ/RFP. Each Proposal shall address the following sections:

1. Cover Letter

The SOQ/Proposal shall include a cover letter introducing the firm, briefly indicate the type of services provided, and highlight the qualifications of the key project team members envisioned to work on the Well Mitigation Plan and Management Actions for the Modesto Subbasin. Actual or potential sub-consultants shall also be identified, and any other information pertinent to the firm's qualifications may be indicated as well.

2. Proposed Scope of Services

The proposed scope of services must provide a description of the intended approach to complete the Well Mitigation Plan and Management Actions of the Modesto Subbasin, including specific tasks reflecting, at a minimum, any required information and documentation that might be prescribed in the GSP. The proposed scope of services shall include the firm's understanding of the desired work, a proposed work plan reflecting the provided approach to a Well Mitigation Plan and Management Actions for the Modesto Subbasin, and associated tasks, and a listing of the expected project deliverables associated with each work task. The consultant shall also specify the expected data needs, and desired level of support from District staff or GSA members.

3. Firm Experience

The consultant's experience shall, at a minimum, include representative projects with a similar scope of work related to the development of Well Mitigation Plans and Management Actions for GSAs. For the prime consultant, and any sub-consulting firms, please provide the following information:

- Length of time in business;
- Names of principal(s) indicating their academic training, experience, and any professional registrations or certifications;
- Office address(es) from which services are expected to be provided, including available manpower, general tasks, and percentage of work to be performed;

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- Listing of a maximum of three (3) completed Well Mitigation Plans and Management Action reports/programs/projects in California over the last five years, including the general scope, consultant fee, and completion date, along with the name, address, and phone number of a knowledgeable owner or client representative;
  - Experience with Well Mitigation Plans and Management Actions in subbasins comparable to the Modesto Subbasin in size and complexity.
  - Key issues, unique circumstances, or challenges for each project, and how they were resolved; and
  - Specialty areas addressed, and sub-consultant involvement.

4. Project Team Experience

The firm's Project Manager (PM) is defined to be the individual who is directly responsible for leading the Well Mitigation Plan and Management Actions and coordinating the required services. The PM, and other key personnel/supporting staff must be knowledgeable and experienced in the development of Well Mitigation Plan and Management Actions. The Proposal shall include the following information (may be in résumé form, but not required) demonstrating the PM's, and other key personnel's knowledge, experience, and availability:

- Name, title, years of experience with the prime consultant's firm, and years of experience with other firms;
- Education, degrees, and type of work specializations;
- Active professional registrations, in which state(s), and in what discipline(s);
- Summary of the qualifications, and representative experience for completed Well Mitigation Plan and Management Actions of similar scope, size, and complexity that would demonstrate experience in being able to complete the Well Mitigation Plan and Management Actions, all completed in California within the last 5 years. Additionally, provide information on all projects that are currently in progress to which the individual is committed, the level of commitment, and when that commitment is expected to end. For each completed Well Mitigation Plan and Management Actions program, please include:
  - Job title and consultant services for which the individual was directly responsible for, and/or functions performed;
  - General project description, key issues, dollar amount of the contract, and completion date;
  - Firm the individual was employed with during each project experience; and
  - Owner name, address, and phone number of knowledgeable representative.
- Proposed responsibilities or tasks to be performed in developing the Well Mitigation Plan and Management Actions.

5. Proposed Project Schedule

The consultant shall provide a proposed schedule for all of the services necessary to complete the Well Mitigation Plan and Management Actions. This includes specifying the

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major tasks, the expected time to complete each task, and the interdependency of the tasks, where applicable.

6. Estimated Level of Effort Matrix

The consultant shall provide an estimate of the amount of staff time (hours), by individual (include title), anticipated to complete each task presented. This section should not include any cost estimates, only time commitments.

7. Deliverables:

At a minimum, and in addition to monthly invoicing, project deliverables shall include at least one (1) Admin Draft each of the Well Mitigation Plan and Management Actions, a Final Draft each of the Well Mitigation Plan and Management Actions, and a Final Well Mitigation Plan and Management Actions. Admin Drafts shall include up to eight (8) hard copies, and a digital version. Final Drafts shall include eight (8) hard copies, and a digital version. Final documents shall include eight (8) hard copies each, as well as some thumb drives, or other form of external hard drive containing digital versions of all the aforementioned deliverables. All publicly available digital documents, including the final documents of the Well Mitigation Plan and Management Actions shall be compliant with mandated Website ADA Guidelines (WCAG 2.0) for visually impaired persons. The project shall provide meeting agendas, and relevant materials for discussion and workshop presentations as necessary. Development and delivery of supporting documents relevant to public noticing and adoption are also encouraged.

8. Meetings/Workshops:

At minimum, the project shall anticipate a face-to-face kick-off meeting, up to three additional face-to-face meetings (if needed), required public workshops, monthly conference calls and attendance (if needed) at STRGBA GSA meetings. The presentation of the Draft Well Mitigation Plan and Management Actions may require additional/separate meetings so, plan on a minimum of a couple separate meetings/conference calls for the Well Mitigation Plan and Management Actions effort. At the District's direction, face-to-face meetings may occasionally be replaced with other effective methods which the consultant would be expected to coordinate, as necessary.

9. Proposed Compensation

The consultant shall provide, in a separately sealed and clearly marked envelope labeled "Cost Proposal", the proposed compensation by major task, and total cost to be charged to the District. The cost proposal shall identify the firm's:

- Overall multiplier rate;
- Labor charge out rates by positions;
- Direct expenses (i.e., travel, high-end computer use, printing, etc.).

The District will be the lead agency for the STRGBA GSA, whereby the District and consultant will be signatories to an agreement for services.

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Cost proposals will not be opened until after each firm has been ranked, and the firm deemed most qualified has been determined. All consultant cost proposals will then be opened, and may form the basis of negotiations with the most qualified consultant for a subsequent Agreement for Consultant Services.

## **SELECTION CONSIDERATIONS:**

Based on the recommendation of the Selection Committee, negotiations will begin with the firm deemed most qualified. If an agreement cannot be reached, District staff will begin negotiations with the firm that is judged the next most qualified. Upon successful negotiation, an Agreement for Consultant Services will be sent for the consultant's signature. The consultant signed Agreement may be presented to the District's Board of Directors for approval. No proposal shall be binding upon the District until after the Agreement for Consultant Services is approved by the duly authorized representatives of the District, and once approved, a 'Notice to Proceed' will be issued. The District reserves the right to reject any, or all Proposals, and to waive any irregularities. The District shall have the sole authority to terminate negotiations with any consultant, at any time, without recourse by the consultant.

Once the Proposals have been evaluated, the District may recommend to the prime consultant the retention of one or more sub-consultants that are deemed capable (through this RFQ/RFP process or through previous work with the District) of providing valuable assistance in the completion of certain scope of services tasks in a highly efficient manner based on their past experiences. The approval of an Agreement for Consultant Services, if made by the District, will be based on a complete review and analysis of each written Proposal, and subsequent interview (if conducted) as outlined in the Proposal Contents and Requirements section of this RFQ/RFP and scored on the following 100-point criteria:

1. Proposed Scope of Services (35 points)

The two key criteria in determining the point ranking in this category are 'Project Understanding' and 'Project Approach'. Project Understanding will be measured by the consultant's demonstrated understanding of the Project's scope of services, and the recognition of potential issues warranting special effort and/or concern. The consultant's Project Approach will be evaluated by the completeness of the proposed work plan in addressing the scope of services, including full coverage of the Project's data needs and technical evaluations.

2. Experience of the Firm (20 points)

This will be evaluated by the firm's years of experience, general capabilities, responsiveness, and demonstrated experience over the last five years in being able to successfully develop a Well Mitigation Plan and Management Actions.



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3. Experience of the Project Team (20 points)

The consultant's proposed project team (including sub-consultants) will be evaluated by the various team members' organizational ability, time management skills, areas of specialization, ability to produce quality work products, availability, and demonstrated experience, over the last five years, in being able to successfully develop a Well Mitigation Plan and Management Actions.

4. Proposed Project Schedule (25 points)

Reasonableness and completeness of the proposed schedule as it relates to the scope of services, and meeting the objectives of the Well Mitigation Plan and Management Actions. Schedule must meet the January 31, 2026 deadline for development and implementation of a Well Mitigation Plan, and the January 31, 2026, deadline for implementation of Management Actions.

**EXECUTION OF AGREEMENT**

A District Standard Agreement for Consultant Services shall be sent to the successful firm for signature. The selected firm is required to submit:

1. Consultant Agreement

The signed Agreement for Consultant Services may be presented to the Board of Directors for approval, or to the designated authorized signatory. Once the Board of Directors has approved the Agreement for Consultant Services, the agreement will be executed by the District. No proposal shall be binding upon the District until after duly authorized representatives of both the consultant, and the District have signed the agreement.

2. Financial Interest Disclosure Form / Conflict of Interest

The District may require that Consultant's Project Manager file a Statement of Economic Interest Form 700 with the District to the satisfaction of the Fair Political Practices Commission (FPPC) when the consultant provides information, advice, recommendations, or counsel to the District.

The selected firm will also be required to submit a completed and signed Financial Interest Disclosure Form.

3. Insurance Certificate

The successful consultant will be required to provide proof of insurance. Refer to Insurance Requirements of Attachment A for a description of types of coverage and dollar amount limits required.

**EXCEPTIONS TO AGREEMENT**

A sample Consultant Agreement is included for your reference (see Exhibit A). Please review the sample agreement carefully with your legal and/or insurance representative.

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You are **REQUIRED** to submit any questions, concerns or language change requests regarding this agreement in writing included in the designated section of the Proposal. **Note: firms choosing not to provide any comments in writing included in the Proposal are assumed to agree with the agreement in its entirety, as written, no exceptions.**

**PROJECT SCHEDULE**

The anticipated milestones for this project are as follows:

| <b>MILESTONE DATES</b>                               | <b>DATE</b>           |
|------------------------------------------------------|-----------------------|
| Issue Request for Qualifications/Proposals (RFQ/RFP) | August 26, 2024       |
| SOQ/Proposal Due Date                                | September 23, 2024    |
| Consultant Selection Process Completed               | October 2024          |
| STRGBA Meeting (Action to Award)                     | October/November 2024 |
| Project Kick-off                                     | November 2024         |

**PROPOSAL DUE DATE**

Proposals must be received by District **prior to 4:00 p.m. on Monday, September 23, 2024.** Proposals received after the above specified date and time will be returned unopened. **Cost proposals shall be delivered in a separately sealed envelope, clearly marked “Cost Proposal”.** Proposals delivered in person or by mail shall be submitted to the following:

Modesto Irrigation District  
Civil Engineering Department  
1231 11<sup>th</sup> Street  
Modesto, California 95354  
Attention: Jesse Franco, P.E., Civil Engineering Manager

**IDENTIFICATION OF PROPOSALS**

Firm shall submit **one (1) electronic copy and three (3) Hard copies** of its proposal addressed as shown above, bearing the firm's name and address and clearly marked as follows:

“RFP #24604 - Proposal for Modesto Irrigation District for an agreement for a Well Mitigation Plan and Management Actions for the Modesto Subbasin”

**ACCEPTANCE OF PROPOSALS**

The District reserves the right to accept or reject any and all Proposals, or any item or part thereof, or to waive any informalities or irregularities. The District reserves the right to withdraw this RFQ/RFP at any time without prior notice, and the District makes no representations that any agreement will be approved with any firm responding to this RFQ/RFP. The District reserves the right to postpone Proposal openings for its own convenience.

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If you have any questions about this RFQ/RFP, please email or call.

Sincerely,

Jesse Franco, P.E.  
Civil Engineering Manager  
Water Operations Division  
[Jesse.franco@mid.org](mailto:Jesse.franco@mid.org)  
Office: 209-526-7459

Attachments

1. Standard Agreement

**STANDARD AGREEMENT  
FOR CONSULTANT SERVICES**

THIS AGREEMENT, made and entered into in the District of Modesto, State of California, this \_\_\_ day of \_\_\_\_\_, 2024, (“Effective Date”) by and between the MODESTO IRRIGATION DISTRICT, a special district of the State of California, hereinafter referred to as "District", and **(CONSULTANT)**, a **California** corporation, hereinafter referred to as "Consultant".

This Agreement is made with regard to the following recitals:

A. The District has determined that an \_\_\_\_\_ should be prepared for the District to \_\_\_\_\_.

B. Consultant represents that it is qualified, willing and able to provide the services to prepare said document(s).

NOW, THEREFORE, in consideration of this agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

**1. SCOPE OF SERVICES.**

Consultant shall undertake and complete the preparation of the scope of work as set forth and described in the documents attached hereto and referred to as Exhibit "A" or "project". The Consultant shall perform the services as described in Exhibit "A" in a manner compatible with the standards of its profession, and shall produce a fully complete project that is acceptable to District.

**2. TERM OF AGREEMENT.**

This Agreement is effective as of the date first written above and will continue in effect until District's acceptance of and payment for all services authorized by

District and performed by Consultant, unless terminated earlier in accordance with the provisions of the termination clause in this Agreement.

Consultant shall undertake and complete the preparation of the scope of work as set forth and described in the documents commonly referred to as “project” attached hereto as Exhibit "A" and made a part hereof. District hereby gives Consultant notice to proceed with the preparation of the project in the manner described in Exhibit "A", as of the Effective Date of this agreement. Consultant shall diligently proceed with the preparation of the project and agrees to complete said preparation within the time period set forth in Exhibit "A".

**3. COMPENSATION.**

Consultant agrees to accept a sum not to exceed \$                      (maximum compensation) as full remuneration for performing all services and furnishing all staffing and materials in accordance with Exhibit "A" attached hereto and for performance by Consultant of all of its duties and obligations under this Agreement, except that additional services may be compensated as described below.

The Compensation shall be paid pursuant in the manner and at the times set forth below:

District shall pay Consultant on a time and materials basis for Consultant’s actual costs for all work called for in Exhibit “A” to this Agreement. All work to be performed under this Agreement shall be billed at the hourly rates set forth in Exhibit “B” attached hereto, Consultant shall submit monthly invoices to District which include detailed tasks, hours worked, and billable rates for all work completed, and detailed receipts for any out-of-pocket costs paid by Consultant in connection with work performed on this project.

Additional services may be authorized by the District in an amount up to, but not to exceed **10%** of the agreed maximum compensation, or \$ [REDACTED]. In the event that additional services are deemed necessary, the Consultant shall provide a written request to the District indicating the reason for additional work, scope and cost of such work. The District shall provide a written response to the request, either approving or denying the additional expenditure. If additional services are requested and approved, they will be billed at the hourly rates set forth in Exhibit "B" and may not exceed the amount requested and approved in writing by the District. In that event, the new total compensation shall not exceed \$ [REDACTED]. If additional services in excess of this amount are deemed necessary by District Staff, an amendment to this Agreement will be required and must be approved by the District prior to commencing the work, as provided in Paragraph 9 of this agreement.

**4. OBLIGATIONS OF CONSULTANT.**

Throughout the term of this Agreement, Consultant shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. Consultant warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide the District with the services contemplated by this Agreement. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

**5. PERFORMANCE BY KEY EMPLOYEE.**

Consultant has represented to District that \_\_\_\_\_, will be the person primarily responsible for the performance of the services referred to in this

Agreement. District has entered into this Agreement in reliance on that representation by Consultant. Consultant therefore agrees that \_\_\_\_\_ percent (\_\_\_%) or more of the time to be devoted to the project that is the subject of this Agreement will be that of the above-named person.

**6. OWNERSHIP OF DOCUMENTS/TITLE TO DATA.**

**Ownership of Documents**

All reports, drawings, designs, graphics, working papers and other incidental work or materials furnished hereunder shall become and remain the property of the District, and may be used by District as it may require without any additional cost to District. No reports shall be used by the Consultant for purposes other than this contract without the express prior written consent of District.

**Title to Data**

If, as a part of the agreement, Consultant is required to produce data such as, but not limited to, drawings, plans, specifications, calculations, models, flow diagrams, visual aids and other related materials, the originals of all such data generated under this agreement will be delivered to District upon the completion or termination of services under the contract.

All materials, documents, data or information obtained from the District data files or any District medium furnished to Consultant in the performance of this Agreement will at all times remain the property of the District. Such data or information may not be used or copied for direct or indirect use by Consultant after termination of this Agreement without written consent of the District.

**7. NEWS AND INFORMATION RELEASE.**

Consultant agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from District.

**8. INTEREST OF CONSULTANT.**

Consultant warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant warrants that, in performance of this Agreement, Consultant shall not employ any person having any such interest. Consultant agrees to file a Statement of Economic Interests with the District's Board Secretary at the start and end of this contract if so required at the option of District.

**9. AMENDMENTS.**

Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for District or Consultant to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with District and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.

Until a change order is so executed, District will not be responsible to pay any charges Consultant may incur in performing such additional services, and Consultant shall not be required to perform any such additional services.



**10. INDEPENDENT CONTRACTOR.**

All acts of Consultant, its agents, officers, and employees and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of District. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of District. Consultant has no authority or responsibility to exercise any rights or power vested in the District. No agent, officer, or employee of the District is to be considered an employee of Consultant. It is understood by both Consultant and District that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

Consultant, its agents, officers and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of District.

Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to District only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to District's control with respect to the physical action or activities of the Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. Consultant is permitted to provide services to others during the same period service is provided to District under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by the Consultant.

It is understood and agreed that as an independent contractor and not an employee of District neither the Consultant or Consultant's assigned personnel shall have any entitlement as a District employee, right to act on behalf of the District in any capacity whatsoever as an agent, or to bind the District to any obligation whatsoever.

It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.

As an independent contractor, Consultant hereby indemnifies and holds District harmless from any and all claims that may be made against District based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

**11. ASSIGNMENT.**

Neither this Agreement nor any portion thereof shall be subcontracted or assigned without the express prior written consent of the District in each and every instance.

**12. PATENT/COPYRIGHT MATERIALS.**

Unless otherwise expressly provided in the contract, Consultant shall be solely responsible for obtaining the right to use any patented or copyrighted materials in the

performance of this Agreement. Consultant shall furnish a warranty of such right to use to District at the request of District.

**13. NOTICES.**

Notice required by this Agreement shall be given in writing and shall be deemed given and effective upon receipt provided that such are delivered in accordance with the provisions of this Section. Notices shall be delivered either by: (a) personal delivery (including delivery by an overnight courier service which obtains confirmation of receipt); or (b) by facsimile, provided that such transmission is followed by delivery by an overnight courier service which obtains confirmation of receipt; or (c) postage prepaid, return receipt requested, certified mail; or (d) by electronic transmission subject to reasonable proof that the notice was both transmitted and received. Each such notice shall be sent to the parties at the address respectively set forth below or to such other address as a party may designate by written notice given in accordance with the provisions of this Section:

FOR CONSULTANT:   Name:  
                          Address:  
  
                          Attention:  
                          Phone:       ( )  
                          Facsimile:   ( )

FOR DISTRICT:       Name:           Modesto Irrigation District  
                          Address:       P.O. Box 4060  
                                          Modesto, CA 95352  
                          Attention:     Jesse Franco, Civil Engineering Manager  
                          Phone:         (209) 526-7459

**14. INSURANCE REQUIREMENTS.**

The Consultant shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the District as may be required by the Risk/Property Department of the District. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk/Property Department of the District by certified mail, return receipt requested, for all of the following stated insurance policies.

In the event the certificates of insurance required hereunder do not provide for notice of cancellation to the certificate holder and/or additional insureds, the Consultant shall provide, and shall require its subcontractors to provide, as an express condition precedent to payment hereunder, an endorsement from their insurers providing that the additional insureds identified herein shall be provided thirty (30) days notice of the cancellation on the policies of insurance required hereunder (10 days notice if the policies are cancelled for non-payment of premium). In addition, the named insured on all such policies shall provide to the additional insureds identified herein any notices of cancellation of said insurance policies within five (5) business days of receipt of such notice. The Consultant shall, as a further express condition precedent to payment for work performed, affirm under penalty of perjury that the required insurance on the project remains in place and said insurance has not been cancelled.

(a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

(b) General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general

aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations as applicable.

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

(d) Professional Liability insurance with a minimum limit of \$1,000,000 per claim and policy aggregate. If coverage is on a claims made basis it shall be maintained for at least three (3) years following completion of the work.

If at any time any of said policies shall be unsatisfactory to the District, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the District, the Consultant shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Consultant to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the District, may be forthwith declared suspended or terminated. Failure of the Consultant to obtain and/or maintain any required insurance shall not relieve the Consultant from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Consultant concerning indemnification. The District, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of

subrogation against the District, its agents, officers, employees, and volunteers for losses arising from work performed by Consultant for the District. The Consultant's insurance policy(ies) shall include a provision that the coverage is primary as respects the District; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Consultant must deliver certificates evidencing existence of the insurance listed above to the District prior to the time the contract is signed.

**CONSULTANT shall provide DISTRICT with separate endorsements evidencing proof of the DISTRICT's additional insured status as to both the general liability and automobile liability insurance policies. In addition, CONSULTANT shall provide DISTRICT with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.**

For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

**15. TERMINATION OF AGREEMENT.**

**Termination by District for Default of Consultant**

Should Consultant default in the performance of this Agreement or materially breach any of its provisions, at its option, District may terminate this Agreement by giving written notification to Consultant. The termination date shall be the effective date of the

notice. For the purposes of this section, material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services or duties, willful destruction of District's property by Consultant, dishonesty or theft.

#### **Termination by District for Convenience**

The District may also terminate the Consultant's performance under the Agreement, either in whole or in part, at its own discretion, or when conditions encountered during the Work make it impossible or impracticable to proceed, or when the District is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority, or upon a determination by the District that such termination is in the best interest and convenience of the District, or whenever the District is prohibited from completing the Work for any reason. The District shall provide no less than ten (10) calendar days written notice of its intent to terminate the Agreement for convenience, and shall endeavor to provide the Consultant with consultation with the District prior to termination.

#### **Post-Termination Procedure**

Upon receipt of a written notice of termination pursuant to either of the foregoing paragraphs, the Consultant shall:

- a. Cease its work as directed in the notice of termination as of the termination date and see to it that its employees, subconsultants and agents are notified of such termination and act as specified in the notice of termination;
- b. Terminate all orders and Subcontractors except as necessary to complete any portion of the Work that is not terminated;
- c. If directed in writing by the District to do so, assign all right,

title and interest in subcontracts and materials in progress to District, in which case the District will have the right at its discretion to settle, or pay any or all claims arising out of the termination of such subconsultants, but in no event shall recovery by any Consultant or subconsultant include lost profits for portions of the Work not completed or undertaken, including materials not delivered;

- d. Deliver or otherwise make available to the District all data, drawings, specifications, reports, estimates, summaries and such other information and material as may have been accumulated by the Consultant in performing the Work whether completed or in process;
- e. Settle outstanding liabilities and claims, subject to the approval of District;
- f. Complete performance of such part of the Work as has not been terminated;
- g. Take such other actions as may be necessary, or as may be directed by the District for the protection and preservation of the Work and/or property related to the Work;
- h. If District so requests, and at District's cost, Consultant shall provide sufficient oral or written status reports to make District reasonably aware of the status of Consultant's work on the project.
- i. The Consultant understands and agrees that District may, in District's sole discretion, refuse to pay Consultant for that portion



of Consultant's services which were performed by Consultant on the project prior to the termination date and which remain unacceptable and/or not useful to District as of the termination date.

District will pay Consultant an amount based on the percentage of satisfactory work completed in accordance with the notice of termination. The final payment to the Consultant after termination for convenience shall be limited to amounts due and owing under the Agreement at time of termination, including the following:

- a. The cost of settling and paying valid claims arising out of the termination of the Work such as subconsultant agreements or contracts for materials;
- b. The Agreement price allocable to the portion of the Work properly performed or goods supplied to the work site by the Consultant as of the date of termination, as determined in accordance with the notice of termination, reduced by any sums previously paid to the Consultant.

#### **Authorization to Terminate Agreement**

Termination of the Agreement may be invoked by the District Manager, or his/her designee, subject to the right of the Consultant to appeal the District Manager, or his/her designee's, decision to the District Council. The Consultant shall appeal by notifying the District Clerk in writing within ten (10) calendar days of receipt of written notification from District of termination of the Agreement. In the event that termination of this Agreement is upheld by the District Council, any cessation of payment of delay claims, extended claims, Eichleay claims, or

any other claims for delay shall be retroactive to the date of termination selected by the District Manager, or his/her designee.

**16. CERTIFIED PAYROLL REQUIREMENT.**

For consultants performing field work on public works contracts on which prevailing wages are required: The Consultant shall comply with the provisions of Section 1776 of the California Labor Code, regarding payroll records, and shall require its subconsultants and subcontractors to comply with that section as may be required by law.

**17. INDEMNITY.**

The Consultant shall hold the District, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities, judgments or damages from every cause, including but not limited to injury to person or property or wrongful death, including reasonable costs and expenses of defense of any judicial or administrative action, arising directly or indirectly out of any negligent or intentional act or omission of Consultant, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

Consultant's obligation to defend, indemnify, and hold the District, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

**18. DISPUTE RESOLUTION.**

All claims, controversies, or disputes arising out of, or relating to the formation of this Agreement, or the breach, termination execution, enforcement, interpretation, or validity of this Agreement, including the determination of the scope or applicability of this

contract provision shall be determined by binding arbitration in Modesto, California by one arbitrator, except as otherwise specified in this Agreement. The American Arbitration Association shall administer the arbitration under its Arbitration Rules then in effect, subject to the modifications of those rules contained in this paragraph. This agreement to arbitrate shall be specifically enforceable under the prevailing law of any court having jurisdiction, and the award rendered by the arbitrator may be entered in any court having jurisdiction. The appropriate venue for any arbitration or court proceeding relating to or arising out of this provision shall be in Stanislaus County, California.

This paragraph is not intended to and does not waive the claim filing requirements found in California Government Code section 900 et seq. In the event that a timely and legally sufficient, arbitrable claim is filed by Consultant with District, and the claim is rejected in whole or in part by District, this paragraph shall result in the conclusive, final, and binding resolution of all the issues presented in the claim by Consultant so long as any issues presented by the claim are arbitrable. Claims rejected by District or by operation of law, shall be submitted by Consultant to arbitration pursuant to the Arbitration Rules of the American Arbitration Association within ninety (90) days after mailing of the written rejection by District to Consultant. Otherwise, the claim or claims shall be deemed waived in their entirety.

The “fast track” rules of the American Arbitration Association shall apply to any claim or counterclaim less than ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$150,000.00) DOLLARS. In arbitration not proceeding under the “fast track” rules, the arbitrator shall have the power to order that depositions be taken and other discovery be made. Both District and Consultant shall have the right, upon written notice, to take no more than three

(3) depositions of the other as a matter of right in an arbitration proceeding under the “fast track” rules.

Whether or not District and Consultant may be engaged in interstate commerce, any controversy or dispute mentioned above shall be determined by, and the parties shall be bound by, the substantive law of the State of California, and not the Federal Arbitration Act at 9 USC Section 1 et seq.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of the arbitration, including the fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party’s actual damages (excluding litigation costs and fees) against any party. This limitation of the arbitrator’s powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

Consultant shall include in all subcontracts a specification whereby the subcontractor consents to being joined in an arbitration between District and Consultant involving the work of the subcontractor to be joined. Consultant’s failure to do so shall be a breach of this Agreement.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

19. **ENTIRE AGREEMENT.**

This Agreement and its exhibits contain the entire understanding between Consultant and District. Additional or new terms contained in this Agreement which vary from Consultant's proposal are controlling and are deemed accepted by Consultant by shipment of any article or other commencement of performance hereunder. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

20. **PARTIAL INVALIDITY.**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. **WAIVER.**

The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

**22. AUDIT.**

The District's duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Consultant's charges to District under this Agreement.

Consultant agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for Consultant services. District's representative shall have the right to reproduce any of the aforesaid documents.

**23. GOVERNING LAW.**

This Agreement shall be governed according to the laws of the State of California.

**24. HEADINGS NOT CONTROLLING.**

Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**25. COMPLIANCE WITH LAWS.**

Consultant shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws. Consultant shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

By \_\_\_\_\_  
District Civil Engineering Manager

By \_\_\_\_\_  
Name Title

By \_\_\_\_\_  
Name Title  
(Seal)

Consultant's Federal ID # \_\_\_\_\_

DRAFT

*\* Corporations - signature of two (2) officers required or one (1) officer plus corporate seal*

*\* LLC - signature of two (2) officers required*

*Partnership - signature of a partner required*

*Sole Proprietorship - signature of proprietor required*