

REQUEST FOR PROPOSAL



Power Marketing / Sales Consultant

**Proposals must be received no later than April 8, 2022
at 12:00 p.m. (Pacific Time)**

NOTICE REGARDING THE CALIFORNIA PUBLIC RECORDS ACT

Government Code Sections 6250 et seq., the California Public Records Act, defines a public record as “any writing containing information relating to the conduct of the public business.” The Public Records Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure. Be advised that any contract that eventually arises from this Request for Proposal is a public record *in its entirety*. Also, all information submitted in response to this Request for Proposal is itself a public record without exception. Submission of any materials in response to this Request for Proposal constitutes a waiver by the submitting party of any claim that the information is protected from disclosure. By submitting materials: (1) you are consenting to release of such materials by the Tri-Dam Project (“Tri-Dam”) if requested under the Public Records Act without further notice to you; and (2) you agree to indemnify and hold Tri-Dam harmless for release of such information.

INTRODUCTION

The Tri-Dam Project and Tri-Dam Power Authority, collectively referred to as Tri-Dam, own and operate hydroelectric facilities in the Sierra Nevada Mountains in Central California. All base load generation and ancillaries are sold through a Power Purchase Agreement (PPA) that expires December 31, 2023. To prepare for this expiring PPA, Tri-Dam is seeking the services of an experienced power marketing consultant or broker to assist with future power sales.

BACKGROUND

Tri-Dam is a partnership between the Oakdale Irrigation District and the South San Joaquin Irrigation District. Together they developed, operate and maintain the Donnells, Beardsley, Tulloch, and Sand Bar Projects including the dams, tunnels, penstocks, powerhouses, communications systems and general offices. These facilities are located on the Middle Fork of the Stanislaus River in Tuolumne County, California.

Tri-Dam is seeking proposals from qualified consultants or brokers to provide guidance on approach, timing, bid document preparation and/or review, bid review, and general consultation regarding marketing generation in advance of the expiration of the current PPA.

SCOPE OF WORK AND DELIVERABLES TO BE PERFORMED BY CONSULTANT

Tri-Dam's existing PPA is with Silicon Valley Power (SVP), of the City of Santa Clara. The contract price for generation is currently set at \$80/MWh, which includes base load and all ancillaries and renewable attributes. The existing PPA is attached for reference.

Tri-Dam's facilities include the following:

- Donnells: 72 MW
- Beardsley: 11 MW
- Tulloch: 25.7 MW
- Sand Bar: 16.2 MW

Tri-Dam is seeking a consultant or broker to provide guidance and direction on future power marketing, whether it be an attempt to renegotiate an extension of the existing PPA with SVP, to seek bids on a new PPA, or pursue an alternate power marketing approach. The selected consultant or broker will need to be experienced in California energy markets; more specifically, experienced in hydro, small hydro, and renewable markets in California. The scope of work for this consultant or broker will include: providing a market overview of wholesale pricing and PPA terms for similar generators in California, possible presentations to the Tri-Dam Board of Directors, preparation or review of bid documents, bid review, and to provide guidance and advice during the bid process and negotiations up to date of contract execution.

If you or your firm is interested in performing the requested services on behalf of Tri-Dam, please submit a proposal in accordance with the instructions and requirements of this RFP. **The deadline for receipt of proposals and all associated materials is April 8, 2022, at 12:00 p.m. Pacific Time.** Proposals or materials received after the deadline may not be considered. Please submit all proposals electronically via Demandstar, or email to:

Brian Jaruszewski
Finance and Administrative Manager
bjaruszewski@tridamproject.com

INSTRUCTIONS TO PROPOSERS

I. REQUIREMENTS

Consultants participating in the RFP process must meet the following minimum qualifications to be considered:

- a. Proven experience with California energy markets
- b. Proven experience with California hydro, small hydro, and renewable markets
- c. Executed or assisted in the execution of at least 10 Power Purchase Agreements in California in the last 10 years

II. REQUIREMENTS FOR PROPOSAL CONTENTS

Proposals shall contain the following information and items (“Proposal Package”), and be organized as follows:

A. Consultant Information

1. General Information. A Cover Letter or general introduction including the Consultant or firm name, address, telephone number, fax number, and e-mail address of the person or persons authorized to represent the firm regarding all matters related to the submitted proposal.
2. Relevant Expertise and Experience.
 - a. A summary of Consultant’s qualifications and experience in providing the services requested.

- b. Detailed information regarding at least five (5) similar, successfully-completed projects performed within the last five (5) years, including the project name; the client or entity; date completed; features or aspects of the project that are comparable to the present project work contemplated herein; and the name, title, and contact information of individuals who can be contacted to verify project information provided. Include also a summary of the financial outcome realized as a result of the work completed.
3. Identification and Qualifications of Project Manager, Key Personnel, Staff Members.
 - a. Identify Project Manager, key personnel, and staff members who will be assigned to Project;
 - b. Explain what responsibilities or roles will be assigned to each;
 - c. Provide information regarding the education, experience, or expertise of each individual, indicating their ability to perform the work (a résumé or curricula vitae is acceptable), and including all professional registrations, certifications and/or license designations and numbers currently active in the State of California for those individuals identified.
4. Identification and Qualifications of Proposed Sub-Consultants. Provide a list of sub-consultants intended to be used by Consultant in carrying out the work, including the names, California license or registration numbers (if applicable), address, phone number, e-mail address, and length of time the sub-consultants has/have been associated with Consultant.

B. Project Approach

1. Consultant shall submit a “Work Plan,” outlining its proposed methods, general approach, strategies in carrying out the Scope of Work, and suggested timeline.
2. Contractor shall propose an estimated timeline and schedule to complete each of the activities in the Scope of Work, including an overall target completion date.
3. Contractor shall identify any resources, information and/or data it needs from Tri-Dam to complete the Project.

C. Fee Schedule

1. Consultant shall propose a rate / fee schedule for all of the services and work contemplated with this RFP. The schedule shall be itemized by each

task with a description of the unit cost (hourly, fixed amount, etc.). Consultant's proposed fee schedule shall clearly detail all labor (rates) and other billable expenses Consultant anticipates incurring.

2. Billing Rates. Provide a listing of the hourly rates for all personnel or categories of employees, the flat or hourly rates for specific services, as well as any overhead or special charges and sub-contractor fees for services that may be needed.

D. Mandatory Forms/Certification

Consultant shall include the following completed forms as part of the submitted "Proposal Package:"

- Statement of No Conflict of Interest (Attached as Exhibit "A")
- Certification Form (Attached as Exhibit "B")

III. PROJECT TIMELINE

It is anticipated that the project will commence soon after contract award, as outlined in the project description. As such, a proposed project timeline must be included in the proposal. The Notice to Proceed is expected to be issued once proposal has been approved by the Tri-Dam Board of Directors.

IV. CONSULTANT QUALIFICATIONS

Consultant shall have demonstrable prior experience in Power Purchase Agreements and power marketing in California renewable and small hydro markets.

V. SELECTION CRITERIA

Evaluation and selection of Consultant will be based upon consideration of the following criteria, at a minimum:

- Timeliness and Completeness of Proposal. (10 percent). Consultant's proposal package is to be received by the posted deadline. Proposals will be evaluated based on organization, clarity, completeness, and responsiveness to the requirements contained in the RFP.
- Technical Qualifications and Experience. (35 percent). Education, training, experience, and requisite credentials; demonstrated experience with like projects; work quality, timely completion and general performance on previous projects and verification by provided references.

- Approach to Project Work. (30 percent). Including, but not limited to: Approach to completing Project, projected timeline, analysis, and study methodologies.
- Projected Project Price. (25 percent). Including the Project rate schedule, as well as demonstration of adequate resources and personnel to complete the Project.

Tri-Dam reserves the right to select a subset of Consultants for additional evaluation and oral presentation (either in-person or via video teleconference) as part of the selection process.

Tri-Dam reserves the right to reject any and all proposals submitted and to request additional information as deemed necessary from the Consultant. Tri-Dam shall be the sole judge of the proposal and, particularly, which one best qualifies for acceptance. The Tri-Dam Project reserves the right to accept other than the lowest price proposal and to negotiate with the Consultant if it is in Tri-Dam's best interest to do so. There is no expressed or implied obligation for Tri-Dam to reimburse responding Consultants for any expenses incurred in the preparation, submission or response to questions in response to this RFP, whether or not the Consultant is selected.

VI. SERVICES AGREEMENT

Upon final award of the Contract for the Project, Consultant will be required to enter into a "Professional Services Agreement" in the form of the attached hereto as Exhibit "C"

VII. QUESTIONS REGARDING THIS RFP

There will be a non-mandatory conference call on March 21, 2022 at 1:00 p.m. Pacific Time to discuss the scope of work. Interested parties can call into the conference at 866-528-2256, Passcode 3498669.

Questions regarding this RFP shall be directed to **Brian Jaruszewski, Finance and Administrative Manager**, at bjaruszewski@tridamproject.com.

All questions must be submitted via email no later than 2:00 p.m. on March 25, 2022. To the extent that a question causes a change to any part of this RFP, an addendum shall be issued addressing such. Questions resulting in clarification of any portion of the RFP or other substantive matter regarding the Project will NOT result in issuance of an addendum to this RFP.

EXHIBIT A
STATEMENT OF NO CONFLICT OF INTEREST

The Undersigned, on behalf of the contractor/contracting firm set forth below (“Contractor”), does hereby certify and warrant that, if selected the Contractor while performing the contracting services required by the Request for Proposals, shall do so as an independent contractor and not as an officer, agent, or employee of the Tri-Dam Project.

The Undersigned further certifies that:

- 1) Contractor has no interest that would constitute a conflict of interest under California Public Contract Code section 10365.5, 10410 or 10411; or Government Code section 1090 *et seq.* or 87100 *et seq.*;
- 2) Contractor has not been a source of income or pay to any employee or officer of Tri-Dam within the past twelve (12) months;
- 3) During the qualifications process (the time from the date of issuance of the RFP to the award of the Contract), Contractor and its sub-contractors shall not contact or solicit Tri-Dam Board Members or staff in an attempt to influence the selection process, and that should such contact occur, Contractor or sub-contractor shall be disqualified from the RFP selection process.

Signature _____

Printed Name _____

Title _____

Date _____

**EXHIBIT B
CERTIFICATION**

I certify that I have read and received a complete set of documents including the instructions for submitting a Proposal in response to the Request for Proposals.

I consent to the Tri-Dam Project contacting references included in the submitted Proposal for the purposes of obtaining information about projects and experience described therein.

I understand that information contained in the submitted Proposal is a public record without exception, and I understand that submittal of the Proposal constitutes a waiver of any claim that the information is protected from disclosure.

I consent to release of such materials by Tri-Dam if requested under the California Public Records Act without further notice, and agree to indemnify and hold Tri-Dam harmless for release of such information.

Signature _____ Date _____

Printed Name _____

Title _____

Company _____

Street _____
Address _____

Telephone _____

E-mail _____

Exhibit C

PROFESSIONAL SERVICES TEMPLATE

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is effective as of _____, 2022 (the “Effective Date”) by and between the **Tri-Dam Project**, a partnership of the **Oakdale** and **South San Joaquin Irrigation Districts**, irrigation districts governed by the provisions of Division 11 of the California Water Code (collectively, “Client”); and _____ (“Consultant”).

In consideration of the promises herein and for other good and valuable consideration, the parties hereto agree as follows:

- 1. Services:** Client and Consultant agree that the Services to be provided by Consultant and other work to be performed by Consultant (“Work”) are specifically described in the Scope of Work attached hereto as **Exhibit A** or on each **Work Release**.
- 2. Term of Agreement.** This Agreement shall be effective immediately and shall remain in effect unless amended pursuant to Section 18 or terminated pursuant to Section 19 herein.
- 3. Schedule for Performance.** Consultant shall perform the Work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.
- 4. Compensation and Price Ceiling.** The compensation to be paid by Client to Consultant for the Work shall be on a time and materials basis in accordance with the Rate and Fee Schedule attached hereto as **Exhibit B**. The Rate and Fee Schedule shall be effective for the duration of performance of the Work, unless otherwise negotiated by the parties, approved by Client’s Board of Directors, and consented to in writing by Client as an amendment to this Agreement.
- 5. Invoicing and Payment.** Consultant shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. All invoices are to be sent to the Client’s Accounts Payable department with the project name listed on the invoice, and must indicate the hours actually worked by each classification as well as all other directly-related costs. Client shall approve or disapprove said invoice within ten (10) days following receipt thereof, and shall pay, within thirty (30) days’ approval, all approved invoices. Client reserves the right to withhold payment of disputed specific items and shall give notice to the Consultant, pursuant to Section 6 herein, of all such disputed specific items within ten (10) days following receipt of billing or invoices. The parties shall exercise good faith and diligence in the resolution of any disputed invoiced amounts.
- 6. Notices.** Any notices or other communications to be given to any party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

“CLIENT”

Tri-Dam Project

P.O. Box 1158
Pinecrest, California 95364-0158
Attn: Jarom Zimmerman, General Manager
Telephone: (209) 965-3996
Facsimile: (209) 965-4235

“CONSULTANT”

With courtesy copies to:

Oakdale Irrigation District

1205 E. F Street
Oakdale, California 95361
Attn: Steve Knell, General Manager
Telephone: (209) 847-0341
Facsimile: (209) 847-3468

South San Joaquin Irrigation District

P.O. Box 747
Ripon, California 95366-0747
Attn: Peter M. Rietkerk, General Manager
Telephone: (209) 249-4600
Facsimile: (209) 249-4688

Notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing shall preclude the giving of personal notice or notice by e-mail or facsimile machine provided, however, that notice by e-mail or facsimile machine shall be followed by notice deposited into the United States mail as set forth above.

- 7. Independent Contractor:** It is understood and agreed that Consultant is an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship:
- a. Consultant, in the performance of its obligations under this Agreement, is subject to the control or direction of Client as to the designation of tasks to be performed, and the work to be accomplished but not the means, methods or sequence used by Consultant for accomplishing the work. Client shall have the right to guide the Consultant's work efforts, but not direct the results nor the manner or the means by which the work is performed.
 - b. 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 terms of employment or requirements of law, shall be determined by Consultant.
 - c. Consultant and Consultant's employees are not authorized to act as agent for, or make any representation, contract, or commitment on behalf of Client.
 - d. Consultant shall not be entitled to any benefits payable to employees of Client.

- e. Client will not make any deductions or withholdings from the compensation payable to Consultant under this Agreement, and will not withhold or make payments for social security; make unemployment insurance or disability insurance contributions; or obtain worker's compensation insurance on Consultant's behalf.
- f. Consultant will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to Consultant's performance of services and receipt of fees under this Agreement. Consultant agrees to accept exclusive liability for complying with all applicable state and federal laws governing self-employed individuals, including obligations such as payment of taxes, social security, disability and other contributions based on fees paid to Consultant, its agents or employees under this Agreement. Consultant hereby agrees to indemnify and defend Client against any and all such taxes or contributions, including penalties and interest.
- g. Consultant hereby indemnifies and holds Client harmless from any and all claims that may be made against Client based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

8. Authority of Consultant. It is understood that Consultant is to provide information, research, advice, recommendations and consulting services to Client. Consultant shall not possess any authority with respect to any decision of Client. Client is responsible for, and shall make all policy decisions related to, the Work performed by Consultant.

9. Potential Conflicts of Interest.

- a. Consultant shall disclose its involvement in any projects which may be directly affected by actions taken by Client based on the services provided hereunder. Consultant shall not write a proprietary specification for material, equipment, or service from companies in which it holds a beneficial interest.
- b. Consultant certifies that it has disclosed to Client any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant hereby agrees to advise Client in writing of any actual, apparent, or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement and shall give such notice pursuant to Section 6 herein, within ten (10) days of Consultant's knowledge of such conflict. Client reserves the right to require Consultant to submit a financial disclosure statement.
- c. Consultant agrees to refrain from other engagements that may present an actual, apparent or potential conflict of interest with respect to the work covered by this Agreement. Consultant may request a waiver of these requirements from Client. The request for a waiver must be in writing and shall contain a disclosure and description of the actual, apparent or potential conflict of interest and Consultant's reasons and justification for requesting such a waiver. The request shall be submitted to Client pursuant to Section 6 of this Agreement.

10. Ownership of Work Product. All technical data, evaluations, plans, specifications, maps, drawings, images, reports or other work product of Consultant prepared pursuant to this Agreement constitute work made for hire ("Work Product").

- a. All Work Product shall be delivered to Client upon completion of the services authorized hereunder, and shall become, the property of Client, and Client shall be the copyright holder thereof. Client shall have the right to make and retain copies and use all Work Product; provided, however, the use shall be limited to the intended use for which the services and Work Products are provided under this Agreement.

Client agrees to indemnify and hold Consultant harmless if Work Product is used for other than its original intended purpose.

- b. Consultant retains no rights to use the Work Product and agrees not to challenge the validity of Client's rights or ownership in the Work Product. Consultant may retain copies of the Work Product for its files and internal use. Consultant's publication or release of any or all of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by Client.
- c. If Consultant has any rights to the Client Work Product that cannot be assigned to Client, (a) Consultant unconditionally and irrevocably waives the enforcement of such rights, including all claims and causes of action of any kind against Client with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights, and (b) Consultant unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicenses, to reproduce, create derivative works of, distribute, publicly perform, and publicly display by all means now known or later developed, such rights.

11. Indemnification. Consultant, by execution of this Agreement, specifically agrees to hold harmless, defend and indemnify Client, its officers, agents, and employees from and against any and all actions, claims, loss, liability, damage and expense arising out of, pertaining to, or relating to the negligent, reckless, or willful misconduct of Consultant, Consultant's employees or sub-consultants engaged by Consultant in connection with the work of Consultant pursuant to the terms of this Agreement, excepting only such injury and harm as may be caused solely and exclusively by Client's sole negligence, willful misconduct or active negligence. In no event shall the cost to defend charged to Consultant exceed Consultant's professional's proportionate percentage of fault. Such indemnity shall extend to claims, demands, or liabilities, of every kind or nature whatsoever including, but not limited to, personal injury, wrongful death, and property damage occurring during and/or after completion of the Work. Notwithstanding the foregoing provisions of this paragraph, if Consultant is a design professional, as defined by Section 2782.8(b)(2) of The Civil Code of the State of California, or its successor, then such design professional shall, to the fullest extent permitted by law, indemnify, and hold Client harmless from and against any and all liabilities, losses or damages, arising out of or encountered in connection with this Agreement or the prosecution of work under it to the extent such, liabilities, losses or damages, are actually caused by the negligence of such design professional or its agents, employees, or subcontractors, or their agents or employees. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Client, its directors, officers, employees, or authorized volunteers.

12. Insurance. During the performance of the Services under this Agreement, Consultant and each sub-consultant retained by Consultant shall maintain at their own expense the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- (3) Workers' Compensation Insurance in accordance with Section 3700 of the California Labor Code and Employers' Liability Insurance Act, with a limit of \$1,000,000 for each occurrence. Consultant shall provide a certificate of compliance in the form attached as **Exhibit C**.
- (4) Errors and Omissions or other applicable Professional Liability coverage in the minimum amount of \$1,000,000.

Said insurance will be evidenced by certification filed with the Client as otherwise specified by this Agreement. All policies shall name **“the Oakdale Irrigation District, the South San Joaquin Irrigation District, the Tri-Dam Project, and each of their respective directors, officers, employees and volunteers”** as additional insureds on the General Commercial Liability and Automobile Liability policies.

a. Commercial General Liability and Automobile Liability Insurance: Consultant shall provide and maintain commercial general liability and automobile liability insurance as set forth in this Agreement.

1. **Coverage:** Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

- i. Insurance Services Office (“ISO”) Commercial General Liability Coverage (Occurrence Form CG 0001); and
- ii. ISO Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto).

2. **Limits:** Consultant shall maintain limits no less than the following limits:

- i. General liability of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer’s equivalent endorsement provided to Client) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit; and
- ii. Automobile Liability of One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.

3. **Required Provisions:** The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- i. “The Oakdale Irrigation District, the South San Joaquin Irrigation District, the Tri-Dam Project and each of their respective directors, officers, employees, and authorized volunteers are to be given insured status (ISO endorsement CG 2010, CG 2033, or insurer’s equivalent for general liability coverage) as respect to liability arising out of activities performed by or on behalf of the

Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; and automobiles owned, leased, hired or borrowed by Consultant.” The coverage shall contain no special limitations on the scope of protection afforded to Client, its directors, officers, employees, or authorized volunteers;

- ii. For any claims related to the Services, Consultant’s insurance shall be the primary insurance, and any insurance, self-insurance, or other coverage maintained by Client, shall be non-contributory.
- iii. Any failure by Consultant to comply with reporting or other provisions of the insurance policies including but not limited to a breach of any warranties contained therein shall not affect coverage provided to Client, its directors, officers, employees, or authorized volunteers; and
- iv. Consultant’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

4. **Subrogation:** Consultant shall waive all rights of subrogation against Client.

b. Workers’ Compensation and Employer’s Liability Insurance: Consultant and all sub-contractors shall insure (or be a qualified self-insured) under the applicable laws relating to Worker’s Compensation insurance, all of their employees working on or about the work site, in accordance with the “Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Consultant shall provide employer’s liability insurance with limits of no less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee.

If Consultant is a Sole Proprietor, a Sole Proprietor Business Affidavit Form must be on file with the Client prior to the start of the Work or providing Services.

c. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by Client.

d. Acceptability of Insurers: Consultant shall purchase the policies of insurance required under this Agreement from insurers having a current A.M. Best Financial Strength Rating of no less than A, and Financial Size Category of no less than VII or as otherwise approved by Client.

e. Evidence of Insurance: Evidence of the insurance coverage required to be maintained by Consultant under this Agreement, as represented by Certificates of Insurance and all required endorsements issued by the insurance carrier, must be furnished to Client prior to Consultant starting the Work. Such Certificates of Insurance/endorsement shall state that Client will be notified in writing thirty (30) days prior to cancellation of insurance. Timely renewal certificates will be provided to Client.

- f. **Continuation of Coverage:** If any of the required coverages expire during the term of this Agreement, Consultant shall deliver all applicable renewal certificates to Client at least ten (10) days prior to the expiration date.
13. **Confidentiality.** Consultant shall not, either during or after the term of this Agreement, disclose to any third party, any confidential information relative to the work of Client without the prior written consent of Client.
14. **Non-Discrimination in Employment.** Consultant shall not discriminate against any employee, applicant for employment or volunteer because of race, color, creed, religion, national origin, sex, age, or physical, mental handicap or any other basis prohibited by applicable law.
- a. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, national origin, age, physical or mental handicap or any other basis prohibited by applicable law. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; or selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices that Consultant shall provide an atmosphere free of harassment as prohibited by applicable law for employees, clients, and volunteers.
- b. Consultant shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, physical or mental handicap or any other basis prohibited by applicable law.
15. **Financial Records.** Consultant shall retain all financial records, including, but not limited to, documents, reports, books and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. Either District or any duly authorized representative of Client shall, with reasonable notice, have access to and the right to examine, audit and copy such records.
16. **Compliance With Laws; Labor Code Provisions.** It is the responsibility of the Consultant and any sub-consultant to comply with all federal, state and local laws and regulations applicable to Consultant and any sub-consultant, including provisions of DIVISION 2, PART 7 of the California Labor Code, and those provisions governing the payment of prevailing wages, working hours, overtime, the employment of apprentices and record keeping requirements. Copies of the prevailing rate of per diem wages are available at Client's principal office and will be made available to any interested party on request. The following sections of the California Labor Code are incorporated into and made a part of this Agreement and will be made available by Client upon request: Section 1771 (prevailing wage requirement,) Section 1810 (eight hour workday,) Section 1813 (penalty for failure to pay overtime,) Section 1777.5 (apprenticeship requirements); Section 1776 (recordkeeping requirements) and Section 1771.4 (job site posting).
17. **Assignment.** Consultant may not assign its rights or obligations hereunder without the prior written consent of Client, which may be granted or withheld in Client's sole discretion.

- 18. Amendments.** Modification or amendments to the terms of this Agreement shall be approved by Client's Board of Directors, and consented to in writing by Client as an amendment to this Agreement, and executed by all parties.
- 19. Termination.** Either party shall have the right to terminate this Agreement at any time by serving upon the other party thirty (30) days' advance written notice of termination. The notice shall be deemed served and effective for all purposes on the date it is deposited in the United States mail, postage prepaid and addressed to Consultant at the address indicated in Section 6. In the event of such notice of termination:
- a. Consultant shall, as directed by Client or on such other mutually acceptable terms, proceed with the orderly shutdown of project activities, cease rendering further services and proceed with archiving of project materials.
 - b. Consultant shall deliver to Client copies of all writings and other Work Product prepared pursuant to this Agreement. The term "writings" shall be construed to mean and include handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
 - c. Client shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
 - d. Client shall pay Consultant for work performed until the effective date of termination, subject to the limitations prescribed by Sections 4 and 5 of this Agreement.
- 20. No Rule of Strict Construction.** The parties agree that this Agreement and any amendments or exhibits hereto shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction shall be applied against any party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of the Agreement will continue in effect.
- 21. Applicable Law; Venue.** This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of California. Any claims or litigation arising under this Agreement shall be brought by the parties in the Superior Court of California, County of San Joaquin.
- 22. Survival.** The ownership of work product provisions of Section 10, the indemnity provisions of Section 11, the confidentiality provisions of Section 13 and the inspection provisions of Section 15 shall survive the expiration or other termination of this Agreement.
- 23. Entire Agreement.** This Agreement, together with the exhibits hereto, is the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by Client and Consultant.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates indicated below; provided, however, that the Agreement shall be deemed effective as of the Effective Date identified above.

TRI-DAM PROJECT

CONSULTANT

Name: Jarom Zimmerman
Position: General Manager

Name:
Position:

Date

Date