



MEMORANDUM

TO: SLDMWA Board of Directions, Alternates
SLDMWA Finance & Administration Committee Members, Alternates

FROM: Pablo Arroyave, Chief Operating Officer
Jaime McNeil, Engineering Manager

DATE: September 9, 2024

RE: Recommendation to Authorize Execution of Professional Services Agreement and Task Order with the Hallmark Group for Project Management & Design Review Services for the DMC Subsidence Correction Project and Related Expenditure of up to \$470,375 from DWR Grant Funds

BACKGROUND

The DMC Subsidence Correction Project (Project) is an ongoing priority project for the San Luis & Delta-Mendota Water Authority (Authority) with multiple active contracts totaling over \$13M to support and advance the Project. To date, \$75M of Bipartisan Infrastructure Law funds have been awarded, as well as a \$45.2M non-reimbursable appropriation from the California Department of Water Resources (DWR) that is required to be expended by June 2027. In the near future, the Authority intends to retain a bridge design consultant to begin the coordination and design of the high priority bridges located within the upper DMC as well as enter into smaller construction projects to ensure full utilization of the DWR grant. Staff intends to utilize the DWR grant to fund a consultant agreement to assist with project management and design reviews.

The Hallmark Group Capital Program Management (the "Hallmark Group") has a history working with the Authority on capital projects such as the Sisk Dam Raise. They are well suited to provide the needed assistance to further the DMC Subsidence Correction Project, and have former highly-respected Reclamation executive that is extremely knowledgeable of the DMC Subsidence Correction Project.

ISSUE FOR DECISION

Whether to recommend authorizing execution of a Professional Services Agreement and Task Order with the Hallmark Group for Project Management and Design Review Services for the DMC Subsidence Correction Project and related expenditure of up to \$470,375 from DWR Grant Funds.

RECOMMENDATION

Staff recommends authorizing execution of the proposed Professional Services Agreement and Task Order and related expenditure of up to \$470,375.

ANALYSIS

Per section 3.2(b) of the San Luis & Delta-Mendota Water Authority Consolidated Procurement Policy (adopted May 14, 2020), “the Authority may award a contract for professional services based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.” Because the budget for this Professional Services Agreement will exceed the \$200,000 delegation of authority in the Consolidated Procurement Policy, Board action is required. (See section 1.1.)

Given the Hallmark Group’s successful history in providing high quality professional management services to the Authority, it is staff’s opinion that they have adequately demonstrated the necessary competence and professional qualifications to provide the project management and design review assistance needed to further the DMC Subsidence Correction Project and ensure that the Authority fully utilizes the DWR grant.

The Hallmark Group has proposed to provide Project Management and Design Review Services for the DMC Subsidence Correction Project between the pre-incurred date of July 29, 2024 until February 28, 2025, with a not to exceed budget of \$470,375.

BUDGET IMPLICATIONS

The proposed expenditure of up to \$470,375 would be funded entirely by the non-reimbursable DWR grant for the DMC Subsidence Correction Project.

ATTACHMENTS

Draft Professional Services Agreement w/ Task Order

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

AGREEMENT FOR PROFESSIONAL SERVICES

For

PROJECT MANAGEMENT SERVICES TO SUPPORT THE EXTRAORDINARY OPERATION & MAINTENANCE AND CAPITAL IMPROVEMENT PROGRAMS FOR THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY.

THIS AGREEMENT is made and entered into effective September _____, 2024, between the San Luis & Delta-Mendota Water Authority, hereinafter referred to as "SLDMWA" and HGCPM, Inc., California Corporation, hereinafter referred to as "Consultant" for professional services as set forth herein.

Task Order Contract: Yes No

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

Exhibit A – Scope of Services

Exhibit B – General Terms and Conditions for Professional Services

Exhibit C – Fees, Hourly Rates a Reimbursable Costs/Expenses

Exhibit D – Task Order Format, applicable to Task Order Contracts

IT IS MUTUALLY AGREED, as follows:

1. SCOPE OF SERVICES

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

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

2. TERM OF AGREEMENT AND PERFORMANCE SCHEDULE

This Agreement shall become effective as of the date indicated and shall continue until the earlier of the completion of all required services or five (5) years from the effective date of the Agreement.

3. PARTY REPRESENTATIVES AND NOTICES

Each party's designated representative for administration of this Agreement and receipt of notices is designated below. All notices or other communications provided for by the Agreement shall be in writing and shall be sent by 1) personal delivery, 2) nationally recognized overnight delivery service (such as Federal Express) which provides evidence of delivery, 3) first class United States mail (postage prepaid), registered or certified, return receipt requested, or 4) e-mail with a copy by first class U.S. mail. Notice shall be deemed received on the date actually delivered if delivered by personal delivery, overnight delivery, or U.S. Mail with return receipt requested and delivered during normal business hours on a

business day. Notice by e-mail shall be deemed delivered on the date of transmission, unless the same is after 5:00 p.m. or on a weekend or holiday, in which event delivery shall be on the next business day. A party may change its address for notices under the Agreement by giving notice as provided herein. Notices shall be sent to the following party representatives at the following addresses:

<u>SLDMWA</u>	<u>Consultant</u>
Bob Martin San Luis & Delta-Mendota Water Authority 15990 Kelso Road Byron, CA 94514-9614 bob.martin@sldmwa.org (209) 832-6220	Richard Welsh HGCPM, Inc. 500 Capitol Mall, Suite 2350 Sacramento, CA 95814 RWelsh@hgcpm.com (530) 308-9839

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

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Pablo Arroyave Chief Operating Officer San Luis & Delta-Mendota Water Authority	By: _____ Charles R Gardner, Jr. President HGCPM, Inc.

EXHIBIT A
SCOPE OF SERVICES

Consultant will provide professional services to SLDMWA, as directed. Individual work efforts, specific tasks, assignments, deliverables, and associated cost estimates will be described in sequential Task Orders. Consultant services rendered under this contract shall include project and construction management oversight, contract management and administration, project engineering services, technical oversight, and professional recommendations and representation as required to support the Extraordinary Operation & Maintenance and the Capital Improvement Program responsibilities of the SLDMWA. Consultant will track specific work efforts according to each Task Order.

In performing the services pursuant to this Agreement, Consultant shall determine the means and the manner by which to accomplish those services and/or each sequential task in the case of a Task Order agreement. SLDMWA expects that Consultant will exercise independent judgement and discretion in performing the services and/or tasks required by this Agreement.

EXHIBIT B
GENERAL CONDITIONS

ARTICLE 1. BASIC SERVICES OF CONSULTANT

A. Basic Services: Consultant's Basic Services consist of the Scope of Services described in **Exhibit A** to the Agreement, all in accordance with all terms of the Agreement and applicable laws and regulations. If any conflict exists in describing the Basic Services, the provision reflecting the broader scope of Basic Services shall control.

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

C. Consultant's Skills and Compliance with Professional Standards: Consultant represents and warrants that it is skilled in the professional calling necessary to perform all services, duties and obligations required by the Agreement; that it is familiar with the statutes, regulations, and other requirements applicable to its Basic Services; that all of its work will conform to current law and professional practices and standards regarding such requirements; and that Consultant will exercise due professional care and will cooperate with any other consultant or contractor also employed by SLDMWA in connection its services under this Agreement. Consultant further represents and warrants to the SLDMWA that it has all licenses, permits, qualifications, and approvals of whatever nature that are required to practice its profession, and that it will keep all such licenses and approvals in good standing and effect during the term of the Agreement. Consultant agrees to perform its work with the skill and judgment of a prudent professional practicing in California and in the most expeditious and economical manner consistent with the interests of SLDMWA.

D. Responsibility for Work: Any review, approval or acceptance of any of Consultant's work under the Agreement shall not relieve Consultant from responsibility for errors and/or omissions in its work or the work of its sub-consultants.

E. Compliance with Laws: At its sole cost and expense, and as part of its Basic Services, Consultant shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of its work, including those relating to safety of its employees and sub-consultants, hazardous materials, and equal employment opportunities; obtain all permits and licenses necessary for performance of its work; pay all wages, fees, benefits, and other amounts due to personnel and sub-consultants in connection with their performance of services and as required by law; pay all local, state, and federal taxes associated with its work; and pay all amounts required by law in connection with employees including, but not limited to, Social Security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance premiums. Upon SLDMWA's request, Consultant shall furnish evidence satisfactory to SLDMWA that any or all of the foregoing obligations have been fulfilled.

F. Independent Contractor: Consultant shall be an independent contractor, and neither Consultant nor any employee of Consultant or its sub-consultants shall be deemed to be an employee of SLDMWA.

G. No Relation with Sub-consultants: Nothing in the Agreement shall create any contractual relation between SLDMWA and any sub-consultants, or their agents and employees, employed by Consultant. No sub-consultants, agents, employees or other parties are third party beneficiaries of the Agreement. Consultant shall be responsible to SLDMWA for the acts and omissions of its employees, sub-consultants, and their agents and employees, and other persons performing any of the work under the Agreement.

Note: See Article 20 for additional terms applicable to Task Order Contracts.

ARTICLE 2. SCHEDULE

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

B. Any delays in or failure of performance by either party under this Agreement (except payment of compensation under Article 7) shall not constitute default hereunder and neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from force majeure which shall be defined to be causes or occurrences beyond the control of the party affected, including, but not limited to, acts of governmental authority, acts of God, strikes or other concerted acts of workmen, unavailability of labor or materials and operating equipment, fires, floods, explosions, riots, war, rebellion, insurrection and sabotage; provided, however, that the party whose performance is delayed shall have given notice and full description of the cause of the delay in writing to the other party as soon as possible after the occurrence of the cause relied on by it.

ARTICLE 3. EXTRA SERVICES OF CONSULTANT

A. Changes in Consultant's Services: SLDMWA, without invalidating the Agreement, may change Consultant's Basic Services by written notice to Consultant of such change. In addition, the scope or duration of Consultant's Basic Services may be changed by actions beyond the control, fault, or neglect of Consultant or its sub-consultants and require performance beyond the time currently estimated under the Agreement. Such additional services are referred to as herein as Extra Services.

B. Notice to SLDMWA: Consultant shall promptly notify SLDMWA if Consultant has been directed or otherwise caused to perform Extra Services, and if the Extra Services are expected to increase or decrease Consultant's costs and compensation, the duration of Consultant's services, or both. Failure to provide written notice to SLDMWA of an expected increase in time, cost or compensation prior to performing the Extra Services, and no later than fourteen (14) days following SLDMWA's written notice of a change to Basic Services or another event causing a change, shall absolutely waive Consultant's right to any increase in time or compensation.

C. Pricing of Changes: Following timely notice, SLDMWA and Consultant shall negotiate in good faith regarding changes to time and/or compensation. Absent a different agreement between SLDMWA and Consultant, Extra Services shall be performed on a time and materials basis calculated in accordance with the hourly rates set forth in **Exhibit C** and for such reimbursable expenses addressed below in Article 7. If Consultant will use sub-consultants to perform Extra Services, those sub-consultants and their billing rates must be approved in advance by SLDMWA. For such approved sub-consultants, Consultant may invoice SLDMWA at one hundred ten percent (110%) of the direct billings of the sub-consultants.

D. Documenting Changes: All Extra Services affecting the duration of the Agreement or compensation shall be documented in a written amendment executed by SLDMWA and Consultant. Prior to Consultant performing any Extra Services, either a) SLDMWA and Consultant shall execute an amendment encompassing such services or b) SLDMWA shall acknowledge in writing that it is directing the performance of Extra Services prior to executing an amendment. No claim for any additional compensation or time shall be valid unless authorized by a written amendment.

ARTICLE 4. CONFLICTS OF INTEREST

Consultant shall not have a familial, financial, or investment interest in any of the persons, contractors or companies with responsibilities related to the work described in Exhibit A or any Task Orders. A familial interest exists if any of Consultant's officers, directors, employee(s) providing professional services to SLDMWA, or owners of 10% or more of the business is the spouse, sibling, parent, child, grandparent, grandchild, aunt/uncle or niece/nephew of any of the officers, directors, project managers, or owners of 10% or more of the business of any of the persons, contractors or companies with responsibilities related to the work described in Exhibit A or any Task Orders. Consultant affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of Consultant and SLDMWA. Consultant agrees to advise SLDMWA of any actual or potential conflicts of interest that may develop subsequent to the date of execution of the Agreement.

ARTICLE 5. ASSIGNMENT AND SUBCONTRACTING

Except as expressly authorized herein, Consultant shall neither assign its rights nor delegate its duties under the Agreement without prior written consent of SLDMWA. This prohibition of assignment and delegation extends to all assignments and delegations that lawfully may be prohibited by agreement. Except as expressly allowed in the Agreement, Consultant shall not subcontract any of the work to be performed or services to be rendered without the prior consent of SLDMWA.

ARTICLE 6. NON-DISCRIMINATION

Consultant shall not discriminate against any employee or potential employee on the basis of prohibited criteria, as defined in Government Code section 12940. Without limiting the foregoing in any way, during the performance of this Agreement, Consultant and its sub-Consultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant and sub-Consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and sub-Consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its sub-Consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

ARTICLE 7. COMPENSATION; TAXES

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

B. Reimbursable Consultant Costs/Expenses: SLDMWA recognizes that certain costs and expenses associated with the services performed may be reimbursable to Consultant. Categories of costs/expenses that may be considered for reimbursement are included in **Exhibit C**. Payments to Consultant for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and invoicing has been verified by submission of substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred by Consultant.

C. Invoicing: Consultant shall submit one (1) invoice monthly to SLDMWA, including applicable time records and identification of any deliverables submitted during the billing period, for the work performed the prior month at rates not to exceed those stated in **Exhibit C**, to Accounts Payable, San Luis & Delta-Mendota Water Authority, at accounts.payable@sldmwa.org. If applicable, Consultant's invoice also shall include reimbursable costs/expenses and Extra Services incurred for the billing period. Invoices requesting reimbursement for costs/expenses incurred during the billing period must clearly list items for which reimbursement is being requested and be accompanied by proper documentation (*e.g.* receipts, invoices). Invoices requesting payment for Extra Services must reflect the hours being charged and a copy of SLDMWA's authorization notice. No payments will be made by SLDMWA to Consultant for monthly invoices requesting reimbursable or Extra Services absent the prior written authorization of SLDMWA.

D. Payment: Invoices received by SLDMWA on or before the 15th day of a given month and subsequently approved by SLDMWA will be paid by SLDMWA before the end of the following month. All other properly invoice amounts shall be paid not more than forty-five (45) days after delivery of an invoice. Disputed invoices shall be returned to Consultant within ten (10) working days of receipt.

E. Payment Disputes: SLDMWA may dispute any invoice or portion thereof which is not properly documented and in accordance with the Agreement. For any disputed payment, SLDMWA shall provide written notice describing its dispute to Consultant. 30-day payment period does not begin until an approved, undisputed invoice is received. There will be no interruption in services while invoices are being disputed. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of SLDMWA. This decision shall be final and conclusive unless within ten (10) days from the date of the receipt of its copy, Contractor mails or otherwise furnishes a written appeal to SLDMWA's Chief Operating Officer. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Operating Officer shall be binding upon Contractor and Contractor shall abide by the decision. Unless otherwise directed by SLDMWA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved. In the event of a dispute between each parties Terms & Conditions, SLDMWA terms will prevail.

F. Taxes: Any and all taxes imposed or assessed on Consultant's income by reason of this agreement or its performance, including but not limited to sales or use taxes, shall be paid by Consultant. Consultant shall be responsible for any taxes or penalties assessed by reason of any claims that Consultant is an employee of SLDMWA.

ARTICLE 8. SLDMWA'S OBLIGATIONS

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

ARTICLE 9. CONFIDENTIAL INFORMATION

A. Confidential Information shall be (a) any and all information provided by SLDMWA (the "Disclosing Party") to Consultant (the "Receiving Party") that is labeled and/or marked confidential, and if disclosed orally, summarized in written format within (30) calendar days of disclosure and identified as "confidential", "trade secret", or "proprietary", and (b) information that is not labeled as "confidential", "trade secret", or "proprietary" but after which SLDMWA notifies Consultant as being "confidential", "trade secret", or "proprietary", SLDMWA shall retain all ownership rights over its Confidential Information.

B. The Confidential Information will be kept confidential, and will not, without SLDMWA's prior written consent, be disclosed by Consultant, in any manner whatsoever, in whole or in part, and shall not be used in any manner directly or indirectly by Consultant, other than in connection with providing services under this Agreement.

C. Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of this Agreement by Consultant; (ii) has been known or independently developed by and is currently in the possession of Consultant prior to disclosure or receipt hereunder; (iii) was or is acquired by Consultant from a third party (other than a Member customer contacted by Consultant through the operation of this Agreement) who did not to Consultant's knowledge breach an obligation of confidentiality by disclosing it to Consultant.

D. Consultant will retain the Confidential Information only so long as it is necessary to perform Consultant's tasks under this Agreement, and after such time, the Confidential Information will be returned to SLDMWA (or at SLDMWA's written option, destroyed), and Consultant will retain no copies of the Confidential Information.

ARTICLE 10. INSURANCE

A. Required Policies: Consultant and any sub-consultants shall procure and maintain insurance on all of its operations during the progress of its work described in Exhibit A and/or the Task Orders, with reliable insurance companies approved by the State of California Department of Insurance and with a Bests' rating of no less than (A) Level VII, on forms acceptable to SLDMWA, for the following minimum insurance coverages, which may be increased or expanded by the Agreement:

1. Workers' Compensation insurance and occupational disease insurance, as required by law, with limits of no less than \$1,000,000 per accident for bodily injury or disease.
2. Employer's liability insurance, with minimum limits of \$1,000,000, covering all workplaces involved in the Agreement.
3. Commercial General Liability Insurance in an amount not less than \$2,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Consultant's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than two million dollars (\$2,000,000) for each occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
4. Commercial Automobile Insurance for all owned, non-owned and hired vehicles used by Consultant in the performance of its services under this Agreement with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
5. Professional Liability Insurance, written on a "Claims Made Basis," with limits of liability in amounts not less than \$1,000,000 per claim and \$2,000,000 aggregate, insuring Consultant, for its own acts and for the acts of all persons for whose acts Consultant may be liable, against liabilities arising out of or in connection with negligent acts, errors, or omissions in connection with the carrying out of their professional responsibilities under the Agreement. Consultant shall provide SLDMWA proof of professional liability insurance coverage for two years following final completion of the Agreement.

B. Additional Terms:

1. All general liability policies shall name SLDMWA, its elected or appointed officers, officials, directors, agents, authorized volunteers, representatives and employees as additional insureds ("Additional Insureds"), include a severability of interest provision, and shall provide that such policy is primary and not contributory with any insurance carried by SLDMWA or its Members.
2. The insurance to be provided by Consultant under this Agreement shall not include any of the following: except for Professional Liability Insurance, any claims-made insurance policies; any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by SLDMWA; any endorsement limiting coverage available to SLDMWA that is otherwise required by this Article 9; and any policy or endorsement language that (i) negates coverage to SLDMWA for SLDMWA's own negligence; (ii) limits the duty to defend SLDMWA under the policy; (iii) provides coverage to SLDMWA

only if Consultant is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with SLDMWA's rights under this Agreement.

3. Consultant shall provide Certificates of Insurance, or other evidence of insurance as requested by SLDMWA, to SLDMWA within ten (10) days after receipt by Consultant of the executed Agreement. The certificates shall provide that there will be no cancellation, suspension, voiding or change of coverage without thirty (30) days' prior written notice to SLDMWA. There shall be no reduction or modification of coverage of insurance required by the Agreement without the written consent of SLDMWA. Consultant shall provide SLDMWA with a new or renewed certificate of insurance upon any changes or modifications to coverage, including any extension or renewal of required insurance coverage; provided that any changes or modifications to coverage shall be consistent with this Agreement.
4. The insurer(s) issuing the required policies shall, by separate endorsement, agree to waive all rights of subrogation against the "Additional Insureds" for losses arising in any manner from the products or work provided or performed by or on behalf of Consultant for SLDMWA, but this provision applies regardless of whether or not SLDMWA has received the waiver of subrogation.

ARTICLE 11. INDEMNITY; NO LIABILITY FOR CONSEQUENTIAL DAMAGES

A. Consultant shall, with respect to all work which is covered by or incidental to the Agreement, defend, indemnify, and hold harmless SLDMWA, its officers, directors, agents, representatives and employees (collectively "SLDMWA"), from and against any and all liens and claims asserted by firms or individuals claiming through Consultant, and claims, liability, loss, damage, civil fines, penalties, costs, or expenses, including reasonable attorneys' fees, expert's fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, other loss, damage, or expense to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, willful misconduct or breach of this Agreement by Consultant or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement. Consultant's duty shall include the duty to defend the indemnitees as required by Civil Code section 2778, which duty shall arise from the need for defense and is not contingent upon a finding of liability for indemnification, and Consultant shall employ counsel reasonably acceptable to SLDMWA for this defense obligation. Consultant shall not be obligated under the Agreement to indemnify SLDMWA to the extent that the damage is caused by the active or sole negligence or willful misconduct of SLDMWA or its agent or servants other than Consultant.

B. SLDMWA shall defend, indemnify, and hold harmless Consultant, its officers, directors, agents, representatives and employees (collectively "Consultant") from and against any and all claims, liability, loss, damage, civil fines, penalties, costs, or expenses, including reasonable attorneys' fees, expert's fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, other loss, damage, or expense to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, willful misconduct or breach of this Agreement by SLDMWA or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement

other than Consultant. SLDMWA's duty shall include the duty to defend the indemnitees as required by Civil Code section 2778, which duty shall arise from the need for defense and is not contingent upon a finding of liability for indemnification, and SLDMWA shall employ counsel reasonably acceptable to Consultant for this defense obligation. SLDMWA shall not be obligated under the Agreement to indemnify Consultant to the extent that the damage is caused by the active or sole negligence or willful misconduct of Consultant or its agent or servants.

C. Where any claim results from the joint negligence, gross negligence, willful misconduct or breach of any provision of this Agreement by SLDMWA and Consultant, the amount of such claim for which SLDMWA or Consultant is liable as indemnitor under this Article shall equal (i) the proportionate part that the amount of such claim attributable to such indemnitor's negligence, gross negligence, willful misconduct or breach of any provision of this Agreement bears to (ii) the amount of the total claim attributable to the joint negligence, gross negligence, willful misconduct or breach of any provision of this Agreement at issue.

D. Consultant and SLDMWA each agree to promptly serve notice on the other party of any claims arising hereunder and shall cooperate in the defense of any such claims.

E. The acceptance by SLDMWA or its representatives of any certificate of insurance providing for coverage of any kind shall in no event be deemed a waiver of any of the provisions of this Article. None of the foregoing provisions shall deprive SLDMWA of any action, right or remedy otherwise available by law.

F. Except to the extent of any insurance coverage, neither Consultant nor SLDMWA shall be responsible to the other for any form of consequential damages, including, but not limited to losses of use, sale, profits, financing, business and reputation, and attorney fees thereon. Nothing in these provisions or in this Agreement shall waive, release or compromise any insurance requirements or coverages required in Article 10.

ARTICLE 12. INTELLECTUAL PROPERTY INFRINGEMENT

Consultant shall defend, indemnify and hold SLDMWA free and harmless from and against, any loss, cost and expense that SLDMWA incurs because of a claim that any deliverables, materials or equipment (hereinafter "Product") provided pursuant to this Agreement infringes on the intellectual property right of others. Consultant's obligations under this indemnification are expressly conditioned on the following: (i) SLDMWA must promptly notify Consultant of any such claim; (ii) SLDMWA must in writing grant Consultant sole control of the defense of any such claim and of negotiations for its settlement or compromise (if SLDMWA chooses to represent its own interests in any such action, SLDMWA may do so at its own expense, but such representation must not prejudice Consultant's right to control the defense of the claim and negotiate its settlement or compromise); (iii) SLDMWA must cooperate with Consultant to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications to or misuse of the Product by SLDMWA, or others. In the event of any such infringement claim, Consultant, at its sole option and expense, may (A) retake title and possession of the Product and refund all compensation paid by SLDMWA, or (B) obtain for SLDMWA the right to continue using the Product under the terms of this Agreement; or (C) replace the Product with another that is substantially equivalent in function, or modify the Product so that it becomes non-infringing and substantially equivalent in function.

ARTICLE 13. USE AND OWNERSHIP OF WORK PRODUCT

As used in this Agreement, the term "Work Product" means any and all deliverables or materials fixed in a tangible medium of expression, including software code, written procedure, written documents, abstracts and summaries thereof, or any portions or components of the foregoing created, written, developed, conceived, perfected or designed in connections with the services provided under this Agreement. SLDMWA shall retain all rights, title and interest in and to the Work Product, including all intellectual property rights therein and any and all enhancements, improvements and derivative works thereof, and Consultant obtains no rights therein.

ARTICLE 14. ONLINE DOCUMENT ACCESSIBILITY

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

ARTICLE 15. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party upon 30 days' written notice, with or without cause, upon written notification to the other party. Following such termination, SLDMWA shall pay Consultant all unpaid sums due for services performed under this Agreement to the date of termination, plus reasonable expenses for winding down the services. Following such payment, SLDMWA shall have the right to immediate possession of all documents, files (including electronic files), and other Work Product. No termination of the Agreement shall excuse or otherwise relieve Consultant of its responsibilities under the Agreement, including, without limitation, the standard of care for its work and services and its indemnity obligations. All of such responsibilities under the Agreement with respect to work and/or services performed prior to the date of termination shall survive any termination.

ARTICLE 16. RECORDS AND AUDIT

A. Records of Consultant's direct personnel and reimbursable expenses pertaining to any Extra Services on the work described in Exhibit A or any Task Orders shall be kept on a generally recognized accounting basis and shall be available to SLDMWA or its authorized representative at mutually convenient times.

B. SLDMWA or SLDMWA's authorized representative shall have access, upon reasonable notice and during normal business hours during the term of the Agreement and for a period of two (2)

years thereafter, to Consultant's books and records and all other documentation pertaining to Consultant's services under this Agreement for the purpose of auditing and verifying the cost of such services or for any other reasonable purpose. Such access includes the right to make excerpts, transcriptions and photocopies at SLDMWA's expense.

C. Consultant will preserve its books, records and other documents related to this Agreement for a period of two (2) years after completion or termination of all services under this Agreement.

ARTICLE 17. NOTICE OF CLAIMS AND DISPUTE RESOLUTION

A. Consultant and SLDMWA shall attempt to resolve conflicts or disputes that arise under this Agreement or that relate in any way to this Agreement or the subject matter of this Agreement in a fair and reasonable manner. In the event of any such conflict or dispute, the party first shall give written notice of the conflict or dispute to the other in accordance with the notice provisions under this Agreement. Such notice shall be given as soon as possible but in no event later than thirty (30) days after the conflict or dispute arises. Thereafter, the conflict or dispute shall be resolved as set forth below.

B. Direct Negotiation: Direct Negotiation will be the initial process used by the parties after written notice of any dispute arising out of or relating to the Agreement is given. Either SLDMWA or Consultant may make a request for Direct Negotiations as an initial attempt to resolve any conflict or dispute arising out of the Agreement. Direct Negotiation representatives of the parties shall be SLDMWA's designated representative and Consultant's designated representative. Any requested Direct Negotiation will take place at SLDMWA's offices or at a mutually agreeable location specified by the parties' designated representatives. Direct Negotiations shall take place as soon as reasonably practical after the request for Direct Negotiation. The parties shall negotiate in good faith in an effort to resolve the claim, dispute, or other matter arising out of the Agreement. Each party shall document the results of the Direct Negotiation, and these documents shall be exchanged between the parties.

C. Mediation: The parties agree that all claims, disputes or controversies between the parties arising out of or relating to the Agreement, or breach thereof, shall initially be submitted to non-binding mediation before a mediator mutually agreed upon by the parties. The costs and fees of the mediator shall be paid equally by the parties. The parties shall negotiate in good faith in an effort to reach an agreement with respect to the claim, dispute or controversy.

D. Arbitration or Litigation: If the conflict or dispute remains unresolved after mediation, the parties may agree in writing to binding arbitration, or the matter may proceed in litigation before a court of competent jurisdiction. Neither party shall commence or pursue arbitration or litigation prior to (1) the completion of mediation proceedings, and (2) prior to completion of Consultant's services under this Agreement.

ARTICLE 18. DIRECTION BY LEGAL COUNSEL

In the course of the services provided under this Agreement, Consultant may be directed by SLDMWA Counsel, and thus may acquire or produce confidential information and communications that are protected from disclosure under the privilege for attorney-client communications or the attorney-work product doctrine. Under such circumstances, SLDMWA Counsel will be identified as a SLDMWA Representative. Consultant acknowledges that the Consultant shall direct all communications, reports and information, including invoices, to said Counsel, and not to any other representative of SLDMWA,

unless otherwise directed by Counsel. Accordingly, Consultant agrees that it will mark all communications, documents and files related to the services provided as “Privileged and Confidential,” except as specifically directed or authorized by SLDMWA Counsel.

ARTICLE 19. ADDITIONAL PROVISIONS

A. Successors and Assigns: SLDMWA and Consultant each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Agreement. Consultant shall not assign the Agreement or sublet it in whole or part without the written consent of SLDMWA, nor shall Consultant assign any moneys due or to become due to it hereunder without the prior written consent of SLDMWA.

B. Unenforceability of any Clause: If any clause or provision of the Agreement is held to be unenforceable or invalid, then that provision of the Agreement shall be stricken, and all other provisions of this Agreement shall remain in full force and effect and shall not be effected thereby.

C. Waiver of Breach: Failure by one party to notify the other of a breach of any provision of this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

D. Entire Agreement: The Agreement, including all exhibits, represents the entire and integrated agreement between SLDMWA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. No changes, amendments, alterations or modifications to this Agreement will be effective unless in writing and executed in the same manner as the Agreement.

E. Interpretation: The Agreement shall be construed and interpreted in accordance with the laws of the State of California.

F. Headings: The titles of sections of these General Conditions are for convenience only and no presumption or implication of the intent of the parties as to the construction of this Agreement shall be drawn therefrom.

ARTICLE 20. ADDITIONAL PROVISIONS FOR TASK ORDER CONTRACTS

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

A. Where this Agreement is indicated to be a Task Order Contract, the Agreement will consist of the individual projects defined by Task Orders entered into by the Parties during the term of and pursuant to this Agreement. Each Task Order will be numbered sequentially and will be similar in format to **Exhibit D**, entitled “Task Order Format,” attached hereto and incorporated herein by this reference. Each Task Order will specifically define the scope of work for each specific project on which SLDMWA desires to retain Consultant’s services. Each Task Order will also specify (1) the date on which the work covered by the Task Order is to begin; (2) the date on which the work covered by the Task Order is to be

completed; (3) the estimated charges that SLDMWA can expect to pay to Consultant for Consultant's services pursuant to such Task Order; and (4) the names of the persons who will be SLDMWA's and Consultant's respective principal representatives for the management and performance of the specific services covered by said Task Order.

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

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

D. All invoices for services shall identify the Task Order number. In addition, all invoices should be submitted separately for each Task Order number.

E. SLDMWA will have the right to terminate Consultant's services under any specific Task Order at any time by giving notice in writing to Consultant. Consultant will not be entitled to payment for any cost related to the terminated part of services covered by the Task Order and incurred after the effective date of termination except for costs directly related to work performed by Consultant in terminating, provided that such work is authorized in advance by SLDMWA's representatives under such Task Order. SLDMWA also will reimburse Consultant for all expenses incurred by Consultant in satisfying commitments for materials, equipment and services for use in the terminated work which were made by Consultant prior to such termination. Such expenses may include the cost of returning or disposing of unused materials and equipment and terminating agreements for services by third parties. Consultant, however, will use its best efforts to minimize such costs. This paragraph provides the full and exclusive compensation to Consultant in the event of a terminated Task Order or termination of a Task Order Contract.

ARTICLE 21. LIMITATION OF LIABILITY

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

EXHIBIT C
FEES, HOURLY RATES AND REIMBURSABLE COSTS/EXPENSES



RATE PER HOUR - 2024

CLASSIFICATION	RATE
Principal / Strategic Advisor	\$350
Vice President / Program Manager	\$350
Director of Water Operations and Management	\$350
Director of Water Resources Development	\$350
Director of Water Supply Management	\$350
Director of Water Infrastructure	\$350
Policy and Agreement Matters	\$500
Director of Water Policy	\$350
Senior Project Manager	\$275
Project Controls Manager	\$250
Senior Project Controls	\$200
Project Manager III	\$225
Project Manager II	\$200
Project Manager I	\$185
Project Analyst	\$185
Project Coordinator II	\$175
Project Coordinator I	\$150
Project Controls Coordinator	\$150
Project Administrator	\$125

Hourly rates are inclusive of all overhead and administrative expenses. Travel and other incidental expenses shall be reimbursed at cost. Mileage expenses shall be reimbursed at the current IRS rate. Upon request, Hallmark Group will provide a cost proposal for additional staff that may be required to support the client. Other costs will be determined upon final scope requirements and approved by the client.

This rate schedule shall be escalated annually as mutually agreed to by Hallmark Group and the client and will incorporate year-over-year increases per the U.S. Bureau of Labor Statistics Employment Cost Index for Professional and Business Services.

If future years have rate increases, the rates must be agreed upon prior to issuance of any future task orders.

**EXHIBIT D
TASK ORDER FORMAT**

TASK ORDER #
[TITLE]

Detailed Scope of Work

[Insert Scope of Work details]

Budget Maximum: [Insert not to exceed amount]

Task # Performance Period: [Insert Task Order start date and ending date]

SLDMWA Project Lead: [Name] [Email]

Consultant Project Lead: [Name] [Email]

Special Instructions: [Insert any special instructions]

Accepted:

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Pablo Arroyave Chief Operating Officer San Luis & Delta-Mendota Water Authority Date: _____	By: _____ [NAME] [TITLE] [ORGANIZATION] Date: _____

TASK ORDER # COST SUMMARY

[Insert TASK ORDER # COST SUMMARY HERE]

TASK ORDER 1

PROJECT MANAGEMENT & DESIGN REVIEW SERVICES FOR THE DELTA-MENDOTA CANAL SUBSIDENCE CORRECTION PROJECT

Detailed Scope of Work

The scope of services to be performed under this task order include Project Management Support for the Delta-Mendota Canal Subsidence Correction Project (Subsidence Project), including but not limited to the following sub-tasks:

1. Management of the design consultant for the Subsidence Project.
2. Review, comment, and provide recommendations regarding the design for rehabilitation of the Upper DMC Subsidence Correction Project.
3. Development of a formal Request for Proposal (RFP) and selection and management of a qualified bridge design consultant for the replacement of impacted bridges.
4. Assist in the development and implementation of a plan to initiate construction activities for the Subsidence Project to enable full utilization of state grant funding.
5. Assist in the solicitation, selection, and management of construction contractor(s) as needed for the project.
6. Coordination with stakeholders, including but not limited to Reclamation, Water/Irrigation Districts, Caltrans, Cities and Counties.
7. Lead and manage the Planning Committee, a subcommittee to the Finance & Administration Committee.
8. Attend meetings and provide support as needed for the work in Task Order 1.
9. Begin the collection and processing of information necessary to ascertain costs, develop reports, archive documents, and track and administer billing.

See TASK ORDER 1 COST SUMMARY & ALLOCATIONS

Budget Maximum: \$470,375

Task 1 Performance Period: July 29, 2024 – February 28, 2025

SLDMWA Project Lead: Jaime McNeil; jaime.mcneil@sldmwa.org

Consultant Project Lead: Richard Welsh; RWelsh@hgcpm.com

Special Instructions: Task Order 1 is subject to applicable terms and conditions set forth between the State of California (Department of Water Resources) and San Luis & Delta-Mendota Water Authority; Agreement No. 4600014564, attached herein as Attachment 1. HGCPM, Inc. shall be entitled to reimbursement of costs on and after July 29, 2024, which if had been incurred after this Agreement was entered into, would have been allowable, allocable and reasonable under the terms and conditions of this Agreement. The Pre-Award incurred costs are associated with the review of the 30% CP-1 Design Package provided to HGCPM, Inc. on July 29, 2024, and all associated project communication thereafter.

Accepted:

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Pablo R. Arroyave Chief Operating Officer San Luis & Delta-Mendota Water Authority	By: _____ Charles R Gardner, Jr. President HGCPM, Inc.
Date: _____	Date: _____

TASK ORDER 1 COST SUMMARY

TASK ORDER 1										
DMC Subsidence		FY 24								
SLDMWA Cost Estimate	Classification	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	FY25 Total
C. Gardner	Program Manager/Strategic Advisor	\$ 700	\$ 1,400	\$ 2,100	\$ 2,800	\$ 2,800	\$ 2,800	\$ 2,800	\$ 2,800	\$ 18,200
R. Welsh	Dir. Of Water Infrastructure	\$ 2,800	\$ 16,800	\$ 16,800	\$ 23,100	\$ 22,400	\$ 20,300	\$ 33,250	\$ 36,400	\$ 171,850
C. Creel	Dir. Of Water Supply Management	\$ 2,100	\$ 2,100	\$ 2,800	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 3,500	\$ 24,500
J. Shin-Lee	Project Manager II	\$ 1,800	\$ 5,400	\$ 9,450	\$ 12,150	\$ 11,850	\$ 10,950	\$ 16,500	\$ 17,850	\$ 85,950
J. Alwan	Senior Project Manager	\$ -	\$ 1,100	\$ 1,375	\$ 6,050	\$ 7,150	\$ 7,150	\$ 7,150	\$ 27,775	\$ 57,750
J. Harris	Project Control Manager	\$ 250	\$ 500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500	\$ 15,750
K. Hamrick	Senior Project Controls	\$ -	\$ 1,200	\$ 5,600	\$ 5,200	\$ 5,200	\$ 5,200	\$ 5,200	\$ 5,200	\$ 32,800
H. Fuentes	Project Coordinator I	\$ -	\$ 75	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 3,675
M. Benner	Project Coordinator II	\$ -	\$ 700	\$ 5,950	\$ 5,950	\$ 5,950	\$ 5,950	\$ 5,950	\$ 5,950	\$ 36,400
Hallmark Consultant/ODC M/U		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Direct Cost Reimbursement		\$ -	\$ 2,000	\$ 2,500	\$ 2,500	\$ 2,000	\$ 2,500	\$ 6,000	\$ 6,000	\$ 23,500
Total Hallmark		\$ 7,650	\$ 31,275	\$ 49,675	\$ 64,350	\$ 63,950	\$ 61,450	\$ 83,450	\$ 108,575	\$ 470,375

TASK ORDER 1 ALLOCATIONS

TASK		
1	Management of the design consultant for the Subsidence Project.	\$ 35,195
2	Review, comment, and provide recommendations regarding the design for rehabilitation of the Upper DMC Subsidence Correction Project.	\$ 142,298
3	Development of a formal Request for Proposal (RFP) and selection and management of a qualified bridge design consultant for the replacement of	\$ 47,213
4	Assist in the development and implementation of a plan to initiate construction activities for the Subsidence Project to enable full utilization of state grant	\$ 46,323
5	Assist in the solicitation, selection, and management of construction contractor(s) as needed for the project.	\$ 47,300
6	Coordination with stakeholders, including but not limited to Reclamation, Water/Irrigation Districts, Caltrans, Cities and Counties.	\$ 22,328
7	Lead and manage the Planning Committee, a subcommittee to the Finance & Administration Committee.	\$ 29,070
8	Attend meetings and provide support as needed for the work in Task Order 1.	\$ 31,845
9	Begin the collection and processing of information necessary to ascertain costs, develop reports, archive documents, and track and administer billing.	\$ 45,303
	Other Direct Cost Reimbursement	\$ 23,500
TOTAL		\$ 470,375