



Official Memorandum

PO Box 2157
Los Banos, CA 93635
sldmwa.org

To: SLDMWA Water Resources Committee Members and Alternates
SLDMWA Board of Directors, Alternates

From: Scott Petersen, Water Policy Director

Date: April 6, 2026

RE: Recommendation to Board of Directors to Authorize Execution of Professional Services Agreement and Task Order with MM Water Resources and Related Expenditures from the FY27 Leg Ops Budget

Background

Regulatory

On December 4, 2025, Reclamation executed a Record of Decision¹ on the Long-Term Operations of the Central Valley Project (“CVP”) and State Water Project, as a first step towards implementing Executive Order 14181, updating operations associated with the Record of Decision executed by Reclamation and the Biological Opinions issued by the Fish and Wildlife Service and NOAA Fisheries in December 2024. This new operation is described as “Action 5”.

Specifically, the Action 5 ROD updates the operations of the Projects by:

- (1) **Removing the Delta Smelt Summer and Fall Habitat Action (Fall X2)**, in response to findings by the U.S. Fish and Wildlife Service that the action is not anticipated to have observable effects on delta smelt survival;
- (2) **Removing the early implementation measure of the Delta export reduction of the Healthy Rivers and Landscapes (“HRL”) program**, in response to uncertainties associated with the timing of potential adoption and implementation of the HRL Program by California’s State Water Resources Control Board; and
- (3) **Updating the Delta operating criteria** to expand the opportunities for Old and Middle River (“OMR”) management at no more negative than -5,000 cubic feet per second (cfs), and a stormflex action of -6,500 cfs, including the use of predictive tools for real-time assessment of environmental conditions.

Federal Workforce

One focus of the current federal administration has been reducing the scale of the federal workforce, which has had impacts on Reclamation’s California-Great Basin region, including staffing reductions in Reclamation’s Bay-Delta office. One result of this workforce reduction effort has been an increase in the consultant pool to provide technical support to advance various lines of evidence that can improve species recovery efforts and more efficient operations of the CVP.

¹ https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=54661



Issue for Decision

Whether the Water Resources Committee should recommend the execution of a Professional Services Agreement and associated Task Orders with MM Water Resources in the amount currently being negotiated with Reclamation to support advancement of lines of evidence that can improve species recovery efforts and more efficient operations of the CVP.

Recommendation

Staff recommends that the Committee recommend the execution of a Professional Services Agreement with MM Water Resources and associated task orders to the Board of Directors.

Analysis

MM Water Resources personnel have substantial experience in the CVP, with strong strategic and technical acumen. There is substantial work needed to be performed to advance various lines of evidence that can improve species recovery and improve the efficiency of CVP operations, and MM Water Resources has the capacity and expertise to advance these important efforts.

Staff understands that Reclamation is advancing a procurement effort to directly contract with MM Water Resources for substantially similar services, but the federal procurement process has a substantial delay in completion, and associated impacts on potential advancement of key Water Authority and CVP contractor efforts to advance exploration of lines of evidence that could lead to operational improvements. The execution of a contract with MM Water Resources would reduce the temporal gap and serve to continue the advancement of these various work streams.

Budget Implications

The Water Authority's Leg-Ops Fund (Fund 05) has a number of funding pools available to support this contract, including Technical Legal and Science Program line items. For CVP wide functions, it is anticipated that the Water Authority will be supporting this contract on a limited temporal basis, as Reclamation is currently advancing its procurement process for a direct contract with MM Water Resources. Funds expended under this contract are anticipated to be reimbursed to the Water Authority by Reclamation under a separate agreement, so the only budget implication is a short-term cash flow of the contract during the time it takes Reclamation to stand up its independent contract with MM Water Resources.

Attachment

Draft Professional Services Agreement with Task Order

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

AGREEMENT FOR PROFESSIONAL SERVICES

For

CVP Long-Term Operation Strategy Support

AGREEMENT No. [XXX-F27-AA05]

THIS AGREEMENT is made and entered into effective **DATE**, 2026, between the San Luis & Delta-Mendota Water Authority, hereinafter referred to as “SLDMWA” and MM Water Resources, 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 and 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>
Scott Petersen San Luis & Delta-Mendota Water Authority 1331 Garden Highway, 2 nd Floor Sacramento, CA 95833 Scott.Petersen@sldmwa.org 209-826-9696	David Mooney MM Water Resources Address City, State ZIP Email address Phone

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 bind Consultant to the terms of this Agreement.

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Federico Barajas Executive Director San Luis & Delta-Mendota Water Authority	By: _____ David Mooney Title MM Water Resources

EXHIBIT A SCOPE OF SERVICES

Consultant will provide strategic advice, project formulation, and program management support on the long-term operation of the CVP to SLDMWA, as requested. Individual work efforts, specific tasks, assignments, deliverables, and associated cost estimates will be described in acceptable detail in sequential Task Orders. Consultant cost accounting, work description detail, and invoicing will track specific work efforts according to Task Order.

EXHIBIT B GENERAL TERMS AND CONDITIONS

ARTICLE 1. SCOPE OF SERVICES OF CONSULTANT

A. Services: Consultant's 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.

B. Changes/Amendments: Consultant's Services may be changed or amended only by written amendment executed by SLDMWA and Consultant. No claim for any additional compensation or time shall be valid unless authorized by a written amendment.

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

D. 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 will perform its Services under this Agreement with the degree of skill and diligence normally practiced in the same industry by consultants performing the same or similar services. Consultant shall comply with all Federal, State, County, local and other governing laws, rules and regulations applicable to the performance of the Services.

E. 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.

F. 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.

G. Compliance with Laws: Consultant shall give all notices and comply with all applicable 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 applicable 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. If federal funding is obtained in connection with any Phase of the project work, Consultant shall comply with all federal requirements applicable at the time of notice to proceed with the work funded in whole or in part by federal funds and that are required in connection with such federal funding. Upon the Authority's request, Consultant shall furnish evidence satisfactory to the Authority that any or all of the foregoing obligations have been fulfilled.

Note: See Article 19 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 6) 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. 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 4. 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 5. 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 6. 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**, with email copy to Accounts Payable, San Luis & Delta-Mendota Water Authority, at accounts.payable@sldmwa.org or via U.S. Mail at P.O. Box 2157, Los Banos, CA 93635. If applicable, Consultant's invoice also shall include reimbursable costs/expenses 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).

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. 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) working 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 7. 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 8. CONFIDENTIAL INFORMATION

A. SLDMWA not disclose to Consultant any information SLDMWA considers confidential or otherwise protected from disclosure under this Agreement or any associated Task Orders. 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 9. 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 or any 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 limit 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 \$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Contractor's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than one million dollars (\$1,000,000) for each occurrence, an annual aggregate of two million dollars (\$2,000,000), and a products/completed operations aggregate of two million dollars (\$2,000,000).
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, agents, directors, representatives, authorized volunteers and employees (collectively "SLDMWA") as 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 with respect to policies on which SLDMWA is required to be named as an additional insured; 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 10. 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, and (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 9.

ARTICLE 11. 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.

ARTICLE 12. LIMITATION OF LIABILITY

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

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 thirty (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

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.

ARTICLE 17. DISPUTE RESOLUTION

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. The parties agree to attempt to mediate through a professional mediator any conflicts or disputes not otherwise resolved by the parties, with the costs of mediation shared equally by the parties. If the mediation does not settle the conflict or dispute, 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. 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 19. 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 accepted by an authorized representative of Consultant.

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.

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.

F. The limitation of liability in Article 12 is modified such that, if the conduct by Consultant giving rise to the loss occurs under one or more Task Orders, the aggregate total liability of Consultant arising from or related to SLDMWA's engagement of Consultant shall not exceed the recoveries from insurance provided or, if none, an amount equivalent to the fee paid by SLDMWA to Consultant for its services under the applicable Task Orders.

EXHIBIT C

FEES, HOURLY RATES AND REIMBURSABLE COSTS/EXPENSES

Fees, hourly rates, and reimbursable costs/expenses will be described in acceptable detail in sequential Task Orders.

EXHIBIT D TASK ORDER FORMAT

**[TITLE]
Detailed Scope of Work**

TASK 1 – [TITLE]

[Description]

TASK 2 – [TITLE]

[Description]

Basis for Payment:

Budget Maximum:

Estimate of Time Schedule:

SLDMWA Project Lead: [Name] [Email]

Consultant Project Lead: [Name] [Email]

Special Instructions:

Accepted:

<u>San Luis & Delta-Mendota Water Authority</u>	<u>Consultant</u>
By: _____ Federico Barajas Executive Director San Luis & Delta-Mendota Water Authority	By: _____ [NAME] [TITLE] [ORGANIZATION]
Date: _____	Date: _____