



Carmel Area Wastewater District

Request for Proposals
for
IRS Code Section 115 Trust Administration

Carmel Area Wastewater District
3945 Rio Road
Carmel, CA 93922
www.cawd.org

I. Introduction

A. **Request for Proposals.** The Carmel Area Wastewater District (CAWD or “District”) is soliciting proposals from qualified firms who offer Internal Revenue Service (IRS) Code Section 115 Retirement Trust (hereinafter referred to as “Trust”) services to California local government agencies. The services anticipated to be provided by the firm include the establishment and ongoing fiduciary investment advice for a Trust(s) for pension and potentially other eligible expenses.

There is no expressed or implied obligation for the District to reimburse responding firms for any expenses incurred in preparing proposals in response to this Request for Proposals (RFP).

The District reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that firm is ultimately selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the subsequent contract between the District and the firm selected.

To be considered, one printed copy or one electronic copy of the technical proposal including fees and fee structure be received by the Carmel Area Wastewater District by 5:00 p.m. on December 21, 2020. Printed proposals are to be mailed or delivered in person to: Carmel Area Wastewater District, Attention: Barbara Buikema, General Manager, 3945 Rio Road, Carmel, CA 93922

Electronic proposals are to be emailed to downstream@cawd.org. The District reserves the right without prejudice to reject any or all proposals submitted. Late proposals will not be considered.

It is anticipated that selection of a firm will be completed by late December 2020 and that a contract will be considered by the Board of Directors at a meeting in January 2021.

B. **Term of Engagement.** The selected firm shall be designated as the District’s Section 115 Pension Trust provider for a three-year agreement with an option of two additional two-year (2) increments under the same terms and conditions. The District reserves the right to cancel any agreement at any time upon thirty (30) days prior written notice of its intent to terminate any agreement. The designated depository shall provide the District at least ninety (90) days prior written notice of its intent to terminate any agreement

C. **Inquiries.** Inquiries regarding this RFP, the proposal process, and any technical questions regarding audit services should be directed to Barbara Buikema, General Manager. She may be reached via telephone at (831) 624-1248 or via email at buikema@cawd.org

II. Services Required

A. **General.** The CAWD is exploring various options for managing its unfunded long-term pension liabilities. One of the strategies being considered is establishing an Internal Revenue Service Code Section 115 trust to hold assets set aside to fund future pension obligations and expenditures. The objectives of the proposed trust are to provide reasonable returns and maximum flexibility in terms of beneficiaries of trust assets. The yield objective recognizes the need to protect the principal value of assets in the trust while also acknowledging that yields cannot be obtained without some measure of prudent risk. The primary purpose of this RFP is to obtain information for purposes of evaluating prospective firms who provide this type of trust service.

B. **Advice and Consultation.** Throughout the contract period, the firm must be available during regular business hours to provide the District with informal advice and consultation on matters relating to the Trust, including but not limited to the analysis of funding options, asset allocation strategies, and trust design. The firm will be expected to keep the District updated on trust related issues and developments pertaining to Federal and State tax code requirements and changes in financial reporting pronouncements issued by the Governmental Accounting Standards Board.

C. **District Requirements.** The firm must comply with all relevant District requirements, providing proof of insurance for at least the minimum required amounts, and executing a District contract for consulting services.

D. **District Board Meetings.** The firm shall make available up to two times per fiscal year a senior staff member to attend District Board meetings and/or District Pension Committee meetings for the purpose of discussing the Trust's performance and strategies. Attendance may be remotely via ZOOM or Microsoft Teams.

E. Scope of Work.

- **Trust Objectives.** Based on the firm's specific prior knowledge and experience as a Trust services provider, advise District staff in establishment of a comprehensive trust program including establishment of IRS Section 115 Trusts (both pension and other eligible expenditures) including recommended annual funding strategies.

- **Trust Administration.** Based on the firm's specific prior knowledge and experience as a Trust services provider, offer trust structure, administration, and related trustee services, including coordinating all District contributions to the Trust and processing requests for distributions.

- **Fiduciary Investment Advisory Services.** Based on the firm's specific prior knowledge and experience as a Trust services provider offer a full scope of fiduciary investment

management services, including but not limited to developing a written investment policy for the trust assets, developing a recommended asset allocation strategy based on the Trust’s funding and investment objectives and the District’s risk tolerance.

- **Reporting.** Provide monthly, quarterly, and annual comparative performance analyses and evaluation reports of the Trust’s investments.

III. Timeline

The expected timeline for the proposal and establishment of the Trust is as follows:

Date	Milestone
November 20, 2020	Request for Proposals issued
December 21, 2020	Proposals due
December 30, 2020	Oral presentations/interviews of selected firms if needed
January 28, 2021	District Board of Directors consideration of agreement with the selected firm

IV. District Responsibilities

A. **Technical Support and Assistance.** Finance staff and responsible management personnel will be available for needed sources of information, documentation, and explanations. It is expected that the firm will rely on the assistance of District staff to a minimum level, in consideration of limited staff capacity.

B. **Manner of Payment.** The District expects that all fees will be assessed as part of the Trust’s administration fees including annual administration and trustee and investment services as set forth in the firms submitted RFP based upon total assets in the Trust under management.

V. Description of the Government

A. **Background Information.** Information regarding CAWD, such as history, governmental structure, services provided, the current Operating and Capital Budgets is available on the District website, www.cawd.org.

B. **Operating Budget Pension Expenditures.** The District contributes to the California Public Employees Retirement System (CalPERS) for employee defined benefit pension plan for Miscellaneous employees. CalPERS provides retirement and disability benefits, annual cost of living adjustments, and death benefits to plan members and beneficiaries. The District currently provides two benefit formulas as follows:

Plan	Formula
Miscellaneous	2.0% @ 60
PEPRA	2.5% @ 62

The District’s FY 2020-21 Adopted Operating Budget includes employer contributions totaling approximately \$278K for miscellaneous plan employees.

C. **Finance Operations.** The Finance Department is headed by Principal Accountant, James Grover. The Department is responsible for budgeting, financial reporting, treasury, financial audits, payroll, accounts payable, accounts receivable, cash collection, business license, purchasing, and other general accounting functions.

VI. Submittal of Proposal

The following materials must be submitted for a proposal to be considered:

General Requirements. To be considered, one printed copy or one electronic copy of the technical proposal including fees and fee structure be received by the District by 5:00 p.m. on December 21, 2020. Printed proposals are to be mailed or delivered in person to: Carmel Area Wastewater District: Attention Barbara Buikema, General Manager, 3945 Rio Road, Carmel, CA, 93923. Electronic proposals are to be emailed to downstream@cawd.org The District reserves the right without prejudice to reject any or all proposals submitted. Late proposals will not be considered.

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the firm and of the staff to be assigned, in conformity with this RFP.

The proposal should address all the points outlined in this RFP. At a minimum, the following components must be included:

- **Title Page.** Showing the RFP subject; the firm’s name; the name, address, telephone number, and email address of the contact person; and the date of the proposal.
- **Table of Contents.** Including a clear and complete identification of the materials submitted by section and page number. Cross-referencing to section and page number in this RFP is preferred.

- **Executive Summary.** Provide a summary describing the Proposer’s ability to perform the work requested, a history of the Proposer’s background and experience providing services, and the qualifications of the proposer’s personnel to be assigned to the District. This summary should be brief and concise to apprise the reader for the basic services offered, and the experience and qualifications of the Proposer and staff.

- **Questionnaire to Scope of Services**

1. Organization Name
2. Organization Address
3. Letter of transmittal signed by an individual authorized to bind the respondent, stating that the respondent has read and will comply with all terms and conditions of the RFP
4. General information about the primary contact who would be able to answer questions about the proposal. Include the name, title, telephone number, and email address of the individual

- **Qualifications and Experience of the Proposer.**

1. Describe your organization’s history and organizational structure. Include the size of the organization, location of offices, years in business, organizational chart, names(s) of owner(s) and principal parties, and number and position titles of staff.
2. What is the primary business of the parent company and/or affiliates?
3. Which office(s) of your organization will have primary responsibility for managing the Trust? List the members of your team who will be responsible for providing the services and for ongoing support.
4. Describe the experience of the organization in providing Trust services to the public sector, including for how long the organization has been providing Trust services and the approximate combined asset value under management.
5. Indicated whether the organization manages client accounts in-house or utilizes an outside investment advisor.
6. State the number of California local government clients currently participating in the organization’s Trust program.
7. Describe any material changes in the organization’s structure, ownership, or management during the past three (3) years.
8. Describe any anticipated future changes in the organization’s structure, ownership, or management.
9. State and explain and Securities Exchange Commission (SEC) Financial Industry Regulatory Authority (FINRA) or other regulatory censure or litigation related to services the organization provides.

10. Comment on other areas that may make your organization different from your competitors.

- **Qualifications and Experience of Staff Assigned to the District**

1. Identify and provide the resume(s) of the personnel who will be assigned to the assignment
2. Describe the qualifications of staff proposed for the assignment including:
 - Their position(s) in the organization
 - Educational background and any financial and/or investment certifications
 - Types and amount of equivalent experience
 - Any agencies they have worked with in the past three (3) years and their level of involvement
3. Describe how the overall supervision will be provided.

- **Scope of Services**

1. Describe the methods by which your organization will fulfill the services requested in the Scope of Services and subsequent sections
2. Describe the process and requirements for the District to establish a Trust through the organization. Indicate whether the organization has received a private letter ruling from the IRS stating income from the organization's Trust program is excludable from gross income because it is derived from the exercise of an essential governmental function.
3. Provide a list of Mutual Funds that the organization includes in its portfolio.
4. Describe the organization's investment philosophy and portfolio management strategies, including whether the Trust's assets will be pooled with those of the organization's other clients. Explain the typical process for establishing how a new client's assets are invested.
5. Describe the process for a qualified withdrawal of funds from the Trust with the organization.
6. Identify any limitation on investment or withdrawal not related to item number five of Scope of Services, including any restrictions to cash withdrawal rate cash transferred in for Investment, and any holding periods.
7. Describe the frequency and format of the performance reports which would be provided. Provide samples of reports which would be provided. Note that reports must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and in compliance with Government Accounting Standards Board (GASB) pronouncements.

8. Describe the common benchmarks utilized for the organization's current Trust accounts.
9. Identify any Trust being managed that is designed to create a similar return to CalPERS.
10. Describe, if applicable, any divestment practices for socially conscience purposes.
11. Describe the separation process and status of the funds should the contract not be renewed in the future.

- **Fees**

1. Provide your fees for the proposed services. Fee quotes should be detailed by service.
2. Detail any/all start-up fees.
3. Outline billing and payment expectations, including timing and method of payment.
4. Describe any remaining fees not previously detailed in the above.
5. Describe any potential conflicts or third-party compensation received from investment products or providers, as well as any expenses/fees associated with the mutual funds recommended.

- **References**

1. List the name, address, email address, and telephone number of references from at least three (3) recent similar Trust clients with similar sizes as Carmel Area Wastewater District. California special district projects are preferred. You may offer more than three recent similar projects if desired. The references should include the start date of the project and the date of completion for each project.

- **Implementation Schedule**

1. Include a detailed implementation schedule with an example initial investment start date of February 1, 2021 and note key project milestones and timeline for deliverables. Identify any assumptions used in developing the schedule.

- **Certificate of Insurance**

1. Proposers must meet all the insurance requirements described in the sample Consulting Agreement (please see Attachment A).

- **Transmittal letter.** Briefly stating the proposer’s understanding of the work to be done, the commitment to perform the work within the timeline in this RFP, a statement addressing why the firm believes itself to be the best qualified to perform the work, and a statement that the proposal is a firm and irrevocable offer for 120 days. Certify that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the Town.

- **Experience.** Describe your firm’s experience serving California local government clients in establishing IRS Section 115 Trusts and related investment services. Comment on the key program advantages which make your firm different from your competitors. Please disclose the total volume of all Section 115 trusts under management with your firm.

- **Program Team and Relationship Services.** Provide the resume of the person (executive assigned to the District’s Trust account) who will be the key contact point to coordinate services to the District. Please identify members of your firm’s service team including their tenure with the firm, their background, and the role they will play in managing the District’s proposed Trust account.

Proposals should also:

- Describe the entity or entities proposed to serve as the trustee/custodian of the Section 115 Trust and as trust administrator, including a description of their background and experience with these types of trusts.
- Describe the entity or entities proposed to serve as the investment manager of the Section 115 Trust and as trust administrator, including a description of their background and experience with these types of trusts. Specify the number of years your organization or subcontractor has been providing investment advisory services.
- Disclose if your firm’s proposal includes use of any subcontractors for the servicing of the Trust plan and if so, please describe the nature of these services.
- Provide the District sample copies of contract documents you would expect to require the District to sign and approve to enter into an agreement.
- Explain if your firm or subcontractor is a registered investment advisor under the Investment Advisor’s Act of 1940. Please attach Part 2A of your most current Form ADV as an appendix.
- Describe any SEC, FINRA, or regulatory censure or litigation involving your firm, subcontractor, or its employees within the past three years.

- **Private Letter Ruling.** Explain the legal basis for your Section 115 Trust and how your program meets the requirements for compliance with federal and state law and any applicable requirements related to pronouncements issued by the Governmental Accounting Standards Board (GASB).

- Disclose if your pension Section 115 Trust program has received approval from the IRS in the form of a Private Letter Ruling.
- Describe safeguards built into your Section 115 Trust program to limit the liability exposure to the District.

- **Trustee and Trust Administration Services.** Please provide a comprehensive list of trustee services and Section 115 trust administration services you will provide.
 - Please note if there are any additional costs for any of the above-mentioned services.
 - Describe how District contributions to and distributions from the Section 115 Trust are handled.
 - Define any termination restrictions for the Section 115 Trust.

- **Investment Requirements and Investment Performance.** Is there an initial minimum balance requirement for the 115 Trust? Please describe the investment services your firm offers with respect to the 115 Trust including:
 - Does your firm help with investment strategy selection and investment policy development? Does this service typically include specific asset allocations recommendations? If so, please explain.
 - Please provide the firm's recommended comparative yield benchmarks for trust assets held in this type of trust. Please provide annual, five-year, ten-year, fifteen-year, and twenty-year return history and expense ratios for each fund/portfolio option available. Would the firm be able to benchmark against yields obtained from similar 115 Trusts? If so, please provide this data.
 - Describe the investment and risk options available for the 115 Trust.
 - Explain your firm's views on passive versus active management. What is your typical recommendation regarding allocation of the Section 115 Trust assets between active and passive management?
 - What are the typical approaches made to rebalancing or reallocating asset classes, styles, and sectors for or on behalf of the fund/trust?
 - Are there minimums requirements for periodic contributions to the Section 115 Trust?

- **Proposer Warranties.** Include an executed copy of Appendix B to this RFP, Proposer Warranties.

Evaluation Procedures

A. **Review of Proposals.** An evaluation committee will evaluate each respondent's relevant experience and expertise. Firms will be evaluated based on the information presented in the RFP. Firms may be invited to follow up interview with the committee to review their proposals. Final selection may be based upon the RFP as well as any supplemental information requested by the evaluation committee or obtained through follow up interviews.

- Qualifications as they relate to this project (40%) in the order shown below:
 - Firm's experience with the planning and implementation of a pension trust.
 - Firm's experience with fiduciary investment advisors
 - Qualifications of proposed key personnel

- Communication skills
- Proposed Fees and Charges for Services (30%)
- Firm's reputation for integrity and competence (20%)
- Ability to provide the required services in a timely manner (10%)

The District may invite one or more of the firms to make oral presentations/interviews during the week of December 30, 2020. It is anticipated that selection of a firm will be completed by early January 2021, and that a contract will be executed by the end of January 2021.

APPENDIX A: CONSULTING AGREEMENT

AGREEMENT FOR CONSULTATION AND/OR OTHER SERVICES

THIS AGREEMENT dated _____, 20XX, is by and between the **Carmel Area Wastewater District** (hereinafter referred to as the "District") and _____ (hereinafter referred to as "Consultant"), for a project generally described as _____.

1. GENERAL

The District engages the Consultant to furnish the services as defined in this agreement, at the compensation and upon the terms set forth herein and the Consultant accepts the engagement based upon the stated terms.

2. DUTIES OF THE CONSULTANT; SERVICES TO BE PERFORMED BY THE CONSULTANT

- A. The Consultant shall perform such duties and services as are listed on Exhibit "A". The services shall be completed according to the time schedule contained in Exhibit "A".
- B. Standard of Care: The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services. The Consultant will re-perform any services not meeting this standard without additional compensation.
- C. Consultant Professional Team: The Consultant shall provide and maintain the professional team to perform the services and furnish the materials in connection with this Agreement whose names and capacities are set forth on Exhibit "B". In the event that any member of that team shall leave the employ of the Consultant or be transferred to another office of the Consultant, the Consultant shall so advise the District and replace him or her with a new member who is competent to perform the required work and who shall be satisfactory to the District. Such other agents or employee contractors or subcontractors not listed on Exhibit "B" as may be required to perform any portion of this Agreement shall be competent and shall be suitably experienced in the function which they perform.

3. SERVICES OR MATERIALS TO BE PERFORMED OR FURNISHED BY District

- A. The District shall perform such services or furnish such materials to Consultant in connection with this Agreement as are set forth on Exhibit "C". If there are no entries on Exhibit "C", the District shall not be required to provide any services or furnish any materials to the Consultant. Unless otherwise provided on Exhibit "C",

all services and material to be furnished by the District will be without cost to Consultant.

- B. The District will authorize the Consultant in writing to proceed prior to the Consultant starting work on any of the services listed in Exhibit "A".
- C. The District will make its facilities accessible to Consultant as required for Consultant's performance of its services. The District will be responsible for all acts of District's personnel performed within the scope of their employment.
- D. Unless otherwise agreed to in the Scope of Services, the District will obtain, arrange, and pay for all advertisements for bids, permits, and licenses required by local, state or federal authorities; and land, easements, rights-of-way, and access necessary for the Consultant's services or project construction.

4. PAYMENT BY THE DISTRICT: TIME AND MANNER OF PAYMENT

The District shall pay the Consultant, for all required services and materials furnished to fulfill this Agreement, the amount or amounts and in the time and manner set forth on Exhibit "D". Consultant agrees to accept the stated sums as full compensation for all required services due under this Agreement.

5. ADDITIONAL WORK

The Consultant shall be entitled to extra compensation for services or materials not otherwise required under this Agreement, provided that the District shall first have identified the service or materials as extra, and specifically requested extra services or materials in writing, and in no event shall the District be liable for payment unless the amount of extra compensation shall first have been agreed to in writing by the District.

6. EQUAL EMPLOYMENT OPPORTUNITY

The Consultant shall not discriminate against any employee or applicant for employment because of age, race, religious creed, color, national origin, physical handicap, medical condition, marital status, or sex.

7. COMPLIANCE WITH LAWS

The Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations affecting the performance of its services under this Agreement.

8. INDEPENDENT CONTRACTOR

The Consultant is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent,

servant, or employee of the District.

9. PROJECT REPRESENTATIVES; NOTICES

The District and the Consultant each designate the following persons to act as authorized representatives of the District and the Consultant in matters and decisions pertinent to the timely performance of this Agreement, and each authorized representative will have full powers to bind the District or the Consultant, including, but not limited to, transmitting instructions, receiving information, making project-related decisions not requiring official District approval, processing Consultant payment requests and other matters. All notices or other official correspondence relating to work under this Agreement may be given by being personally delivered, by being placed in the United States mail, first-class postage prepaid, or by being sent by overnight prepaid air freight, addressed to the party to whom notice is to be given. Each notice shall be deemed to be effective upon receipt, if personally delivered or sent by air freight, or five days after being so mailed. Any notice may also be given by facsimile. Notices shall be provided to the following names and addresses:

For the Carmel Area Wastewater District:

Barbara Buikema, General Manager
P. O. Box 221428
Carmel, CA 93922

For the Consultant:

John Doe, Principal
Street
City, CA 9xxxx

10. INSURANCE:

Prior to the commencement of services hereunder, the Consultant shall certify and provide evidence of coverage from responsible insurance carriers of the following insurance. Such insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by the District. Consultant shall deliver to District certificates of insurance which shall provide that thirty days' notice will be given to District in the event of a reduction, modification, or cancellation.

- a) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation in compliance with the applicable state and federal laws. Employer's Liability limit \$1,000,000.
- b) Comprehensive General Liability Insurance, including Blanket Contractual, Broad Form Property Damage, Completed Operations and Independent Contractor's Liability, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 per each occurrence/claim, subject to

\$2,000,000 annual aggregate for Completed Operations and Personal Injury other than Bodily Injury.

- c) Comprehensive Automobile Liability Insurance including owned, hired, and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 per each occurrence.
- d) Professional Liability Insurance affording professional liability coverage to a combined single limit of \$1,000,000 per each occurrence/claim subject to a \$2,000,000 annual aggregate.
- e) Excess Liability Insurance following employers' liability afforded by item a) and other coverages afforded by items b), c) and d) set forth above, subject to a combined single limit of liability of \$2,000,000 for each occurrence/claim/aggregate.
- f) Additional Insured. District shall be included as an additional insured (but not as a named insured) on the Comprehensive General Liability, Comprehensive Automobile Liability and Excess Liability insurance policies described in parts b), c) and e) above; and as evidenced by filing with District the ISO (Insurance Service Office) CG 2010 endorsement form or equivalent. g) No Exclusion. No insurance coverages described herein shall exclude coverage for claims against the Consultant by the District because the District is named as an additional insured.

11. INDEMNITY

The Consultant shall indemnify, defend and hold the District and each officer, director, employee, and agent of the District harmless from and against any and all claims, suits, judgments, liabilities, losses, damages, costs and expenses of any kind (including attorney's fees) which arise in any way out of the work under this Agreement and which are caused in whole or in part by the negligence, willful misconduct or other legal fault of the Consultant or any of its agents, employees, contractors or subcontractors, except to the extent such injury or harm is caused by the District. The Consultant's obligation to indemnify, defend and hold harmless any individual or entity pursuant to the provisions of this section shall be limited to the total insurance policy coverage limits set forth in section 10 so long as the claim for indemnity is insured and covered by the policies listed in section 10. In the event of an uninsured claim, the limit of Consultant's liability shall be \$2,000,000.

12. FORCE MAJEURE

The Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the Consultant.

13. TITLE TO DOCUMENTS

All original calculations, photographs, maps, drawings, plans, design notes and other material or documents developed or used in connection with the performance of this Agreement shall be the property of the District, provided, however, that the Consultant may provide the District with legible photostatic copies in lieu of the originals. Any plans and specifications shall bear the name of the Consultant together with the Consultant's certification number, if any. If the Consultant's working papers or product includes computer generated statistical material, the Consultant shall provide the material to the District in a mutually agreed upon computer machine-readable format and media.

14. ASSIGNMENT

The Consultant shall not assign or sublet any portion of this Agreement without the express prior written consent of the District, which may be withheld by the District in its discretion.

15. TERMINATION

Without limitation to such rights or remedies as the District shall otherwise have by law, the District shall also have the right to terminate this Agreement for any reason upon seven (7) days' written notice to the consultant. This Agreement may also be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with this Agreement through no fault of the other or if the project is stopped for a period of 60 days by conditions beyond the control of the District.

16. ADDITIONAL PROVISIONS, EXHIBITS

Additional provisions of this Agreement are set forth on Exhibits "A" - "D". All Exhibits shall be attached to this Agreement and are incorporated and made a part by reference.

17. AMENDMENT OR MODIFICATION

This Agreement may be amended, altered, or modified only by written agreement executed by both parties.

18. FURTHER ASSURANCES

Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to effectuate the terms and conditions of this Agreement; provided, however, such covenant shall not have the effect of increasing the obligations of any party pursuant to this Agreement or require any representations and warranties by any party.

19. SEVERABILITY

Should any provision of this Agreement be declared invalid and unenforceable in any jurisdiction by a court of competent jurisdiction, then such portion or provision shall be deemed to be severable, to the extent valid or unenforceable, from this Agreement as to such jurisdiction (but, to the extent permitted by law, not elsewhere) and shall not affect the remainder hereof. Notwithstanding the foregoing, a) such provision of this Agreement shall be interpreted by the parties and by any such court, to the extent possible, in such a manner that such provision shall be deemed to be valid and enforceable, and b) such court shall have the right to make such modifications to any provision of this Agreement as do not materially affect the rights or obligations under this Agreement of the parties hereto and as may be necessary in order for such provision to be valid and enforceable.

20. WAIVER

No waiver of any right or obligation of any of the parties shall be effective unless in a writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by any of the parties of any of their rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

21. ATTORNEYS FEES

Should either party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.

22. COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same instrument.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings, or agreements of the parties, whether written or oral, with respect to such subject matter.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the duly authorized officers of each of the parties effective the date first shown above.

FOR THE DISTRICT

By _____

Title _____

Approved as to Form:

District Legal Counsel

FOR THE CONSULTANT

By _____

Printed Name _____

Title _____

By _____

Printed Name _____

Title _____

- Exhibit "A": Consultant Scope of Services and Schedule
- Exhibit "B": Consultant Team
- Exhibit "C": District Services
- Exhibit "D": Payment Schedule

APPENDIX B: PROPOSER WARRANTIES

The proposer warrants that it can and will provide and make available, at a minimum, all the services and deliverables set forth in this RFP.

The proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts or omissions of any officers, employees, or agents in conjunction with the services to be provided. Coverage limits shall be \$2,000,000 or more per occurrence, without reduction for claims paid during the policy period. The carrier should be duly insured and authorized to issue similar insurance policies for this nature in the State of California.

The proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the District.

The proposer shall state the length of time for which the submitted Proposal shall remain valid. The District requires a period of at least 120 calendar days.

The proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature: _____

Printed Name: _____

Title: _____

Firm: _____

Date: _____