

REQUEST FOR PROPOSALS

Professional Services: Engineering Study For Special Benefit Assessments and Assessment Administration for the Kirkwood Meadows Public Utility District and Kirkwood Volunteer Fire Department



Kirkwood Meadows PUD

33540 Loop Road
PO Box 247
Kirkwood, CA 95646
(209) 258-4444

April 3, 2024

Response Due by Friday: May 3, 2024 at 2:00 P.M.

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PURPOSE

The Kirkwood Meadows Public Utility District (District) seeks experienced and qualified firms to provide assessment engineering and related professional services to review the District's estimated financial needs for staffing the Kirkwood Volunteer Fire Department (KVFD) at certain specified levels, prepare the engineer's report with the special benefit allocation methodology and proposed assessment rates for each assessed parcel or eligible property within the District to meet the KVFD's fiscal needs, and provide services relative to conducting an election and public hearing for the landowner approval of said assessments in accordance with the procedural requirements of Proposition 218.

Qualified consultants are invited to submit proposals in accordance with the requirements of this Request for Proposals (RFP) on or before May 3, 2024, at 2:00 P.M. The successful Consultant must be aware of the budget limitations and be able to provide a clear plan for completing the required work that meets the project's goals within the project budget constraints and schedule.

BACKGROUND

The District was formed in 1985 as an independent local public agency under the California Public Utilities Code after detachment from the El Dorado Irrigation District. The District's service area encompasses an area of approximately 1.875 square miles. The District also operates the Kirkwood Volunteer Fire Department (KVFD) from one fire station with no employees and a varying number of volunteers. KVFD responds to all types of emergency calls, including structure and wild land fires, medical emergencies, propane leaks, fire alarms, and hazardous material spills within Kirkwood Valley and surrounding areas through mutual aid agreements. Calls for service average less than 140 per year.

Currently, KVFD funding comes from an annual fire assessment, property taxes, and donations from the KVFD 501(c)(3) nonprofit corporation. KVFD incurs about \$300,000 of operating expenses annually. About 20% of these costs are covered through the annual assessment created in 1988 of \$.04 per square foot of combustible building space, paid as part of the District's monthly utility invoices. The remaining 80% of expenses are generally covered by property taxes that are returned to us by Alpine, Amador, and El Dorado Counties, or by reserves.

SCOPE OF SERVICES

Scope of Services sought by the District includes, but is not limited to, the following tasks to be performed by a qualified consultant:

1. Coordinate with the District and Counties to establish schedule, timelines, deliverables, etc. to ensure delivery of assessment enrollment to the respective Counties as they require in order to appear on the 2026 property tax rolls;
2. Review the District's budgets and cost estimates for the specified services to be funded;
3. Obtain assessor's parcel data and other real property information from the Counties as required for the determination and assignment of the District's assessment to each parcel or property within the District;

4. Research parcel attributes, parcel ownership information, and special benefits to appropriately calculate and assign assessments to each affected parcel;
5. Prepare a detailed draft engineer's report in accordance with the requirements of Proposition 218 substantiating the special benefits and proposed assessments assigned to each parcel;
6. Prepare and update assessment diagrams and maps as needed;
7. Work with District's staff and legal counsel to ensure compliance with Proposition 218;
8. Review the cost estimates, special benefit analysis, and assessment engineering analysis with the District Board of Directors prior to finalizing the engineer's report;
9. Prepare final engineer's report;
10. Attend at least 3 District public meetings for the review of the preliminary engineer's report and the public hearing for the assessment election;
11. Prepare, notice, distribute, and tally Proposition 218 election materials;
12. Communicate and coordinate with the Alpine, Amador, and El Dorado County Assessor's Offices, and other parties as needed; and
13. Submit the final assessment roll for inclusion on the County tax roll for the 2026 property tax rolls.

TERM AND TIMELINE

The Term of the agreement for professional services to be awarded in accordance with this RFP shall be for all services needed for the complete administration of the Proposition 218 process, including the ballot proceeding, to be completed as soon as reasonably possible in order to enroll the assessments for the 2026 property tax rolls.

PROPOSAL COMPONENTS

Submitted proposals should include the following components:

A. Cover Letter The cover letter shall be signed by a an officer or employee of each proposer having the authority to negotiate and execute contracts on behalf of the firm. Include the names, titles, mailing addresses, and phone numbers of personnel in your organization authorized to negotiate and approve the proposed contract with KMPUD.

B. Detailed Description of the Proposer's Qualifications – Each proposer shall provide a detailed description of firm qualifications, including a brief history of relevant work experience, the types of services provided, and specific examples of experience in providing similar services as those requested in this RFP.

C. Proposed Services – This section should provide an outline of the proposer's approach and scope of services for completing the Project described above.

D. Assessment Defense – In the event of a legal challenge to the assessments, any claims by one or more property owners that they do not receive the special benefits indicated in the engineer’s report, or other allegations challenging the validity of the engineer’s report and its methodology in determining the assessments, describe what services proposer would provide to support the District in responding to any claims or litigation, and the fees for these services.

E. Personnel to be Assigned – This section shall designate the following personnel, and briefly describe their relevant experience and qualifications:

- Project Manager. The Project Manager shall be designated as the principal contact for the District and shall be responsible for supervising the Project and meeting all Project objectives and deadlines.
- Principal Engineer. Identify the licensed, professional engineer who will author and sign the engineer’s report. The specific experience of the responsible professional engineer with similar Proposition 218 benefit assessments should be provided.
- Additional Personnel. Identify any other individuals who will perform the primary tasks for the Project, the specific tasks/services they will perform, and the percentage of the overall project work they will perform. This section shall also include a certification that the personnel identified will perform the work specified at the approximate scope of work percentages specified.
- Any resumes included shall be limited to one page per person.

F. References – Provide at least two (2) public agency clients (include names of contact persons, telephone numbers, email addresses and a brief description of the work performed) for whom proposer has performed services within the last three years similar to those required by this RFP. Do not include information on projects that are not similar in scope and character to the proposed RFP work scope.

G. Proposed Fee Schedule and Total Project Price – The fee schedule should reflect the hourly rates of each individual, total costs for all personnel, materials, and services necessary to complete the scope of work requested in this RFP, as well as the total price for the completion of the Project. This shall be submitted separately from the proposal.

H. District Standard Consultant Agreement - The proposal shall state that the proposer accepts the District’s standard services agreement attached as Appendix A and made a part of this RFP without modification or shall identify any proposed changes.

SUBMITTAL REQUIREMENTS

Each proposer shall submit the following items to the KMPUD:

- A. One (1) electronic (PDF) copy of the proposal.
- B. One (1) electronic cost proposal in a separate PDF.
- C. Proposal costs and contract shall be time and materials not to exceed, based on standard hourly rates. A separate spreadsheet identifying hours, personnel, and tasks (not including rates or costs) shall be included with the technical proposal. Hourly rates for individual personnel and services shall be included with the cost proposal. All travel, miles, meals, fees, markups, printing, and incidentals shall be included in hourly rates. Hourly rates shall remain the same throughout the project. This spreadsheet must be used in any requests for progress

payments based upon the percentage of individual tasks completed.

- D. The proposals must be signed by an official authorized to bind the proposer to its provisions. These items shall be delivered to the District no later than the date and time listed on the cover sheet of this RFP. All documents shall be labeled "KVFD Fire Protection Assessment."

Responses shall be submitted to the District before May 3, 2024 2:00 pm. Late responses will not be considered. Any changes the District makes to the requirements of this RFP, or answers to any questions, will be made by written addenda and posted on its website. The District reserves the right to revise or withdraw this RFP for any reason. The District reserves the right to reject all responses, to request additional information concerning any response for purposes of clarification, to accept or negotiate any modification to any response following the deadline for responses, and to waive any irregularities if it would serve the best interests of the District. Proposals, questions, or requests for information about this RFP should be addressed as follows:

Kirkwood Meadows PUD; Attn: Rick Ansel
PO Box 247
Kirkwood, CA 95646
Telephone: (209) 258-4444
Email: ransel@kmpud.com

All costs incurred by a proposer during response preparation or in any way associated with the preparation, submission, presentation, or interview if held, shall be the sole responsibility of the proposer. All submitted documents shall become the property of the District. By submitting a proposal, each proposer represents that it has examined and is familiar with this RFP and any addenda, that the proposal information submitted is correct, and that proposer understands and agrees to the provisions of this RFP and the appended services agreement.

EVALUATION, SELECTION, AND ASSIGNMENTS

Proposals will be reviewed and evaluated by a committee of District staff. After the technical proposals are reviewed and scored, the cost proposals will be opened, reviewed, and scored. Proposals will be rated and ranked based on the following criteria:

Criteria	Points
Cover Letter	Pass/Fail
Project Familiarity and Understanding	20
Project Approach	30
Project Team	15
Related Team Experience	15
Overall Impression	20
Total	100

The District will begin contract negotiations with the top-ranked proposer. The District may request additional information from the proposer during the negotiating phase. The District reserves the right and intends to negotiate the final scope of work, staff participation, and price before entering into a contract. In the event that the top-ranked proposer submits a fee that is

not considered by the District to be a reasonable cost for the work and an acceptable fee cannot be reached through the negotiation process, or the proposer requests changes in the services agreement unacceptable to the District, the District reserves the right to reject the top-ranked proposer and open contract negotiations with the second-ranked proposer, and so on.

DISPUTES RELATING TO RFP PROCESS

Any dispute arising from the RFP process prior to the award of a contract must be submitted in writing to Rick Ansel at the above address within ten calendar days of the date of the recommended award or denial letter. The only grounds for an appeal that will be considered are that the District failed to follow the selection procedures specified in this RFP or that there is a conflict of interest as provided by California Government Code section 87100 et seq, or violation of federal or state law. The District will consider only those specific issues addressed in the written appeal. The District will make its determination within 30 days of receipt and its decision shall be final.

APPENDIX A
Consultant Services Agreement

**Kirkwood Meadows Public Utility District
Services Agreement**

This Agreement is entered into as of the date last signed and dated below by and between Kirkwood Meadows Public Utility District, a local government agency (“District”), and

_____, a _____ *[Insert type and jurisdiction of entity]* (“Consultant”), who agree as follows:

1 Scope of Work

Consultant shall perform the work and render the services described in the attached Exhibit A (the “Work”). Consultant shall provide all labor, services, equipment, tools, material and supplies required or necessary to properly, competently and completely perform the Work. Consultant shall determine the method, details and means of doing the Work.

2 Payment

2.1 District shall pay to Consultant a fee based on Consultant’s time and expenses necessarily and actually expended or incurred on the Work in accordance with Consultant’s fee schedule on the attached Exhibit A.

The total fee for the Work shall not exceed \$_____. There shall be no compensation for extra or additional work or services by Consultant unless approved in advance in writing by District. Consultant’s fee includes all of Consultant’s costs and expenses related to the Work.

2.2 At the end of each month, Consultant shall submit to District an invoice for the Work performed during the preceding month. The invoice shall include a brief description of the Work performed, the dates of Work, number of hours worked and by whom (if payment is based on time), payment due, and an itemization of any reimbursable expenditures. If the Work is satisfactorily completed and the invoice is accurately computed, District shall pay the invoice within 30 days of its receipt.

3 Term

3.1 This Agreement shall take effect on the above date and continue in effect until completion of the Work, unless sooner terminated as provided below. Time is of the essence in this Agreement. If Exhibit A includes a Work schedule or deadline, then Consultant must complete the Work in accordance with the specified schedule or deadline, which may be extended by District for good cause shown by Consultant. If Exhibit A does not include a Work schedule or deadline, then Consultant must perform the Work diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress of the Work.

3.2 This Agreement may be terminated at any time by District upon 10 days advance written notice to Consultant. In the event of such termination, Consultant shall be fairly compensated for all work performed to the date of termination as calculated by District based on the above fee and payment provisions. Compensation under this section shall not

include any termination-related expenses, cancellation or demobilization charges, or lost profit associated with the expected completion of the Work or other such similar payments relating to Consultant's claimed benefit of the bargain.

4 Professional Ability of Consultant

4.1 Consultant represents that it is specially trained and experienced, and possesses the skill, ability, knowledge and certification, to competently perform the Work provided by this Agreement. District has relied upon Consultant's training, experience, skill, ability, knowledge and certification as a material inducement to enter into this Agreement. All Work performed by Consultant shall be in accordance with applicable legal requirements and meet the standard of care and quality ordinarily to be expected of competent professionals in Consultant's field.

[The paragraphs in section 4.2 can be replaced with "Intentionally omitted" if the District is not requiring the Consultant to designate key personnel.]

4.2 INTENTIONALLY OMITTED

5 Conflict of Interest

Consultant (including principals, associates and professional employees) represents and acknowledges that (a) it does not now have and shall not acquire any direct or indirect investment, interest in real property or source of income that would be affected in any manner or degree by the performance of Consultant's services under this agreement, and (b) no person having any such interest shall perform any portion of the Work. The parties agree that Consultant is not a designated employee within the meaning of the Political Reform Act and District's conflict of interest code because Consultant will perform the Work independent of the control and direction of the District or of any District official, other than normal contract monitoring, and Consultant possesses no authority with respect to any District decision beyond the rendition of information, advice, recommendation or counsel.

6 Consultant Records

6.1 Consultant shall keep and maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records and documents evidencing or relating to the Work and invoice preparation and support for a minimum period of three years (or for any longer period required by law) from the date of final payment to Consultant under this Agreement. District may inspect and audit such books and records, including source documents, to verify all charges, payments and reimbursable costs under this Agreement.

6.2 In accordance with California Government Code section 8546.7, the parties acknowledge that this Agreement, and performance and payments under it, are subject to examination and audit by the California State Auditor for three years following final payment under the Agreement.

7 Ownership of Documents

All works of authorship and every report, study, spreadsheet, worksheet, plan, design, blueprint, specification, drawing, map, photograph, computer model, computer disk,

magnetic tape, CAD data file, computer software and any other document or thing prepared, developed or created by Consultant under this Agreement and provided to District (“Work Product”) shall be the property of District, and District shall have the rights to use, modify, reuse, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product without further compensation to Consultant or any other party. Consultant may retain a copy of any Work Product and use, reproduce, publish, display, broadcast and distribute any Work Product and prepare derivative and additional documents or works based on any Work Product; provided, however, that Consultant shall not provide any Work Product to any third party without District’s prior written approval, unless compelled to do so by legal process. If any Work Product is copyrightable, Consultant may copyright the same, except that, as to any Work Product that is copyrighted by Consultant, District reserves a royalty-free, nonexclusive and irrevocable license to use, reuse, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product. If District reuses or modifies any Work Product for a use or purpose other than that intended by the scope of work under this Agreement, then District shall hold Consultant harmless against all claims, damages, losses and expenses arising from such reuse or modification. For any Work Product provided to District in paper format, upon request by District at any time (including, but not limited to, at expiration or termination of this Agreement), Consultant agrees to provide the Work Product to District in a readable, transferable and usable electronic format generally acknowledged as being an industry-standard format for information exchange between computers (e.g., Word file, Excel spreadsheet file, AutoCAD file).

8 Confidentiality of Information

8.1 Consultant shall keep in strict confidence all confidential, privileged, trade secret, and proprietary information, data and other materials in any format generated, used or obtained by the District or created by Consultant in connection with the performance of the Work under this Agreement (the “Confidential Material”). Consultant shall not use any Confidential Material for any purpose other than the performance of the Work under this Agreement, unless otherwise authorized in writing by District. Consultant also shall not disclose any Confidential Material to any person or entity not connected with the performance of the Work under this Agreement, unless otherwise authorized in advance in writing by District. If there is a question if Confidential Material is protected from disclosure or is a public record or in the public domain, the party considering disclosure of such materials shall consult with the other party concerning the proposed disclosure.

8.2 Consultant, and its officers, employees, agents, and subcontractors, shall at all times take all steps that are necessary to protect and preserve all Confidential Material. At no time shall Consultant, or its officers, employees, agents, or subcontractors in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any Confidential Material to any person or entity unless specifically authorized in writing by the District or by order of a court or regulatory entity with jurisdiction over the matter. Consultant, and its officers, employees, agents, and subcontractors shall protect the Confidential Material and treat it as strictly confidential in accordance with applicable law, District policies and directives, and best industry security practices and standards.

8.3 If any person or entity, other than District or Consultant, requests or demands, by subpoena, discovery request, California Public Records Act request or otherwise, Confidential Material or its contents, the party to whom the request is made will immediately notify the other party, so that the parties may collectively consider appropriate steps to protect the disclosure of those materials. The parties agree to take all steps reasonably necessary to preserve the confidential and privileged nature of the Confidential Material and its content. In the event that the parties cannot agree whether to oppose or comply with a disclosure demand, the opposing party may oppose the demand at its sole cost and expense, in which event the party favoring disclosure will refrain from disclosing the demanded Confidential Material until such time as a final agreement regarding disclosure is reached or, if an agreement is not reached, a judicial determination is made concerning the demand.

8.4 Unless otherwise directed in writing by the District, upon contract completion or termination, Consultant must destroy all Confidential Materials (written, printed and/or electronic) and shall provide a written statement to the District that such materials have been destroyed.

9 Compliance with Laws

9.1 General. Consultant shall perform the Work in compliance with all applicable federal, state and local laws and regulations. Consultant shall possess, maintain and comply with all federal, state and local permits, licenses and certificates that may be required for it to perform the Work. Consultant shall comply with all federal, state and local air pollution control laws and regulations applicable to the Consultant and its Work (as required by California Code of Regulations title 13, section 2022.1). Consultant shall be responsible for the safety of its workers and Consultant shall comply with applicable federal and state worker safety-related laws and regulations.

9.2 California Labor Code Compliance for Pre- and Post-Construction Related Work and Maintenance.

9.2.1 This section 9.2 applies if the Work includes either of the following:

9.2.1.1 Labor performed during the design, site assessment, feasibility study and pre-construction phases of construction, including, but not limited to, inspection and land surveying work, and labor performed during the post-construction phases of construction, including, but not limited to, cleanup work at the jobsite. (See California Labor Code section 1720(a).) If the Work includes some labor as described in the preceding sentence and other labor that is not, then this section 9.2 applies only to workers performing the pre-construction and post-construction work.

9.2.1.2 “Maintenance” work, which means (i) routine, recurring and usual work for the preservation, protection and keeping of any District facility, plant, building, structure, utility system or other property (“District Facility”) in a safe and continually usable condition, (ii) carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve any District Facility in a safe, efficient and continuously usable condition, including repairs, cleaning and other operations on District machinery and equipment, and (iii) landscape maintenance. “Maintenance” excludes (i) janitorial or custodial services of a routine, recurring or usual nature, and (ii) security, guard or other protection-related services. (See California Labor Code section 1771 and 8 California

Code of Regulations section 16000.) If the Work includes some “maintenance” work and other work that is not “maintenance,” then this section 9.2 applies only to workers performing the “maintenance” work.

9.2.2 Consultant shall comply with the California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works as may be required by the Labor Code and applicable state regulations. (See California Labor Code division 2, part 7, chapter 1 (sections 1720-1861), which is incorporated in this Agreement by this reference.) The state-approved prevailing rates of per diem wages are available at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Consultant also shall comply with Labor Code sections 1775 and 1813, including provisions that require Consultant to (a) forfeit as a penalty to District up to \$200 for each calendar day or portion thereof for each worker (whether employed by Consultant or any subcontractor) paid less than the applicable prevailing wage rates for any labor done under this Agreement in violation of the Labor Code, (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage, and (c) forfeit as a penalty to District the sum of \$25 for each worker (whether employed by Consultant or any subcontractor) for each calendar day during which the worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one calendar week in violation of Labor Code sections 1810 through 1815.

9.2.3 INTENTIONALLY OMITTED

9.2.4 INTENTIONALLY OMITTED

9.2.5 INTENTIONALLY OMITTED

10 Indemnification.

10.1 Consultant shall indemnify, defend, protect, and hold harmless District, and its officers, employees and agents (“Indemnitees”) from and against any claims, liability, losses, damages and expenses (including attorney, expert witness and Consultant fees, and litigation costs) (collectively a “Claim”) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its employees, agents or subcontractors. The duty to indemnify, including the duty and the cost to defend, is limited as provided in this section. However, this indemnity provision will not apply to any Claim arising from the sole negligence or willful misconduct of District or its employees or agents. Consultant’s obligations under this indemnification provision shall survive the termination of, or completion of Work under, this Agreement.

10.2 This section 10.2 applies if the Consultant is a “design professional” as that term is defined in Civil Code section 2782.8. If a court or arbitrator determines that the incident or occurrence that gave rise to the Claim was partially caused by the fault of an Indemnitee, then in no event shall Consultant’s total costs incurred pursuant to its duty to defend Indemnitees exceed Consultant’s proportionate percentage of fault as determined by a final judgment of a court or final decision of arbitrator.

11 Insurance

Types & Limits. Consultant at its sole cost and expense shall procure and maintain for the duration of this Agreement the following types and limits of insurance: ***[The general liability and automobile coverage limits may be adjusted depending on the Work's overall risks, cost and complexity.]***

<i>Type</i>	<i>Limits</i>	<i>Scope</i>
Commercial general liability	\$2,000,000 per occurrence & \$4,000,000 aggregate	at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury
Automobile liability	\$1,000,000 per accident	at least as broad as ISO Business Auto Coverage (Form CA 00 01)
Workers' compensation	Statutory limits	
Employers' liability	\$1,000,000 per accident	
Professional liability	\$1,000,000 per claim	

11.1 Other Requirements. The general and automobile liability policy(ies) shall be endorsed to name District, its officers, employees, volunteers and agents as additional insureds regarding liability arising out of the Work. Consultant's general and automobile coverage shall be primary and apply separately to each insurer against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. District's insurance or self-insurance, if any, shall be excess and shall not contribute with Consultant's insurance. Each insurance policy shall be endorsed to state that coverage shall not be canceled, except after 30 days (10 days for non-payment of premium) prior written notice to District. Insurance is to be placed with insurers authorized to do business in California with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to District. Workers' compensation insurance issued by the State Compensation Insurance Fund is acceptable. Except for professional liability insurance, Consultant agrees to waive subrogation that any insurer may acquire from Consultant by virtue of the payment of any loss relating to the Work. Consultant agrees to obtain any endorsement that may be necessary to implement this subrogation waiver. The workers' compensation policy must be endorsed to contain a subrogation waiver in favor of District for the Work performed by Consultant.

11.2 Proof of Insurance. Upon request, Consultant shall provide to District the following proof of insurance: (a) certificate(s) of insurance evidencing this insurance; and (b)

endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf of the insurer(s), and certifying the additional insured coverage.

12 General Provisions

12.1 **Entire Agreement; Amendment.** The parties intend this writing to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the Work. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the Work, except those other documents (if any) that are expressly referenced in this Agreement. This Agreement may be amended only by a subsequent written contract approved and signed by both parties.

12.2 **Independent Contractor.** Consultant's relationship to District is that of an independent Contractor. All persons hired by Consultant and performing the Work shall be Consultant's employees or agents. Consultant and its officers, employees and agents are not District employees, and they are not entitled to District employment salary, wages or benefits. Consultant shall pay, and District shall not be responsible in any way for, the salary, wages, workers' compensation, unemployment insurance, disability insurance, tax withholding, and benefits to and on behalf of Consultant's employees. Consultant shall, to the fullest extent permitted by law, indemnify District, and its officers, employees, volunteers and agents from and against any and all liability, penalties, expenses and costs resulting from any adverse determination by the federal Internal Revenue Service, California Franchise Tax Board, other federal or state agency, or court concerning Consultant's independent Consultant status or employment-related liability.

12.3 **Subcontractors.** No subcontract shall be awarded nor any subcontractor engaged by Consultant without District's prior written approval. Consultant shall be responsible for requiring and confirming that each approved subcontractor meets the minimum insurance requirements specified in section 11 of this Agreement. Any approved subcontractor shall obtain the required insurance coverages and provide proof of same to District in the manner provided in section 11 of this Agreement.

12.4 **Assignment.** This Agreement and all rights and obligations under it are personal to the parties. The Agreement may not be transferred, assigned, delegated or subcontracted in whole or in part, whether by assignment, subcontract, merger, operation of law or otherwise, by either party without the prior written consent of the other party. Any transfer, assignment, delegation, or subcontract in violation of this provision is null and void and grounds for the other party to terminate the Agreement.

12.5 **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by District to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

12.6 **Severability.** If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.

12.7 **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California. The county and federal district court where District's office is located shall be venue for any state and federal court litigation concerning the enforcement or construction of this Agreement.

12.8 **Notice.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (d) by email with confirmed receipt. Such notices, etc. shall be addressed as follows:

District:

Kirkwood Meadows Public Utility District
Attn: Erik M. Christeson
Kirkwood Meadows Public Utility District, 33540 Loop Road, Kirkwood, CA 95646
E-mail: echristeson@kmpud.com

Consultant:

Attn: _____

E-mail: _____

Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) on the date of delivery as shown on the overnight courier service receipt, or (d) upon the sender's receipt of an email from the other party confirming the delivery of the notice, etc. Any party may change its contact information by notifying the other party of the change in the manner provided above.

12.9 **Signatures and Authority.** Each party warrants that the person signing this Agreement is authorized to act on behalf of the party for whom that person signs. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Counterparts may be delivered by facsimile, electronic mail (including PDF or any electronic signature complying with California's Uniform Electronic Transactions Act (Cal. Civ. Code, §1633.1, et seq.) or any other applicable law) or other transmission method. The parties agree that any electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Kirkwood Meadows Public Utility District:

Dated: _____

By: _____

Erik M. Christeson
General Manager

[Name of Consultant]:

Dated: _____

By: _____
[Name/Title]