

Hilton Creek Community Services District  
Request for Proposals (“RFP”)  
Crowley Lake, California  
Sewer Rate Study for FY 2022-2023

RFP Submittal Deadline: October 1, 2021

Submit to:

Hilton Creek Community Services District  
ATTN: Kyle Burnett – RFP Sewer Rate Study  
3222 Crowley Lake Drive  
Crowley Lake, CA 93546

# **Request for Proposal (“RFP”)**

## **Hilton Creek Community Services District**

### **Sewer Rate Study for FY 2022/2023 to 2027/2028**

#### **I. INTRODUCTION**

The Hilton Creek Community Services District (District) desires to have a sewer rate study completed for its sewer services to set its rates for sewer service at a level that will ensure the District has sufficient revenues to meet operating and capital costs, maintain adequate debt coverage, and build adequate and sustainable reserve funds. It is critical for the District to maintain reasonable reserves in order to handle emergencies, fund capital projects, maintain a good credit rating, and generally follow sound financial management practices.

Interested proposers responding to this Request for Proposals (RFP) shall submit two (2) sets of their responsive proposal.

All questions regarding this RFP shall be in writing and directed to the District’s General Manager, Kyle Burnett, at [districtmanager@hiltoncreekcsd.com](mailto:districtmanager@hiltoncreekcsd.com) with the subject line “RFP – Sewer Rate Study”. The deadline for submittal of all questions shall be September 15, 2021 at 5 p.m.

Proposals shall be submitted by proposers that have the knowledge and experience to conduct a sewer rate study in compliance with all requirements of California law and sound cost-of-service and rate setting principles, including the requirements of Proposition 218. Moreover, all interested proposers shall have sufficient, readily available resources in the form of trained personnel, support services, specialized consultants, and the financial resources to carry out the work without delay or shortcomings.

Each proposal shall be clearly marked “Hilton Creek Community Services District Sewer Rate Study RFP FY 2022/2023”, and shall be submitted to Hilton Creek Community Services District, 3222 Crowley Lake Drive, Crowley Lake, CA 93546 no later than:

**October 1, 2021 at 5 p.m.**

Each proposer shall submit two (2) full sets of its proposal in strict accordance with Section III “PROPOSAL REQUIREMENTS.” All submittals must be sealed. The District reserves the right to reject all proposals and to not award a contract. Any proposal not conforming to the intent, purpose, or requirements of this RFP may be rejected. The District may extend the time to award the contract.

## District Overview

The Hilton Creek Community Services District (HCCSD or District) was formed in 1963 for the purpose of providing public services to the Hilton Creek community in the Crowley Lake area of Mono County. The HCCSD is responsible for sewer connections and services, wastewater treatment, and maintaining Juniper Drive Road. The District's current Operating Budget is \$500,000 as of June 30, 2021.

Hilton Creek Community Services District is located approximately 15 miles south of the town of Mammoth Lakes, in Mono County, California.

The District serves approximately 1,000 people within 456.8 acres comprised of the following service connections and potential service connections:

- 282 Single Family Homes
- 49 Condominiums Units
- 42 Apartment Units
- 28 14 +1 Units (\*2)
- 74 Mobile Homes
- 41 Travel Trailer Hookups
- 08 Miscellaneous
  - 1 Commercial retail store, gas & café
  - 1 Communication Center
  - 1 County Road Maintenance Center
  - 1 Church/School
  - 1 Community Center
  - 1 Skate Park
  - 1 Baseball Park
  - 1 Other

**554 Total**

## 113 Vacant Lots for Potential Future Development

### Vacant Lots with Potential for: Commercial, Subdivision or Multi-Family Housing Development

379 South Landing Road	8.95 Acres*	APN: 060-210-027-000	1.24 Acres
APN: 060-370-003-000	6.49 Acres	APN: 060-210-026-000	0.91 Acres
APN: 060-370-002-000	2.93 Acres	APN: 060-210-025-000	1.10 Acres
APN: 060-220-008-000	59.42 Acres*	APN: 060-370-001-000	1.55 Acres
APN: 060-180-005-000	1.31 Acres	APN: 060-370-002-000	2.93 Acres
APN: 060-280-005-000	3.79 Acres	526 Pearson Road – Elementary School Site	
APN: 060-240-001-000	1.96 Acres		

\*Plans may exist with Mono County Planning Division



## II. SCOPE OF WORK

The District's current rate structure for all users is based on CPI increases. The District desires to have a rate study completed to evaluate alternative rate structures for its sewer service rates that would provide more stable revenues from year to year. The District's sewer rates are typically reviewed and forecast in five-year blocks, and rates are set by the Board of Directors (Board) each year.

Any new sewer service rates proposed must be set at a level that will ensure the District receives sufficient revenues to meet operating and capital costs, maintain adequate debt coverage, and build and maintain adequate reserve funds. It is critical for the District to maintain adequate levels of reserves in order to handle emergencies, fund

capital projects, and maintain a good credit rating, and generally follow sound financial management practices.

Each proposal must include a detailed narrative stating the proposer's approach for each task, and provide a detailed scope of work to accomplish those tasks, as deemed necessary to provide a complete study analysis and recommendations.

Each response to the RFP must include a scope of work and narrative that explicitly includes at least the following elements:

- A. Current and Recommended Rate Structures: Assess the current rate structure's suitability for sustaining cost recovery based on customer demands, as well as conformance with existing laws and regulations, and make recommendations for any changes that are necessary to achieve compliance. The study shall recommend modifications to the existing rate structure or include one or more options for a new rate structure for each of the following five years, starting with Fiscal Year 2022/2023, that consider and make provisions for the following factors:
  - 1. Current and future cost of providing sewer service in accordance with established and anticipated state standards and regulations, including Proposition 218.
  - 2. Age and condition of sewer collection and treatment systems and the need to fund long-term capital improvement/replacements.
  - 3. Impact of current and future environmental regulations.
  - 4. Provide Accessory Dwelling Unit (ADU) capacity fees and the rate structure to calculate the proportionate charge.
  - 5. Recommend Capital Reserve fund policies and set yearly targets to develop the recommended reserve levels.
  - 6. Guide the District in the rate study process, including attendance (Zoom or in person) at the public hearing(s) to answer any questions the public or the Board have regarding the rate study.
  
- B. Other impacts or considerations as identified or recommended.
  
- C. Equity: Assess the equity of recommended sewer rates for all types of property ownership. Justifications shall be provided for any special classes of customers under the recommended rate structure. The recommended rates shall be based on cost-of-service principles and shall be sufficient to meet the short- and long-term revenue requirements of the District's wastewater utility operations. The benefits of any proposed modifications to the existing rate structure or any proposed new rate structure shall be weighed against the financial impacts on ratepayers.
  
- D. Sensitivity Analysis: Assess the ability of the revenue stream generated by the recommended rate structure to fund sewer system costs against projected

impacts and changes to housing development, tourism, and other community factors.

- E. Industry Standards: The recommended rates shall be consistent with industry practices for utility rate making in California and Proposition 218. The study shall recommend rates based upon standard rate practices that meet the criteria.
- F. Environmental Regulations: The study shall include an assessment of the revenue stream generated by the recommended rates and their ability to continue to fully fund sewer system costs under the impacts of known future water quality and environmental regulations and standards.
- G. Connection Fees: Evaluate the existing connection fees and make recommendations for any charges for new capacity and development impact fees to offset demands for future/new service locations.
- H. Other Service Charges: Assess existing customer service fee structure and identify other potential service and system charges that the District is legally authorized to impose and recommend any such fees or charges, if appropriate.
- I. Reserve Balance Targets: Recommend appropriate reserve levels for operating and capital replacement as well as cash flow and unforeseen events. The recommended rates shall consider the type and amount of reserves appropriate to the District sewer system operations, taking into consideration reserves for cash flow, emergencies, infrastructure replacement, funding past and future depreciation, and other appropriate purposes.
- J. Electronic Rate Model: Provide an easy-to-use electronic rate model for the District to use in future rate setting.
- K. Proposition 218 Considerations: Provide discussion for any Proposition 218 requirements the District will need to consider in making changes to its rates and its rate-setting methodology, including but not limited to any recent court cases or legal findings that may apply.
- L. Provide Accessory Dwelling Unit (ADU) capacity charge methodologies.
- M. Include in each proposal the following optional tasks which may be included and approved or declined in part or in whole by Hilton Creek Community Services District at its sole discretion.
  - 1. Engineering study on existing and future wastewater infrastructure, maintenance and future capital expenditures, including the District's Collection System.
  - 2. Collection System
    - i. Determine life expectancy and cost of gravity sewer and force main piping and infrastructure.

- ii. Determine expected line maintenance and cost, including possible slip-lining and/or replacement.
  - iii. Evaluate life expectancy and cost of the Sierra Springs Lift Station, including wet well, pumps, and emergency backup generator.
- 3. Wastewater Treatment Plant
  - i. Evaluate wastewater treatment plant infrastructure life expectancy and maintenance, including but not limited to aeration tanks, percolation ponds, sludge drying beds, secondary clarifiers, WAS pumps, RAS pumps, blowers, clarifier drives and flights, valving and piping through the treatment plant.
  - ii. Evaluate structure life expectancy, including but not limited to office with attached garage/workshop and electrical building.
  - iii. Evaluate life expectancy and expected maintenance of potable water well.
  - iv. Evaluate life expectancy and expected maintenance of three groundwater sampling wells downgrade of the effluent percolation ponds.

**Expectations of the Consultant:**

Consultant is expected to perform the following tasks and provide the following deliverables:

- A. Provide a schedule for conducting the review and analysis so that recommended rates may be adopted and implemented in fiscal year 2022/2023, which begins on July 1, 2022 and ends on June 30, 2023.
- B. Conduct a detailed review of the existing sewer rates and status of the sewer funds, and develop a general familiarity with the District's billing system.
- C. Meet and confer with Board and Staff as needed throughout the process.
- D. Attend one to two public meetings to present the interim status of the study and obtain input, and one Public Hearing where the sewer rates are considered for adoption.
- E. Conduct analyses as required to address the scope of work, reviewing all fixed and variable costs.
- F. Prepare draft rate study and with proposed rates.
- G. Prepare final report incorporating changes/modifications from comments received at the District's Board meetings.
  - 1. Provide five (5) copies of the final report plus an electronic copy in Microsoft Word and Excel format, and a bookmarked PDF.

2. Present final report and recommendations to the District Board at a designated public meeting.
3. Report shall include a summary and Public FAQs on the rate changes that can be posted to the District's website.
4. Provide an easy-to-use electronic rate model in Microsoft Excel for the District use in future rate settings.
5. Provide assistance with preparing and mailing the required Proposition 218 notice and conducting the protest and hearing proceedings, as requested by the District.

### **III. PROPOSAL REQUIREMENTS**

Each proposer shall submit two (2) bound sets of its proposal containing 8-1/2 x 11 sheet sizes for the text and a maximum of four (4) 11 x 17-inch sheet sizes for any fold-out drawings in a sealed envelope or other container. Proposals should be limited to twenty (20) pages maximum, not including Appendices, and shall include:

- A. A summary of the proposer's understanding of the contract requirements as a whole and a statement of the proposer's technical expertise, facilities, capabilities, and financial resources necessary to perform the work in a satisfactory manner.
- B. A description of the approach that the Proposer would follow for each of the phases outlined in the scope of work. The approach description should include, the steps that will be followed in each phase, the estimated level of effort (i.e., number of proposer's staff, District staff, etc.), and an estimated duration.
- C. The proposer's experience and history in performing work on sewer rate studies.
- D. The proposer shall include references from a minimum of three (3) responsible persons at other public agencies for which a sewer rate study was performed that the District may contact to verify the experience of the proposer. Phone numbers and email address must be provided. References must be only for projects on which the project manager/key contact has performed work.
- E. A table or list identifying the proposer's project manager, supporting staff, and any subcontractors, a narrative explaining how the project team will be organized and perform the work, and a statement of qualifications and experience of each team member. The District reserves the right to approve or reject any subcontractors identified by a proposer. Each proposer submitting qualifications to perform the optional engineering tasks (described in Scope of Work paragraph M) must have a registered engineer on its team and provide the engineer's registration number, expiration date, and number of years of licensure and practice in California.



- F. A statement that each person identified as a member of the proposer's project team will be available to perform work during the duration of the rate study. Proposers must be able to staff projects with qualified individuals who shall be committed to the work from inception through completion.
- G. A list of all instances in the last five (5) years in which the firm has been a debtor in a bankruptcy case, along with an explanation of each instance.
- H. A list of all instances in the last five (5) years in which the California department of Consumer Affairs (or similar agency in any other state) has taken any disciplinary action against the Proposer or Principal Engineer, along with an explanation of each instance.
- I. A list of all instances in the last five (5) years in which the firm was disqualified from a project, along with an explanation of each instance.
- J. A list of all litigation and/or arbitration involving the proposer in the last five (5) years, along with an explanation of each event.
- K. A statement that the proposer, if selected, possesses (or will obtain before start of work) and will maintain a business license in the State of California.
- L. A statement that the proposals, including the cost proposal, shall remain effective for at least ninety (90) days after the submittal deadline. The District reserves the right to request an extension of time, if needed.

**The following items shall be included as Appendices to the Proposal:**

- A. Resumes of no more than two pages for each identified project team member.
- B. Provide a cost proposal for performance of the work. The cost proposal may be a guaranteed lump sum or a not-to-exceed estimate based on time and materials rates. If a quote is based in time and materials estimate, the proposer shall include any schedule of hourly rates for personnel and equipment, and an itemization of charges for materials and other expenses charged. Hourly rates for personnel and equipment shall include labor, taxes, insurance, overhead, and all other incidental charges.
- C. Specific identification of any proposed modifications to the attached Agreement for Consultant Services (Attachment 1) that the proposer would request prior to entering into an agreement with the District.
- D. The firm's most recently audited financial statement.

## **Mistake in Proposal**

- A. If a proposer discovers a mistake in its proposal prior to the deadline specified for receipt of proposals in this RFP, then the Proposer may correct the mistake by withdrawing its proposal and resubmitting it prior to the stated proposal deadline.
- B. If within seventy-two hours after the submittal deadline and prior to the issuance of a selection notice or issuance of a consultant services agreement, a proposer discovers a mistake in its proposal of a serious and significant nature, the proposer may request that the District permit a withdrawal of the proposal. The materiality of the mistake must be evident and provable.
- C. A mistake in the selected proposer's proposal cannot be corrected or considered once the District has executed the services agreement described in this RFP.

## **IV. PROPOSER SELECTION PROCEDURE**

The following are the selection procedure:

### **A. Evaluation Criteria**

The District reserves the right to cancel this RFP for any reason without incurring any liability to any proposer or to waive irregularities in the process at its discretion. This solicitation does not constitute a contract offer of employment, or offer of purchase. The District makes no representation that any contract will be awarded to any respondent to this solicitation. The District also reserves the right to reject any and all proposals at its sole discretion.

The contract, if awarded, will be awarded to a Contractor whose proposal is considered the best value to the District. Best value will be determined based on price, responsiveness, capability, and responsibility. Thus, the result will not be determined based solely on price. Although price is a key factor, the District will consider awarding the contract to the proposer which meets the best interests of the District as interpreted by the District.

Proposals timely received by the District will be reviewed by a Selection Committee appointed by the Board, which will make the final selection. The following factors will be taken into account to determine price, responsiveness, capability, and responsibility:

- Demonstrated ability of the firm to provide the required services.
- Proposer's understanding of the needs and objectives of the District.
- The qualifications of the Contractor and the District's perception of the ability of the Contractor to comply with the terms of the RFP.
- Qualifications of project staff, key personnel's level of involvement in performing related work, logic of work organization, adequacy of labor commitment; concurrence in the restriction on changes in key personnel.

- Reference and other pertinent checks.
- Financial terms of proposal.
- Fiscal soundness of Contractor.
- Completeness and professionalism of Contractor's submission.
- Submissions which are deemed incomplete may be rejected as being not responsive.
- A responsive proposal is one that conforms to the solicitation documents in all material respects.
- A responsible contractor means a Contractor who has the capability, in all respects, to fully perform the contract requirements and the moral and business integrity and reliability to ensure honest and good faith performance. Qualifications, interview, experience, and financial stability may all be taken into consideration.

Proposers are prohibited from contacting members of the Selection Committee.

### **B. Evaluation Procedure**

The Selection Committee or Board may schedule an interview by telephone or virtual platform with one or more of the proposers after written proposals have been received by the District. If the District decides to schedule interviews, it will contact the selected proposer(s) to schedule a time for the interview

The Selection Committee will review the proposals submitted, establish a list of finalists based on pre-established review criteria, schedule interviews as appropriate, and select the successful proposer. The individual or composite rating and evaluation forms prepared by the Selection Committee are not public records and will not be disclosed.

If an oral interview is scheduled, sixty minutes will be allowed for the oral interview, including a question-and-answer period. The proposer's project manager must lead the presentation before the Selection Committee.

### **C. Award**

The successful proposer will be notified of its selection, if the District makes an award. A copy of the Hilton Creek Community Services District Standard Agreement for Consultant Services can be found in Attachment 1. The selected proposer will be required to execute the consultant services agreement and provide all evidences of insurance and other requirements provided in the agreement before starting work. The selected proposer may not negotiate any terms of the consultant services agreement except for those terms for which modification was requested in the proposer's proposal.

The District reserves the right for any reason to modify the scope of work and reject any or all proposals. The final scope of work as determined by the District will be incorporated into any consultant services agreement, if awarded.

#### **D. Public Nature of Proposal Material**

Responses to this RFP become exclusive property of the Hilton Creek Community Services District. When the Selection Committee recommends a proposal for award to the Board, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are identified by the proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Propriety”. Proposals that are not opened as untimely will be disposed of without examination or disclosure.

#### **V. ESTIMATED SCHEDULE FOR SELECTION**

The RFP Timeline is as follows:

Begin RFP Process	August 18, 2021
Deadline to Submit Questions related to the RFP	September 15, 2021
Deadline to Submit Proposal	October 1, 2021
Evaluation of Proposals	October 1, 2021 to November 1, 2021
Board to Consider Selecting Firm	November 9, 2021
Notification to Firms	November 15, 2021
Contract Execution and Project Start (if awarded)	December 14, 2021

#### **VI. CONTACT PERSON**

Prospective proposers may contact Kyle Burnett, the District’s Manager, for information regarding questions for this RFP. Deadline for submitting questions is September 5, 2021. The District will respond to all timely submitted questions no later than September 30, 2021, and all questions and responses will be posted on the District’s website. All requests for interpretation or questions must be sent by email or in writing and must clearly include the subject line “RFP – Sewer Rate Study”.

Inquiries and written correspondence may be directed to:

Hilton Creek Community Services District  
Attn: Kyle Burnett - RFP – Sewer Rate Study  
3222 Crowley Lake Drive  
Crowley Lake, CA 93546  
Email: [districtmanager@hiltoncreekcsd.com](mailto:districtmanager@hiltoncreekcsd.com)

#### **VII. LATE PROPOSALS NOT CONSIDERED**

Proposals must be received in the District’s office by 5 p.m. on October 1, 2021. Proposals must be hand-delivered, mailed, or sent by overnight courier. Proposers are solely responsible for ensuring that their responses are timely received by the District. Any proposal received after the deadline will not be considered.

# Attachment 1

## Agreement for Consultant Services

## **AGREEMENT FOR CONSULTANT SERVICES**

This Agreement for Consultant Services (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the HILTON CREEK COMMUNITY SERVICES DISTRICT, a California special district (*hereinafter referred to as "DISTRICT"*) and \_\_\_\_\_ [a (*name state of domicile*) sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation] (*hereinafter referred to as "CONSULTANT"*).

### **RECITALS**

**WHEREAS**, DISTRICT requires \_\_\_\_\_ services in connection with the \_\_\_\_\_;

**WHEREAS**, CONSULTANT is qualified to perform such services; and

**WHEREAS**, CONSULTANT has agreed to provide DISTRICT with such services on the terms and conditions set forth herein.

**NOW, THEREFORE**, for the considerations hereinafter set forth, CONSULTANT and DISTRICT agree as follows:

### **ARTICLE 1 - SCOPE OF SERVICES**

- 1.1 **Scope of Work.** CONSULTANT agrees to furnish the services set forth in Exhibit A, scope of work, which is attached hereto and incorporated herein (the "Services")
- 1.2 **Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders. CONSULTANT shall comply with all federal, state and local air pollution control laws and regulations applicable to CONSULTANT and the Services (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, and all applicable wage and hour laws and regulations.
- 1.3 **Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.
- 1.4 **Professional Competence.** CONSULTANT represents that it has the professional skills necessary to perform the Services and that it will perform the

Services in a skillful and professional manner. CONSULTANT represents that it has all the necessary licenses to perform the Services and shall maintain them throughout the term of this Agreement. CONSULTANT agrees that the Services shall be performed in a manner consistent with practices usual and customary to the \_\_\_\_\_ profession. DISTRICT and CONSULTANT agree that CONSULTANT is in responsible charge of the means and methods for providing the Services. Acceptance by DISTRICT of the Services does not operate as a release of CONSULTANT from professional responsibility for the Services performed.

- 1.5 **Independent Contractor.** CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee of DISTRICT. All persons hired by CONSULTANT and performing the Services 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 contractor status or employment-related liability.
- 1.6 **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 Article 6 of this Agreement. Any approved subcontractor shall obtain the required insurance coverages and provide proof of same to DISTRICT in the manner provided in Article 6.
- 1.7 **Confidentiality.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, government entity, or corporation, without DISTRICT's prior written consent any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person firm, governmental entity, or corporation any data, information, technology, or material developed or obtained by CONSULTANT during the performance of the Services. The covenants contained in this Section 1.6 shall survive the termination of this Agreement for whatever cause.

- 1.8 **Ownership of Material.** 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 Contractor, 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).
- 1.9 **Documentation.** CONSULTANT shall keep and maintain full and complete documentation and accounting records, employee time sheets, and correspondence pertaining to the performance of Services, and CONSULTANT shall make such documents available for review and/or audit by DISTRICT and DISTRICT’s representatives at all reasonable times for at least four years (or any longer period required by law) after the termination of this Agreement or completion of the Services. 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 this Agreement.
- 1.10 **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 Services. The parties agree that CONSULTANT is not a designated employee within the meaning of the Political Reform Act and CONSULTANT's conflict of interest code because CONSULTANT will perform the Services 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.

- 1.11 **Testimony.** CONSULTANT agrees to testify at DISTRICT's request if litigation is brought against DISTRICT in connection with the Services. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, DISTRICT will compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates unless otherwise agreed to by District.

## **ARTICLE 2 – COMPENSATION**

- 2.1 **Compensation.** Compensation for the Services shall be in accordance with Exhibit B, Compensation, attached hereto and incorporated herein. It is agreed that the compensation for the Services shall not exceed \$\_\_\_\_\_ (“Cost Ceiling”). The Cost Ceiling may be increased in a mutually-agreed to writing.
- 2.2 **Invoices.** CONSULTANT shall submit monthly invoices in a form satisfactory to DISTRICT for Services provided during the preceding month. CONSULTANT shall submit time and cost records as necessary to substantiate performance of the Services. Within 35 days after receipt of each such invoice, DISTRICT shall verify the accuracy of the invoice, correct the charges where appropriate and as discussed and mutually agreed with CONSULTANT, and make payment to CONSULTANT in an amount equal to the amount of such invoice, as verified or corrected by DISTRICT. No payment hereunder shall be construed as evidence of acceptance of any CONSULTANT's work. DISTRICT reserves the right to withhold payment from CONSULTANT on account of Services not performed satisfactorily, delays in CONSULTANT's performance of Services, or other defaults hereunder. CONSULTANT shall not stop or delay performance of the Services under this Agreement on account of payment disputes with DISTRICT.
- 2.3 **Status Reports.** Together with each monthly invoice, CONSULTANT shall submit a status report detailing the amount expended on the Services to that date and the remaining amount to be expended before the Cost Ceiling is reached. CONSULTANT shall notify DISTRICT in writing when payments have reached 90 percent of the Cost Ceiling.
- 2.4 **Withholding.** In lieu of holding retention, DISTRICT shall withhold CONSULTANT's final payment until the Services are complete and DISTRICT

has received all Documents. CONSULTANT shall diligently continue and complete performance of the Services if the Services are not complete at the time CONSULTANT has performed services up to the Cost Ceiling.

### **ARTICLE 3 – TIME OF PERFORMANCE**

- 3.1 **Effective Date.** The Agreement shall become effective upon execution of the second signature and shall remain in full force and effect until the Services are completed (the “Term”). CONSULTANT agrees to complete all services by \_\_\_\_\_.
- 3.2 **Termination.** This agreement may be terminated at any time by DISTRICT upon 10 days’ written notice to CONSULTANT.
- 3.3 **Final Payment.** CONSULTANT shall be entitled to compensation for Services performed up to the time of such termination, it being understood that any payments are full compensation for the Services rendered under this Agreement.
- 3.4 **Other Remedies.** Nothing in this Article 3 shall be deemed to limit with respective rights of the parties to terminate this agreement for cause or otherwise to exercise any rights or pursue any remedies which may accrue to them.

### **ARTICLE 4 – DESIGNATED CONTACTS**

- 4.1 **DISTRICT Contact.** DISTRICT designates \_\_\_\_\_, its \_\_\_\_\_, as its contact who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT’s performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. In the event DISTRICT wishes to make a change in the DISTRICT’s representative, DISTRICT will notify CONSULTANT of the change in writing.
- 4.2 **CONSULTANT Contact.** CONSULTANT designates \_\_\_\_\_ as its contact, who shall have immediate responsibility for the performance of the Services and for all matters relating to performance under this Agreement. Any change in CONSULTANT’s designated contact shall be subject to written approval by DISTRICT.

### **ARTICLE 5 – INDEMNIFICATION AND INSURANCE**

- 5.1 **Indemnification.** 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 an Indemnitee. CONSULTANT's obligations under this indemnification provision shall survive the termination of, or completion of Work under, this Agreement. If CONSULTANT is deemed to be a "design professional" as that term is defined in Civil Code section 2782.8, and 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.

- 5.2 **Insurance.** CONSULTANT and all of CONSULTANT's employees, subcontractors, consultants and other agency shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below with insurers authorized to do business in the State of California and with a Best's rating of no less than A:VII.
- A. **Comprehensive Automobile Liability Insurance.** Comprehensive Automobile Liability Insurance providing bodily injury liability and property damage, to protect against all liability arising out of the use of any owned or leased, passenger or commercial automobile at a minimum amount of \$1,000,000 combined single limit and \$2,000,000 aggregate. Coverage shall apply to hired and non-owned autos.
  - B. **Commercial General Liability Insurance.** Commercial General Liability Insurance, with limits providing a minimum amount of \$1,000,000 combined single limit coverage for each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. The insurance shall cover all operations including but not limited to the following: (1) premises, operations and mobile equipment liability, (2) completed operations and products liability, (3) contractual liability insuring the obligations assumed by CONSULTANT in this Agreement; (4) broad form property damage liability; and (5) personal injury liability endorsement, including death.
  - C. **Professional Liability Insurance.** Professional Liability Insurance protecting against liabilities arising out of or in connection with negligent acts, errors, or omissions of CONSULTANT and all CONSULTANT's employees, subcontractors, consultants and other agency in connection with this Agreement, at a minimum amount of \$1,000,000 combined single limit coverage and \$1,000,000 aggregate, on a "claims made basis" with a continuation of coverage extension for liabilities for two years from the date

the Services are substantially complete. Such professional liability policies shall include coverage for liability assumed by the CONSULTANT under this Agreement.

- D. **Workers' Compensation Insurance.** Workers' Compensation insurance, occupational disease insurance and employer's liability insurance shall be required with minimum limits as required by law, covering all workplaces involved in this Agreement.
- E. **Policy Terms.** Concurrently with execution of this Agreement, CONSULTANT, shall provide DISTRICT with Certificates of Insurance evidencing that CONSULTANT has obtained or maintains the insurance required by this Section 5.3. The Certificates shall be on forms acceptable to DISTRICT. CONSULTANT shall also furnish DISTRICT with original endorsements with the following documentation:
- Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after DISTRICT shall have received written notification thereof from CONSULTANT as provided in Article 6 of this Agreement.
  - Providing the CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each separately, except with respect to the limits of the insurer's liability (cross-liability endorsement).
  - Naming DISTRICT, its Directors, commissions, committees, officers, employees and agents as additional insureds (Additional Insureds").
  - Providing that for any claims relating to CONSULTANT's services hereunder, CONSULTANT's insurance coverage shall be primary insurance with respect to DISTRICT, its Directors, officers, employees, and agents, and that any insurance or self-insurance maintained by DISTRICT for itself, its Directors, officers, employees, and agents shall be in excess of CONSULTANT's insurance and shall not be contributory with it.
  - It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the DISTRICT, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of (a) the minimum coverage and limits specified in the Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.
  - CONSULTANT shall waive subrogation against the District, and its Directors, officers, employees, and agents that any insurer may acquire from CONSULTANT by virtue of the payment of any loss



Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

## **ARTICLE 7 – MISCELLANEOUS**

- 7.1 **Entire Agreement.** This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by an amendment in writing signed by each party.
- 7.2 **No Assignment.** The Services are deemed unique and CONSULTANT shall not assign, transfer, subcontract or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT. As limited by this Section 7.2, this Agreement is to be binding on the successors and assigns of the parties hereto.
- 7.3 **Severability.** If any part of this Agreement is determined to be unconstitutional, invalid or beyond the authority of either party, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 7.4 **Counterparts.** This Agreement may be signed in original or facsimile counterparts and, when fully signed, such counterparts shall have the same effect as if signed in one document.
- 7.5 **Choice of Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of laws principles and venue shall be in the appropriate court in Mono County, California.
- 7.6 **Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate a waiver of any other right or remedy that party may have hereunder. A waiver by either DISTRICT or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.
- 7.7 **Mediation.** In the event the parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

7.8 **Interpretation.** In the event this Agreement is ever construed in any dispute between the parties, it and each of its provisions shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

7.9 **Authority.** Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

**HILTON CREEK COMMUNITY SERVICES DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steven Shipley, President

Attest

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lorinda Beatty, Secretary of the Board

Approved As To Form

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Joshua Horowitz, District Attorney

**CONSULTANT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_