

# BAY AREA AIR QUALITY MANAGEMENT DISTRICT

## PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. 2019.332

1. PARTIES – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 375 Beale Street, Suite 600, San Francisco, CA 94105, and the **California Energy Commission** (“CONTRACTOR”) whose address is 1516 Ninth Street, Sacramento, CA 95814.
2. RECITALS
  - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701.
  - B. The Environmental Mitigation Trust (“Mitigation Trust”) was created by the First Partial Consent Decree approved on October 25, 2016 and the Second Partial Consent Decree approved on May 17, 2017 (jointly referred to as “Consent Decree”) by the United States District Court, Northern District of California, in settlement of a lawsuit against Volkswagen Group of America, Inc. (VW) and related entities for their use of illegal software “defeat devices” in certain 2.0-liter and 3.0-liter diesel vehicles.
  - C. VW is required to pay into the Mitigation Trust to fund projects to reduce emissions of NOx caused by the subject vehicles.
  - D. The Court appointed Wilmington Trust, N.A. as the Trustee, and on January 29, 2018, the State of California officially became a beneficiary of the Trust through filing of the Notice of Beneficiary Designation. The California Air Resources Board (CARB) is the designated as the Lead Agency acting on the State’s behalf as beneficiary to implement California’s allocation of the Mitigation Trust funds.
  - E. On March 13, 2019, CARB and DISTRICT executed an agreement (G18-VWM-03), which authorized DISTRICT to administer \$5 million of the Mitigation Trust funds for new publicly available light-duty hydrogen fuel cell vehicle supply equipment throughout the state of California.
  - F. To maximize the efficacy and impact of the Mitigation Trust funds, DISTRICT seeks to combine these funds with the CONTRACTOR’s Clean Transportation Program funding. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference.
  - G. CONTRACTOR has unique expertise related to the selection of hydrogen refueling infrastructure projects and management and oversight of hydrogen refueling infrastructure grant agreements through the Clean Transportation

Program. DISTRICT is entering into this Contract based on CONTRACTOR's stated qualifications to perform the services.

H. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.

3. PERFORMANCE REQUIREMENTS

A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.

B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.

C. CONTRACTOR shall comply with and require its contractors and subcontractors to comply with all laws, rules, guidelines, regulations, and requirements that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT's Conflict of Interest Code.

D. CONTRACTOR shall not engage in any performance of work during the term of this Contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.

E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.

F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.

G. The CONTRACTOR shall disclose any direct or indirect financial interest or situation which may pose an actual, apparent, or potential conflict of interest with its duties throughout the Project term.

4. TERM – The term of this Contract is from the date of execution by the PARTIES to May 24, 2028, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

Because CONTRACTOR is a California state agency, its contracts are subject to the oversight of the California Department of General Services (DGS). Accordingly, this Contract is of no force or effect until signed by both PARTIES and approved by DGS. CONTRACTOR may not commence performance until such approval has been obtained.

5. TERMINATION

A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of

section 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.

- B. Either party may terminate this Contract for breach by the other party.
  - i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
  - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
  - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the payment otherwise due to CONTRACTOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
  - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
  - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE – [Reserved. The CONTRACTOR is a California state agency, and as such is self-insured.]

7. INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the

extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
  - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
  - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
  - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$5,000,000.

9. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
- B. The mediation shall take place at DISTRICT's office at 375 Beale Street, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract after

following any other applicable procedures (e.g., the Government Claims Program relative to monetary claims against the CONTRACTOR).

F. Maximum recovery under this section shall be limited to \$5,000,000. The mediation costs shall not reduce the maximum amount recoverable under this section.

10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management  
District 375 Beale Street, Suite 600  
San Francisco, CA 94105  
Attn: Linda Hui

CONTRACTOR: California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814  
Attn: Phil Cazel

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

**Acknowledgement:** CONTRACTOR shall acknowledge and require subcontractors to acknowledge the Mitigation Trust fund program as a funding source whenever projects funded, in whole or in part by this Contract, are publicized in any news media, websites, brochures, publications, audiovisuals, or other types of promotional material. The acknowledgement shall read as follows: 'This publication (or project) was supported by the VW Mitigation Trust Fund program.' Guidelines for the usage of the VW Mitigation Trust Fund name will be provided by DISTRICT.

**Amendment:** No amendment or variation of the terms of this Contract will be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Contract is binding on any of the parties.

**Audit:** DISTRICT or its designee reserves the right to audit at any time during the duration, and up to three years past, the term of this Contract.

CONTRACTOR agrees that DISTRICT, CARB, the United States District Court for the Northern District of California, the Department of General Services, Department of Finance, the Bureau of State Audits, or their designated representative will have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract and all Mitigation Trust funds received.

CONTRACTOR agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

CONTRACTOR agrees to include similar right of the DISTRICT, State, or Court to audit records and interview staff in any agreements related to performance of this Contract.

**Availability of Funds:** DISTRICT's obligations under this Contract are contingent upon the availability of Mitigation Trust funds. In the event such funds are not available, DISTRICT will have no liability to pay any funds whatsoever to the CONTRACTOR or to furnish any other considerations under this Contract.

**Computer Software:** The CONTRACTOR certifies that it has appropriate systems and controls in place to ensure that Mitigation Trust funds will not be used in the performance of this Contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

**Environmental Justice:** In the performance of this Contract, the CONTRACTOR will conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.

**Equipment Ownership:** CONTRACTOR shall include a three-year ownership, operation, and reporting requirements for newly funded equipment. CONTRACTOR shall require funding recipients to self-certify that the funding recipient still owns the equipment.

**Fiscal Management Systems and Accounting Standards:** The CONTRACTOR agrees that, at a minimum, its fiscal control and accounting procedures are sufficient to permit tracking of Mitigation Trust funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law or this Contract. Unless otherwise prohibited by State or local law, the CONTRACTOR further agrees that it will maintain separate account for Mitigation Trust funds in accordance with generally accepted accounting principles.

**Governing Law and Venue:** This Contract is governed by and will be interpreted in accordance with the laws of the State of California. DISTRICT and the CONTRACTOR hereby agree that any action arising out of this Contract will be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

**Independent Contractor:** The CONTRACTOR, and its agents and employees, if any, in their performance of this Contract, will act in an independent capacity and not as officers, employees, or agents of DISTRICT.

**Incorporation by Reference:** This Contract incorporates by reference the Consent Decree<sup>1</sup> and its appendices; and the Beneficiary Mitigation Plan<sup>2</sup>.

**No Third Party Rights:** The parties to this Contract do not create rights in, or Contract remedies to, any third party as a beneficiary of this Contract, or of any duty, covenant, obligation or undertaking establish herein.

**Oversight and Accountability:** CONTRACTOR shall comply with all oversight responsibilities identified herein. DISTRICT or its designee may recoup the awarded Mitigation Trust funds which were received based upon misinformation or fraud, or for which CONTRACTOR, equipment manufacturer, technology provider, or selected applicant is in significant or continual non-compliance with the terms of this Contract or State law. DISTRICT also reserves the right to prohibit any entity from participating in the Mitigation Trust funding.

If the CONTRACTOR detects any actual and/or potentially fraudulent activity by an equipment dealer, manufacturer or selected applicant, CONTRACTOR will notify DISTRICT as soon as possible and provide DISTRICT with all necessary information for DISTRICT to determine and pursue an appropriate course of action.

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<sup>1</sup> [VW Settlement Consent Decrees](https://ww2.arb.ca.gov/resources/documents/vw-settlement-consent-decrees), <https://ww2.arb.ca.gov/resources/documents/vw-settlement-consent-decrees>.

<sup>2</sup> [California's Beneficiary Mitigation Plan](https://ww2.arb.ca.gov/resources/documents/californias-beneficiary-mitigation-plan), <https://ww2.arb.ca.gov/resources/documents/californias-beneficiary-mitigation-plan>.

**Ownership:** All information or data received or generated by the CONTRACTOR under this Contract will become the property of DISTRICT or its designee.

**Prevailing Wages and Labor Compliance:** The CONTRACTOR agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The CONTRACTOR will include the provision to comply with all California prevailing wage requirements in all subcontracts to perform work under this Contract.

**Professionals:** The CONTRACTOR agrees that only licensed professionals will be used to perform services under this Contract where such services are called for and licensed professionals are required for those services under State law.

**CONTRACTOR's Responsibility for Work:** The CONTRACTOR will be responsible for work and for persons or entities engaged in work, including, but not limited to subcontractors, suppliers, and providers of services. The CONTRACTOR will be responsible for any and all disputes arising out of its subcontract for work that includes Mitigation Trust funds, including but not limited to payment disputes with subcontractors and providers of services. The DISTRICT will not mediate disputes between the CONTRACTOR and any other entity concerning responsibility for performance of work. The CONTRACTOR will pay out funds to other entities on a reimbursement basis only.

**Site Visits:** DISTRICT or its designee reserves the right to conduct site visits for program reviews, fiscal audits, or other purposes during, and for up to three years past, the term of this Contract.

**Timeliness:** Time is of the essence in this Contract. CONTRACTOR will proceed with and complete the Scope of Work in an expeditious manner.

**Waiver of Rights:** Any waiver of rights with respect to a default or other matter arising under the Contract at any time by either party will not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the DISTRICT provided for in this Contract are in addition to any other rights and remedies provided by law.

## 12. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to

participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

13. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain aspects of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:
- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall only be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract. CONTRACTOR will maintain a list of such employees and make this list available to DISTRICT upon request.
  - B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from accessing, disclosing, copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
  - C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
  - D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
  - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract. At the conclusion of this Contract, the CONTRACTOR will surrender all information in any form developed or collected pursuant to this Contract upon DISTRICT's written request.
  - F. Prevent access to such materials by a person or entity not authorized under this Contract.
  - G. Establish specific procedures in order to fulfill the obligations of this section.
  - H. If the CONTRACTOR suspects loss or theft of information or data developed or collected pursuant to this Contract, CONTRACTOR will report this to

DISTRICT immediately.

- I. CONTRACTOR will provide DISTRICT all pass phrases/passwords used for private keys to encrypt data used, produced or acquired in the course of performing duties under this Contract.
  - J. The CONTRACTOR agrees to notify DISTRICT immediately of any known security incident involving the information system, servers, data, or any other information developed or collected pursuant to this Contract. The CONTRACTOR agrees that DISTRICT has the right to participate in the investigation of a security incident involving its data or conduct its own independent investigation, and that the CONTRACTOR will cooperate fully in such investigations.
  - K. Any information or data required to be publicly accessible by DISTRICT (such as placement of such information or data in a publicly accessible website or database) is not confidential. In addition, the CONTRACTOR may disclose information or data to its governing board, including personally identifying individuals, for the purpose of providing status updates and obtaining necessary approvals for awarding contracts under this Contract.
  - L. Notwithstanding the provisions of this Contract, the CONTRACTOR may disclose any of the Confidential Information in the event it is required to do so by law or legal process. Prior to making such disclosure, the CONTRACTOR shall provide reasonable advanced written notice of any such requirement to DISTRICT so that DISTRICT may seek a protective order or other appropriate remedy.
14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with CARB, unless otherwise agreed to in writing. The CONTRACTOR will maintain ownership of any pre-existing webpage(s), software, database, or other intellectual property used to administer the Mitigation Trust funds including but not limited to changes or modifications to its existing programs or databases. Should DISTRICT/CARB select a different CONTRACTOR to manage the Mitigation Trust funds, the CONTRACTOR is responsible for turning over CARB’s intellectual property and information to CARB and the new CONTRACTOR and providing all reasonable and necessary assistance needed to ensure a smooth transfer. It is DISTRICT’s intention that funding access be seamless to eligible selected applicants.
15. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
  - B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating “DRAFT – Not Reviewed or Approved by BAAQMD,” unless

DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.

- C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This publication (or project) was supported by the VW Mitigation Trust Fund program.”

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.

- 16. NON-DISCRIMINATION – During the performance of this Contract, the CONTRACTOR and its third party entities will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The CONTRACTOR and its third party entities will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The CONTRACTOR and its third party entities will comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. The CONTRACTOR and its third party entities will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The CONTRACTOR will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.
- 17. PROPERTY AND SECURITY – Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT's premises.

18. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
19. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
20. ATTORNEYS' FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
21. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.
22. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
23. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

24. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party’s signature as an original for all purposes.
25. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction’s laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be Sacramento, California.
26. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.