

Exhibit C

Oakdale Irrigation District

Professional Services

Agreement



## PROFESSIONAL SERVICES AGREEMENT

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is effective as of Month/Date/Year (the "Effective Date") by and between \_\_\_\_\_ ("Consultant"), with offices at \_\_\_\_\_, and **Oakdale Irrigation District**, an irrigation district organized pursuant to Division 11 of the California Water Code ("Client"), with offices at 1205 East F Street, Oakdale, California 95361.

In consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Services:** Consultant and Client agree Consultant will perform the services identified as defined in **Exhibit "A"** or on each **Work Release** issued. Consultant will perform the following Scope of Work:

### General Engineering & Architectural Services

2. **Independent Contractor Relationship:** Consultant's relationship with Client will be that of an independent contractor, and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Consultant is not the agent of Client and is not authorized to make any representation, contract, or commitment on behalf of Client. Consultant will not be entitled to any of the benefits which Client may make available to its employees, such as group insurance, profit-sharing or retirement benefits. Consultant will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state or local tax authority with respect to Consultant's performance of services and receipt of fees under this Agreement. Client will regularly report amounts paid to Consultant by filing Form 1099-MISC with the Internal Revenue Service as required by law. Because Consultant is an independent contractor, Client will not withhold or make payments for social security; make unemployment insurance or disability insurance contributions; or obtain worker's compensation insurance on Consultant's behalf. Consultant agrees to accept exclusive liability for complying with all applicable state and federal laws governing self-employed individuals, including obligations such as payment of taxes, social security, disability and other contributions based on fees paid to Consultant, its agents or employees under this Agreement. Consultant hereby agrees to indemnify and defend Client against any and all such taxes or contributions, including penalties and interest. Consultant warrants that, to the best of its knowledge, there is no other existing contract or duty on Consultant's part inconsistent with this Agreement.
3. **Prevailing Wages:** Consultant shall pay its employees and agents not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations pursuant to Section 1770 of the California Labor Code where determined to be necessary and appropriate in accordance with the law. The rate shall be based on the prevailing rate of per diem wages at the time the actual



work is performed. Copies of the prevailing rate of per diem wages are on file at Client's offices and available to any interested party upon request or on the internet at <http://www.dir.ca.gov/DLSR/PWD/index.htm>.

4. **Manner of Performance:** The manner and means which Consultant chooses to complete the Work are in Consultant's sole discretion and control. In completing the Work, Consultant agrees to provide its own equipment, tools, and other materials at its own expense. Consultant shall perform the services necessary to complete the Work in a timely and professional manner consistent with industry standards.
5. **Changes/Amendments.** This Agreement may not be changed except by written amendment signed by both parties. Services not expressly set forth in this Agreement are excluded. If Consultant is delayed in performing its services due to an event beyond its control, including but not limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under the Agreement shall be equitably adjusted, in Client's reasonable discretion, to compensate Consultant for any reasonable additional costs directly attributable to the delay.
6. **Fees for Services:** All Work shall be performed on an as-needed basis. For each Task, a **Work Release** will be issued. If the Work can be defined sufficiently prior to the Work Release, a lump sum amount as payment for the Work will be negotiated and identified on the **Work Release**. However, if the scope of Work cannot be defined, Work will be paid for on a time-and-material basis. The rates will be in accordance with the attached rates in **Exhibit "B"**. All rates will include payroll burdens and benefits, overhead, and profit. The rates identified on **Exhibit "B"** shall remain fixed for the duration of the Work; provided, however, that Consultant may request, in writing, a modification of such rates. Any modifications may only take effect if and after approved by the Client's Board of Directors, at which point Client and Consultant shall enter into a written modification of this Agreement to reflect such increased rates. In no event will Client be held accountable for any additional cost except in accordance with the terms and procedures of this Agreement.
7. **Payment:** Payment shall be made for undisputed invoices within thirty (30) days of receipt by Client of Consultant's invoice and per the current rate schedule attached as **Exhibit "B"**, or per the pricing identified in each **Work Release**. If portions of the invoice are in dispute, the undisputed portions shall be paid. Disputed invoices shall be returned as soon as possible but within seven (7) days after receipt with an explanation setting forth the reasons in writing why the invoice is not proper. Partial payments of up to ninety percent (90%) of the quote may be billed and paid based on approval of work completed and receipt of approved materials. **PLEASE SUBMIT CERTIFIED PAYROLL AND SIGNED CERTIFICATE OF COMPLIANCE WITH INVOICES FOR PROMPT PAYMENT, if required.** If any other payment schedules are needed by Consultant, the Consultant must obtain approval before the project begins. All invoices for project are to be sent to the Client's accounts payable department with the project name listed on the invoice.

Invoices submitted to Client for payment shall include a daily breakdown of tasks worked on, hours spent on specific tasks, and the parties performing the Work every day within the billing cycle. If the Client fails to pay invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend Work hereunder or



may initiate collection proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

**8. Insurance:** Consultant shall maintain insurance with the following required coverage and minimum limits and, upon request, shall provide insurance certificates to the Client:

- Commercial General Liability: \$1,000,000 per occurrence  
\$2,000,000 aggregate
- Auto Liability: \$1,000,000 per occurrence
- Workers' Compensation coverage:
- Consultant's coverage is primary and Client's coverage is noncontributory AM Best Rating A = VII or better
- Thirty (30) day notice of cancellation
- Professional Liability not less than: \$1,000,000

Said insurance will be evidenced by certification filed with the Client as otherwise specified by this Agreement. All policies shall name **"the Oakdale Irrigation District, its directors, officers, employees and volunteers"** as additional insured's on the General and Auto liability policies.

**9. Commercial General Liability and Automobile Liability Insurance:** Consultant shall provide and maintain commercial general liability and automobile liability insurance as set forth in this Agreement.

**A. Coverage:** Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

- i. Insurance Services Office ("ISO") Commercial General Liability Coverage (Occurrence Form CG 0001); and
- ii. ISO Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto).

**B. Limits:** Consultant shall maintain limits no less than the following limits:

- i. General liability of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to Client) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit; and



- ii. Automobile Liability of One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit.

C. **Required Provisions:** The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- i. Client, its directors, officers, employees, and authorized volunteers are to be given insured status (ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; and automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Client, its directors, officers, employees, or authorized volunteers;
- ii. For any claims related to the Work, Consultant's insurance shall be the primary insurance, and any insurance, self-insurance, or other coverage maintained by Client, shall be non-contributory.
- iii. Any failure by Consultant to comply with reporting or other provisions of the insurance policies including but not limited to a breach of any warranties contained therein shall not affect coverage provided to Client, its directors, officers, employees, or authorized volunteers; and
- iv. Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. **Subrogation:** Consultant shall waive all rights of subrogation against Client.

10. **Workers' Compensation and Employer's Liability Insurance:** Consultant and all sub-contractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Consultant shall provide employer's liability insurance with limits of no less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee.

If Consultant is a Sole Proprietor, a Sole Proprietor Business Affidavit Form must be on file with the Client prior to the start of work.

11. **Deductibles and Self-Insured Retentions:** Any deductible or self-insured retention must be declared to and approved by Client.
12. **Acceptability of Insurers:** Consultant shall purchase the policies of insurance required under this Agreement from insurers having a current A.M. Best Financial Strength Rating of no less than A, and Financial Size Category of no less than VII or as otherwise approved by Client.



13. **Evidence of Insurance:** Evidence of the insurance coverage required to be maintained by Consultant under this Agreement, as represented by Certificates of Insurance issued by the insurance carrier, must be furnished to Client prior to Consultant starting the Work. Such Certificates of Insurance shall state that Client will be notified in writing thirty (30) days prior to cancellation, of insurance. Consultant shall provide Client a certified copy of any and all applicable insurance policies upon request of Client. Timely renewal certificates will be provided to Client.
14. **Continuation of Coverage:** If any of the required coverages expire during the term of this Agreement, Consultant shall deliver all applicable renewal certificates to Client at least ten (10) days prior to the expiration date.
15. **Indemnity:** To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client from and against any and all losses or damages arising out of, pertaining to, or relating to this Agreement, or the work to be performed under this Agreement, whether such losses or damages are caused by willful misconduct or negligence by Consultant, Consultant's agents, employees, or subcontractors, or their agents or employees, or products installed in connection with the Work by Consultant, Consultant's agents, employees, or subcontractors, or their agents, or employees, excepting only such injury and harm as may be caused solely and exclusively by Client's sole negligence, willful misconduct or active negligence. Such indemnity shall extend to claims, demands, or liabilities, of every kind or nature whatsoever including, but not limited to, personal injury, wrongful death, and property damage occurring during and/or after completion of the Work. Notwithstanding the foregoing provisions of this paragraph, if Consultant is a design professional, as defined by Section 2782.8(b)(2) of The Civil Code of the State of California, or its successor, then such design professional shall, to the fullest extent permitted by law, indemnify, and hold Client harmless from and against any and all liabilities, losses or damages, arising out of or encountered in connection with this Agreement or the prosecution of work under it to the extent such, liabilities, losses or damages, are actually caused by the negligence of such design professional or its agents, employees, or subcontractors, or their agents or employees. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Client, its directors, officers, employees, or authorized volunteers.
16. **Laws, Regulations and Permits:** Consultant shall give all notices required by law and exercise due professional care to comply with all laws, ordinances, rules and regulations pertaining to the conduct of the Work. Consultant shall be liable for all violations of the law in connection with Work furnished by Consultant caused by Consultant's legal fault. If Consultant observes that any drawings or specifications prepared in connection with the Work are at variance with any law or ordinance, rule or regulation, Consultant shall promptly notify Client in writing prior to proceeding with any Work in accordance therewith.
17. **Safety, Illness and Injury Prevention Plan (IIPP):** Client is not responsible for Consultant's means, techniques, sequences, or procedures, or the safety precautions and programs incident thereto. All work will be performed in compliance to the CAL/OSHA requirements and regulations. Consultant is not responsible for site safety at any site. Client or contractor will be responsible for site safety.
18. **Termination:** Either party may terminate this Agreement upon Thirty (30) days' written notice to the other party. Client shall pay Consultant for all services rendered to the date of termination. If either party defaults in its obligations under this Agreement (including



Client's obligation to make payments hereunder), the non-defaulting party may suspend performance under this Agreement, after giving seven (7) days written notice of its intention to suspend performance under this Agreement and if cure of the default is not commenced and diligently continued. Upon termination of the Agreement or earlier as requested by Client, Consultant shall deliver to Client any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Client Work Product or Proprietary Information of Client.

19. **Reuse of Work Products:** "Client Work Product" shall include all documents, analyses, and other data solely or jointly conceived, made, reduced to practice, or learned by Consultant in the course of any work performed for Client under this Agreement, including all intellectual property rights associated therewith. Except for technology which (a) Consultant intends to use in performing the Work under this Agreement, (b) is either owned solely by Consultant or licensed to Consultant with a right to sublicense and (c) is in existence prior to the Effective Date (collectively, the "Background Technology"), the Client Work Product shall be assigned to, and shall become, the property of Client and Consultant retains no rights to use the Work Product and agrees not to challenge the validity of Client's rights or ownership in the Work Product. Client shall have the right to make and retain copies and use all Work Products; provided, however, the use shall be limited to the intended use for which the services and Work Products are provided under this Agreement. Client will indemnify and hold Consultant harmless if work product is used for other than for its original intended purpose.

The Work Products shall not be changed or used for purposes other than those set forth in this Agreement without approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, Client does so at its sole risk and discretion and CONSULTANT shall not be liable for any claims or damages resulting from or connected with the release or any third party's use of the Work Products. If software is intended or expected to be developed under this Agreement, Client shall execute a software license Agreement acceptable to Consultant.

If Consultant has any rights to the Client Work Product that cannot be assigned to Client, (a) Consultant unconditionally and irrevocably waives the enforcement of such rights, including all claims and causes of action of any kind against Client with respect to such rights, and agrees, at Client's request and expense, to consent to and join in any action to enforce such rights, and (b) Consultant unconditionally and irrevocably grants to Client during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, create derivative works of, distribute, publicly perform, and publicly display by all means now known or later developed, such rights.

20. **Proprietary Information:** Consultant agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold Client's Proprietary Information in trust and confidence, will not use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining Client's express written consent on a case-by-case basis. By way of illustration but not limitation, "Proprietary Information" includes (a) trade secrets, inventions, ideas, processes, formulas, data, programs, other works of authorship, know-how, improvements, discoveries,



developments, designs, and techniques, (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers, and (c) information regarding the skills and compensation of other employees of Client. Notwithstanding the other provisions of this Agreement, nothing received by Consultant will be considered to be Client's Proprietary Information if (1) it has been published or is otherwise readily available to the public other than by a breach of this Agreement, (2) it has been rightfully received by Consultant from a third party without confidential limitations, (3) it has been independently developed for Consultant by personnel or agents having no access to the Client Proprietary Information, or (4) it was known to Consultant prior to its first receipt from Client. Consultant agrees not to disclose to Client, or bring into Client's premises, or induce Client to use any confidential information that belongs to anyone other than Client or Consultant.

21. **Non-Interference:** During and for a period of two (2) years immediately following termination of this Agreement by either party, Consultant agrees not to solicit or induce any employee or independent contractor to terminate an employment, contractual, or other relationship with Client.
22. **Limitation of Liability:** No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total liability of Consultant to Client for any and all claims arising out of this Agreement, whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based upon third party claims, shall not exceed fifty thousand dollars (\$50,000)
23. **Consequential Damages:** In no event and under no circumstances shall Consultant be liable to Client for any interest, loss of anticipated revenues, earnings, profits, increased expense of operations, loss by reason of shutdown or non-operation due to late completion, or for any consequential, indirect or special damages.
24. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicate is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.
25. **Opinions of Cost:** Consultant does not control the cost of labor, materials, equipment or services furnished by others, nor does it control pricing factors used by others, nor does it control pricing factors used by others to accommodate inflation, competitive bidding or market conditions. Consultant estimates of operations expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost.
26. **Miscellaneous:**
  - A. This Agreement is binding upon the Client and Consultant. Consultant may not assign its rights or obligations hereunder without the prior written consent of Client, which may be granted or withheld in Client's sole discretion.
  - B. The parties agree that this Agreement and any amendments or exhibits hereto shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to



be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction shall be applied against any party.

- C. This Agreement, together with the exhibits hereto, is the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by Client and Consultant.
- D. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Moreover, if any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.
- E. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- F. The parties agree that a breach of any of the promises or agreements contained in this Agreement will result in irreparable and continuing damage to Client for which there might be no adequate remedy at law, and Client is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the dates indicated below; provided, however, that the Agreement shall be deemed to be effective as of the Effective Date identified above.

**OAKDALE IRRIGATION DISTRICT**

**CONSULTANT**

\_\_\_\_\_  
Name: Steve Knell, P.E.  
Position: General Manager

\_\_\_\_\_  
Name:  
Position:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## **EXHIBIT "A"**

### **DESCRIPTION OF WORK**

**For each Scope of Work, a Work Release will be issued containing the Scope of Work, Schedule, Pricing with the Terms and Conditions. Each Work Release will have a unique number for the Work Release for the specified contract.**



**EXHIBIT "B"**  
**FEE AND RATE SCHEDULE**

**Rate Schedule will be inserted here marked as:**

**"Exhibit B"**