

**AGREEMENT NO. \_\_\_ - \_\_\_**

(Agreement for Arsenic Treatment Design at Wild Wings County Service Area)

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the **County of Yolo**, a political subdivision of the State of California (“County”) and **Luhdorff & Scalmanini Consulting Engineers, Inc.**, a California corporation (“Consultant”).

**WITNESSETH**

**WHEREAS**, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

**WHEREAS**, the County is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert and competent to perform special services such as architectural and engineering; and)

**WHEREAS**, the County desires to obtain architectural and engineering services; and

**WHEREAS**, the County circulated and distributed a Request for Qualifications (“RFQu”), an excerpt of which is attached as Exhibit A; and

**WHEREAS**, the Consultant submitted a statement of qualifications, an excerpt of which is attached as Exhibit B; and

**WHEREAS**, Consultant has represented and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County; and

**WHEREAS**, Consultant represents and warrants that neither Consultant, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

**WHEREAS**, Consultant further represents and warrants that no conditions or events now exist which give rise to Consultant or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

**WHEREAS**, Consultant understands that the County is relying upon these representations in entering into this Agreement.

**NOW, THEREFORE**, the County and the Consultant agree as follows:

**I. BASIC SERVICES**

**A.** Consultant shall furnish and perform the following services in accordance with Exhibits A-B, and in a manner satisfactory to the County Administrative Officer or his/her written designee (“Administrator”): Comprehensive preliminary engineering through final design and permitting, bidding, construction, and commissioning. These services include the following tasks and subtasks:

Consultant’s Scope of Work includes all project elements to assist the County with the design and construction of an arsenic treatment system for the Wild Wings CSA Public Water System. The work plan is detailed below and includes all tasks from data analysis and treatment system selection through installation, startup, and commissioning.

The tasks are arranged in two phases, Phase 1 and Phase 2, and generally in the order they will be completed. Phase 1 is completion of the preliminary engineering analysis through the final design, permitting and environmental compliance with CEQA. Phase 2 is the completion of bidding, construction, commissioning, training and final permitting. After the completion of Phase 1, the County will have the information required to either directly fund the project or seek outside funding sources (e.g. loan or grant applications).

Consultant shall provide project management throughout the entirety of project and work with the County staff, the Wild Wings CSA representatives, the water system operators (SUSP), regulatory agencies, contractors and vendors to complete the scope of work described herein, with the objective of commissioning a fully functioning and permitted arsenic treatment system for use.

Consultant shall provide subconsultants for electrical design, structural design, and environmental review to complete the project. Consultant shall provide oversight of all subcontractors to ensure that the work is carried out per industry standards, Consultant’s specifications, and County requirements.

The Consultant-designated Project Manager will be the primary point of contact throughout the project. The Project Manager shall provide the County with regular updates via phone, email, and at regularly scheduled meetings regarding project progress, findings, recommendations, schedule, and budget.

Consultant’s Scope of Work shall be completed in the following tasks:

**Phase 1: Preliminary Engineering through Final Design**

**Task 1: Production & Demand Analysis**

Consultant’s work shall begin with an analysis of the available production and demand data for the Wild Wings CSA. Consultant understands that there is a gap in production data from 2011 through early 2018, so the first task is to obtain the available data from the County and system operators (presumably production data

from before 2011 and since 2018) and demand data from the County's meter records. Consultant shall review all available data, including records from DDW, and water system records or SCADA, to determine if there is enough information to properly size the arsenic treatment system. If it is determined that more information is necessary, Consultant shall review other similar water systems in the area (Woodland, Esparto, Davis, etc.) to define maximum or minimum demand factors. A memo will be prepared to qualify the information and define the water demand factors pertaining to this system that will be used for treatment system sizing in later tasks, which are the Maximum Day Demand (MDD) and the Peak Hour Demand (PHD).

**Deliverables for Task 1:**

- Memo #1 discussing production data and demand analysis defining MDD and PHD.

**Meetings for Task 1:**

- Meeting #1: Kickoff with County, Wild Wings CSA and Operators to review objectives and data.
- Coordination meetings with the County and Operators, as needed, to obtain and discuss data.
- Meeting #2: Memo review meeting to discuss findings and next steps.

**Task 2: Conceptual Treatment & Operational Strategies Design**

Under Task 2, Consultant shall develop conceptual arsenic treatment and operational strategies from the water quality data, pump station schematics, well construction information, water supply requirements and water system information. The demand information in Task 1 will form a basis for the required water supply of the system and level of treatment to meet the water system demands from both wells. Design considerations will also include County and Operator preferences, existing water quality, cost, site layout, waste handling, chemical feed, pilot testing, operations and maintenance, and any other factors deemed necessary for the comparison of the different treatment options. Consultant shall present the conceptual treatment and operational strategies in a memo which discusses the considerations associated with each treatment type and provides a comparison of the treatment options.

**Deliverables for Task 2:**

- Memo #2 discussing the Conceptual Treatment & Operational Strategies Design, with comparison of the alternatives in terms of life cycle cost and operational complexity and supporting figures for each alternative.

**Meetings for Task 2:**

- Coordination meetings with the County and Operators, as needed, to obtain and discuss data.
- Meeting #3: Memo review meeting to discuss findings and next steps.

### **Task 3: RFP for Vendor Treatment Systems**

- To carry through the conceptual alternatives developed in Task 2, Consultant shall seek information from treatment system vendors to provide more detailed descriptions and costs of the individual treatment options and pre- or post-treatment requirements for each technology. Under Task 3, Consultant shall develop a Request for Proposals (RFP) to solicit proposals from treatment vendors that will enable a side-by-side comparison of the treatment system options (an outline of the RFP is at the end of this section).
- Vendors will be invited to present proposals for adsorptive media or coagulation/filtration, whichever they feel is the best option given existing information. The RFP will require a cost estimate for the proposed treatment system and details of the system specifications, including but not limited to: system size and system components, operation description, pretreatment and chemical requirements, operation and maintenance cycles, replacement media cycles, solids generation, backwash/regeneration requirements, control requirements, and arsenic removal efficiency. The vendors will be required to indicate whether pilot testing is required to guarantee performance of the proposed treatment system and to provide a cost of pilot testing. Performance guarantees will be provided for each system in terms of arsenic reduction and anticipated media life expectancy.
- The RFP will include a basis of design with a description of the Wild Wings facilities as they exist now, including water quality data for both the Canvas Back and Pintail wells, anticipated operating cycles, and design parameters for treatment systems. Conceptual treatment strategies from Task 2 will be presented to the vendors.
- The RFP will be sent to selected vendors known to Consultant from prior projects and review of literature. Consultant shall hold discussions with vendors and provide written addendums during the proposal period. The proposal period is assumed to be 3 weeks from issuance of RFP to receipt of proposals.
- Consultant shall review vendor proposals and evaluate cost, track record of arsenic treatment, and adherence to the requirements of the RFP. Consultant shall prepare a memo for the County that recommends selection of a vendor or multiple vendors for pilot testing different treatment systems. A meeting will be held to discuss the proposals following Consultant's memo. The objective at the end of this meeting is to select a vendor to proceed with through the completion of design, either with or without pilot testing of their system, or to select a group of vendors to conduct pilot testing. It is important to note that DDW will require pilot testing if the Wild Wings CSA is to pursue funding from the State Revolving Funds (SRF).

### **Deliverables for Task 3:**

- Vendor RFP Document
- Memo #3 reviewing vendor proposals with recommendations

### **Meetings for Task 3:**

- Coordination meetings with the County and Operators, as needed, to obtain and discuss data.
- Meeting #3: Memo review meeting to discuss findings and next steps.

### **Conceptual Outline for Vendor RFP Document (Task 3)**

#### 1. Project Information

- a. Wild Wings water system information
- b. Canvas Back and Pintail well construction
- c. Pump station schematics
- d. Water quality information
- e. Pilot test parameters
- f. Pilot test report requirements
  - Optimization strategies
    - Coagulation/filtration
      - Chemical feed volumes, automation
      - Solids volume and anticipated annual waste volume
      - Backwash frequency, volume, fate
    - Adsorption
      - pH adjustment
      - Regeneration volume, frequency
      - Eluent volumes, fate
  - Treatment levels
  - Startup/mothball costs and protocols
  - Chemical storage considerations

#### 2. Vendor proposal requirements

- a. Qualifications of vendor, years in operation
- b. Current examples of arsenic treatment in operation for drinking water
- c. Cost quote for pilot test
- d. Cost estimate for installed system
- e. Pilot test equipment
  - Description
  - Connection and waste disposal requirements
  - Test duration minimum and expected
- f. Installed system
  - Installation requirements
    - Connections, pipes, valves, pumps, tanks, enclosures, etc.
  - Power demands
  - Specifications
    - Sizes of treatment systems and associated equipment
    - Access requirements for operations, maintenance, and materials handling
  - Operations manuals

### **Task 4: Pilot Testing of Selected Vendor Systems (if required)**

Under Task 4, Consultant shall assist with pilot testing of the selected system(s) as

determined in Task 3. Consultant shall manage the installation, connection, and pilot testing under Task 4. This will include any permitting, pipe and pump modifications, or discharge handling. Consultant shall coordinate pilot testing with vendors, SUSP, and the County for connection of the vendor systems to both wells. Consultant shall collect water samples for lab analysis, quality assurance, and verification of system performance. Each vendor will bring their own pilot testing trailer and connect the trailer to the system. Consultant assumes there will be one week of pilot testing by all vendors simultaneously, and that the trailers will be manned by the vendors during operation.

Consultant shall visit the field daily to assess operations and QA/QC of the pilot testing. Independent water quality testing is assumed to be needed to confirm treatment operation. Water samples are assumed to be collected three times throughout the week to verify performance of the pilot systems. Each water quality sampling event includes a raw and treated sample tested for arsenic, iron, manganese, and general chemistry. Only one raw sample will be collected, and one treated sample for each pilot unit.

County's Operator may conduct water quality sampling.

Following pilot testing, the vendors will supply a report summarizing the findings in accordance with the RFP requirements. Consultant shall evaluate the vendor reports and provide a memo to the County summarizing the feasibility and selected treatment system after evaluating the performance and life-cycle cost comparisons of each system, including site or well-head modifications and operations and management considerations. The results of this study will be used in selection of a system to best serve the needs of the County.

**Deliverables for Task 4:**

- Pilot test results, QA/QC sample results
- Memo #4 presenting pilot study reports and updating design information from previous tasks

**Meetings for Task 4:**

- Vendor meetings as needed
- Meeting #5: Review meeting to discuss results and recommended treatment system.

**Pilot Testing Cost Assumptions:**

- Vendor costs for pilot testing is not included in Consultant's fee proposal.
- Water quality samples from pilot testing is not included in Consultant's fee proposal (it is assumed the County's existing laboratory services will be utilized).

## **Task 5: Treatment System Design**

Under Task 5, Consultant shall develop the design of the facilities required to obtain contractor bids for the installation of the treatment system and upgrades to the existing production facilities. This task will incorporate the selected treatment system from the previous tasks. The design process includes development of a Basis of Design Memorandum and the design plans and specifications for contractor bidding. To the extent required, Contractor shall perform permitting activities (discussed under Task 7) to obtain design reviews from outside agencies concurrently with the design development.

The design will identify modifications to the well and upgrades to existing facilities to implement the selected treatment system, and any other upgrades associated with system control, maintenance, waste discharge, materials handling, power requirements, or other needs. Upgrades will also consider other improvements to the existing system such as the PLC controls and SCADA system that can be completed concurrently with the treatment system installation. Consultant's electrical engineering sub-consultant will prepare a design that meets the County and operator preferences for the electrical upgrades.

A pre-design meeting shall be coordinated with the County, County's Water/Wastewater Operator (currently S.U.S.P.), the control integrator, Consultant, and key sub-consultants to establish preferences for controls and operation.

### **Design Elements:**

Consultant's design includes the engineering disciplines in Civil, Mechanical, Electrical and Structural. The design will involve the following elements:

- Modifications of existing facilities: Pump selection, well-head modifications, treatment system connections, piping modifications.
- Chemical feed and handling: New and existing chemical feed systems including supply storage, waste storage, analyzers, disposal routes, controls, secondary containment, access, safety, and restocking.
- Structure and foundation design and site modifications: Shade structures, small prefabricated weather enclosures, grading, concrete pedestals, building modifications.
- Solids handling: Backwash storage and operation, solids separation and drying, disposal access, sampling requirements and sewer connections.
- Reclaim system: Pump stations, skimmer systems, piping and valve layouts, control logic.
- Electrical supply and control systems programming: Instrumentation, control logic for a complete operating facility, motor control centers (MCC), panel lineup, power supply, integration with existing SCADA

components or redesign. The Wild Wings integrator will conduct the PLC and SCADA programming.

**Plans, Specifications, and Cost Estimates (75%, 100%, Final Bid Set):**

Consultant shall prepare a complete design that consists of plans, technical specifications, and cost estimates. A basis of design memo will be provided with the initial (75%) design to define the required upgrades, sizing and operation decisions and preferences from the discussions with the County and SUSP.

The design will be provided in three completion phases: 75%, 100%, and a final bid set. It is assumed that the County will provide formal comments on the 75% submittal and the basis of design memo and on the revised design in the 100% deliverable. The final bid set will be presented with a signed and stamped set of drawings suitable for bidding to general contractors or to finalize grant/loan applications (if required). Consultant shall integrate any front-end provisions the County requests for the bidding package, as applicable. Consultant shall provide front-end contractual documents to include in public construction contracts. An Engineer's Estimate will also be provided for the construction at each design deliverable.

Consultant shall generate a detailed performance-based specification wherein the supplier or General Contractor will guarantee performance, including initial commissioning and a one-year recertification of performance.

**Deliverables for Task 5:**

- Draft Basis of Design Memo with 75% Plans, Specs and Estimate
- Final Basis of Design Memo with 100% Plans, Specs and Estimate
- Final Bid Set (signed and stamped)

**Meetings for Task 5:**

- Meeting #6: Pre-Design Basis Meeting
- Meeting #7: Design review of the 75% deliverable and Basis of Design Memo
- Meeting #8: Design review of the 100% deliverable

**Task 6: CEQA Documentation**

Preparation of CEQA documentation will be required prior to making modifications to the system for DDW permit amendment and any SRF loan applications that may be sought for construction. The CEQA analysis will be performed by Consultant's subconsultant, Inland Ecosystems. Any mitigation measures required by CEQA will be included in the design and construction of the treatment system as needed.

**Deliverables for Task 6:**



- Preliminary determination of CEQA requirements
- Initial Study and Mitigated Negative Declaration (if required)

**Phase 2: Permitting, Bidding, Construction, and Commissioning**

Item	Description
<b>Pilot Testing Protocol</b>	To be compliant with DDW Arsenic Treatment Pilot Study Guidelines.
<b>Pilot Testing Results and Treatment Technology Selection</b>	To be submitted prior to Permit Amendment Application.
<b>Permit Amendment Application (Initial and Final)</b>	Initial application will be sent with Plans and Specifications prior to construction. Final will be submitted after WTP is constructed and tested.
<b>Plans and Specifications for Water Treatment Plant</b>	Submittal will include well modifications, treatment system, and accompanying piping, instrumentation, solids handling systems, and site improvements. To be submitted with Initial Permit Amendment Application.
<b>CEQA Documentation</b>	Cat Ex, Neg. Dec. or Initial Study (TBD) to be submitted with Initial Permit Application
<b>Well Construction Specifications</b>	Submittal will include well profile and final construction specifications to be sent with the Initial Permit Application.
<b>DWR Well Completion and Well Data Sheet</b>	To be submitted with Initial Permit Application.
<b>DWSAP Document</b>	Already submitted to DDW
<b>Filter Data Sheet and Chemical Data Sheets</b>	To be submitted with Final Application after station is constructed and tested.
<b>Water Quality Reports</b>	To be submitted in Final Application. Submittal will include analytical results for well, before and after treatment, prior to going online, including disinfection testing of complete water treatment plant.

**Task 7: Permitting**

Consultant shall be responsible for ensuring that all permits, plans, notifications, and other documentation required from agencies with jurisdiction over the project are procured and submitted in a timely and professional manner. Consultant shall ensure that the building contractor, or any other project participant, adheres to all

project permit requirements. Consultant shall inform the contractor(s) when operations are out of compliance and require measures be taken to comply with permit requirements. Specific permits and documents anticipated include:

**Water Supply Permit Amendment with DDW:** Consultant shall be in contact with DDW from the beginning of the project through completion to amend the water supply permit and gain approval of the new arsenic treatment facility. Working with DDW will occur throughout all tasks, as detailed in this proposal. The work will be completed throughout the project during completion of other tasks. Below is a table of anticipated documentation for the Water Supply Permit Amendment.

DDW will be informed of the selection of a treatment system following the RFP process, and provide input on the need for a pilot testing program and review of the program if it is necessary (Task 4).

Following final selection of the treatment system and preparation of design drawings, DDW will be informed of the plans and designs, and a preliminary permit amendment will be filed with all necessary information prior to Consultant bidding and construction. After construction, and prior to commissioning, DDW will be consulted regarding approval of the plant and a sanitary inspection for concurrence to bring the new system online (Task 9). At the end of the project, Consultant shall provide the final permit amendment information including system as-built design drawings (Task 9).

#### **Documentation for Water Supply Permit Amendment from DDW**

**Regional Water Quality Control Board (RWQCB) Permits:** Consultant's subconsultant, Inland Ecosystems, shall coordinate with the RWQCB as necessary for permitting or approval associated with disposal of waste products for any onsite land disposal. There is no land disposal envisioned for this project; however, Inland Ecosystems will conduct this effort if it is necessary for onsite disposal of temporary discharge water, backwash water, or solids disposal. A Storm Water Pollution Prevention Plan (SWPPP) is not required since the disturbed surface will be under one acre.

**Building Permits** – No building permits are envisioned for this project as there will be no new occupied structures. Consultant assumes there will be time involved reviewing the project with County officials to confirm any required permits.

**Encroachment Permit** – Consultant assumes there will be no encroachment permit required for construction.

#### **Deliverables for Task 7:**

- Permit submittals and letters to DDW

### **Meetings for Task 7:**

- DDW phone conferences and meetings, as needed

### **Task 8: Bidding and Construction Management**

Under Task 8, Consultant shall assist with contractor bidding and construction management to oversee the construction of the selected treatment system and modifications to the existing system. These components are detailed below.

#### **Contractor Bidding**

Consultant shall assist with bid solicitation from qualified contractors. To save time and minimize cost, it is assumed that the County can be selective in bid solicitation and permit Consultant to identify a qualified short list of contractors unless an SRF loan is obtained and public bids are necessary. Consultant shall hold a pre-bidding meeting with selected contractors to describe the project and begin taking questions. During bidding, Consultant shall respond to questions from bidders and provide formal written addenda (three addendums are assumed).

Consultant shall evaluate the bids and recommend the contract award based on responsiveness and lowest cost. Consultant assumes that the construction contract will be between the County and the contractor that is awarded the work. Consultant assumes bidding will consist of assisting with solicitation to qualified selected contractors, attending a pre-bid meeting, responding to questions, preparing up to three addendums, evaluating bids, and recommendation for award.

#### **Construction Management**

Consultant's approach to providing construction support services involves regular interaction with the Contractor and treatment vendor and close review of construction schedule, progress, and administrative processes. A key assumption of the level of scope and budget is that the assistance during construction will span 10 months; this accounts for the contractor submittals, procurements, site construction, startup and testing, and commissioning, training and final permitting. Consultant shall act on behalf of the County and work in coordination with SUSP operators as necessary. SUSP and County roles during construction are to be determined by County. Consultant's construction management services consist of the following activities:

- **Pre-Construction Conference:** Consultant shall hold a pre-construction conference to discuss the baseline schedule and the procedure for construction progress, RFIs, status of submittals, and any miscellaneous items throughout construction.
- **Bi-Weekly Construction Meetings:** Bi-weekly construction meetings will be held throughout construction at the job site, County offices or Consultant's office. The meetings will be conducted to address items actively as they come up. Consultant shall prepare formal agenda and

meeting minutes documenting the status of all RFIs, submittals, change orders, etc. to track progress and resolve items.

- **Submittal Review:** Consultant shall complete the review and transmittal of technical submittals provided by the general contractor. A submittal spreadsheet log will be maintained for use in tracking and documenting submittal review.
- **Requests for Information:** Consultant shall review questions and provide written clarifications for any questions the general contractor has during the construction period such as details of the contract, substitutions, and alternative approaches.
- **Change Order Assistance:** Consultant shall assist in the preparation of any necessary field instructions and change orders. Anticipated assignments may include preparing requests to the general contractor for proposals for extra or changed work; review of contractor requests for change order to determine if work proposed is considered extra work; opinion of probable construction cost; and, review and negotiation of cost estimates. Consultant shall also prepare drawings, sketches, or specifications for extra or changed work items.
- **Monthly Pay Requests:** Consultant shall review monthly payment requests from the Consultant based on the quantities of bid items that have been procured, installed and accepted. Consultant shall approve of all payment requests of the Consultant before they are submitted to the County.
- **Milestone Inspection:** Consultant shall provide on-site milestone inspections including special inspections for electrical, structural and mechanical components. There are approximately 10 milestone inspections included. The milestone inspections include the well site modifications, subsurface piping, conduits and raceways, utility connections, earthwork preparation, concrete form/rebar and pour, Factory Acceptance Testing, and pre-system punchlists to identify incomplete or deficient items. Consultant shall prepare an inspection report for each site visit indicating the date and times, people on site, material delivered, work completed, and corrections noted. Consultant shall coordinate a DDW inspection required to bring the system online with an SUSP operator and DDW engineer. Consultant shall provide milestone inspections with five (5) additional miscellaneous inspections as needed. Site visits will also occur as part of the bi-weekly construction meetings.
- **Part-time Construction Observation:** At the time of this contract execution, Consultant does not propose resident full-time construction observation. This project can be adequately managed through the regular meetings and milestone inspections described above. A part-time construction observation is assumed in addition to the above services at a rate of 4 hours per week of onsite observation.
- **Staking:** The selected General Contractor shall provide their own construction staking. Consultant's scope does not include a surveyor for construction staking. This item will be included as part of the specifications,

with the selected General Contractor providing the necessary services by a licensed surveyor approved by the Engineer.

**Deliverables for Task 8:**

- Bid Solicitation Document
- Bid Review and Recommendations
- Submittal Reviews, RFIs, Change Order Reviews, Pay Request Reviews
- Meeting agenda and minutes
- Inspection Reviews

**Meetings for Task 8:**

- Meeting #9: Bid Review Meeting
- Meeting #10: Pre-construction Meeting
- Meeting #11-#30: Bi-weekly Construction Meetings

**Task 9: Startup and Commissioning**

Consultant oversee and be responsible for the approval of the General Contractor's startup and commissioning activities for a fully functioning and operable facility, including all equipment acceptance testing, communications and programming, and close-out permitting requirements. This process will involve coordinating the general contractor, treatment system installer/supplier, other sub-contractors, systems integrator, equipment manufacturers, County staff, SUSP operators, and regulatory agencies. During the commissioning period, Consultant shall generate a punchlist to be completed by the contractor for final closeout. Consultant estimates that 5 days of testing will be required for approval of the new systems including: cleared water quality testing, treatment operation, MCC panel checks, pump operation, alarms and setpoints. The contractor will be required to perform a 7-day operational commissioning test where the system will run in auto and go through all modes of operation and backwash/regeneration cycles of the treatment unit. During this time, operators will be trained to correctly operate the new system. Consultant assumes 2 days are necessary for operator training.

At the end of the construction phase of the project, Consultant shall modify the conformed project drawings into a set of project Record Drawings (as-builts) based on field changes and red-line markups from the general contractor and Consultant construction management staff. Record Drawings and Operations & Maintenance Manuals will be provided to the County after they have been reviewed and approved by Consultant. Consultant shall provide a letter of acceptance of the facility.

The Final DDW Water Supply Permit Amendment will be filed under Task 9, building on the preliminary application filed under Task 7. This includes final documentation of filter system, chemical system, as- builts, engineering technical report, water system information and permit amendment.

**Deliverables for Task 9:**

- Punchlist
- Record Drawings
- Final DDW Permit Amendment package

**Meetings for Task 9:**

- Punchlist Meeting

Contractor’s compensation shall not exceed the amount budgeted in the table below:

Task	Consultant Fee	Outside Services Fee	Total Not to Exceed
<b>Phase 1 – Preliminary Engineering through Final Design</b>			
1 – Production and Demand Analysis	\$6,435	\$0	\$6,435
2 – Conceptual Design	\$12,850	\$1,725	\$14,575
3 – RFP for Treatment Vendors	\$7,640	\$0	\$7,640
4 – Pilot Testing	\$12,555	\$0	\$12,555
5 – Final Plans and Specifications	\$54,860	\$41,975	\$96,835
6 – CEQA Documentation	\$2,620	\$23,000	\$25,620
<b>Phase 1 Total</b>	<b>\$96,960</b>	<b>\$66,700</b>	<b>\$163,660</b>
<b>Phase 2 – Permitting, Bidding, Construction and Commissioning</b>			
7 – Permitting	\$16,060	\$0	\$19,800
8 – Bidding and Construction Management	\$82,390	\$17,870	\$100,260
9 – Startup and Commissioning	\$20,955	\$3,450	\$24,405
<b>Phase 2 Total</b>	<b>\$119,405</b>	<b>\$21,320</b>	<b>\$140,725</b>
<b>GRAND TOTAL</b>	<b>\$216,365</b>	<b>\$88,020</b>	<b>\$304,385</b>

Costs not included in Consultant’s scope of work include permit fees, capital costs, geotechnical inspections, and surveying as described below:

- Permit Fees: fees for permits will be assessed by agencies at the time of application. Consultant assumes the County will pay any permit fees directly.
- Capital Costs: treatment system, vendor pilot testing, or general contractor costs for installation are not included.
- Geotechnical Inspections: the specifications for construction will direct the General Contractor to obtain a geotechnical engineer to confirm subgrade

preparation and compaction.

- Surveying: Consultant shall utilize the existing site basemaps. The specifications for construction will direct the General Contractor to obtain a surveyor to conduct construction staking.

If Consultant is directed to deviate from the proposed scope, or as dictated by unforeseen field conditions, Consultant shall provide notification of any potential changes in the estimated cost and time to complete the work. Consultant shall not proceed with any work that deviates from the approved scope and budget until approval to proceed is granted.

### Project Schedule

Consultant shall coordinate all schedule of activities with the County. At the initial meeting Consultant shall prepare a detailed project schedule in Gantt Chart format showing the key milestone deliverables, tasks and outside agency reviews. The proposed project schedule below is based on the anticipated work products described under Tasks 1 through 9 above, performed by Consultant, with review time for coordinating agencies, such as DDW and the County. Consultant shall complete each task as it is approved by the County, so the anticipated completion dates are subject to change given County approval and funding sources.

Task Description	Anticipated Duration	Anticipated Completion Date
Production & Demand Analysis	1 month	February 1, 2020
Conceptual Treatment & Operational Strategies Design	2 months	April 1, 2020
RFP for Vendor Treatment Systems	2 months	June 1, 2020
Pilot Testing of Selected Vendor Systems (if required)	2 months	August 1, 2020
Treatment System Design	4 months	December 1, 2020
Permitting (concurrent with treatment system design)	--	--
Bidding and Construction Management	10 months	October 1, 2021
Startup & Commissioning	1 month	November 1, 2021
<b>Total Duration</b>	<b>22 months</b>	

**B.** Consultant shall provide all facilities, equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.

C. The complete contract shall include the following Exhibits attached hereto and incorporated herein:

Exhibit A	RFQu Excerpt
Exhibit B	Statement of Qualifications Excerpt

In the event of any conflict between any of the provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from Consultant for the County's benefit shall prevail.

D. The Administrator may approve modifications of the term, scheduling, billing rates, and allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Paragraph III of this Agreement.

**II. ADDITIONAL SERVICES**

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**III. COMPENSATION AND REIMBURSEMENT OF EXPENSES**

A. For the services described in Paragraph I above, and subject to the condition that the services have been completed in a manner satisfactory to the Administrator or his/her designee, Consultant shall be compensated as follows:

**Hourly Rates:**

Senior Principal .....	\$215/hr
Principal Professional .....	\$210/hr
Supervising Professional .....	\$200/hr
Senior Professional .....	\$187/hr
Project Professional .....	\$145 to \$170/hr
Staff Professional .....	\$130 to \$140/hr
Engineering Inspector .....	\$130/hr
ACAD Drafting/GIS .....	\$130/hr
Engineering Assistant .....	\$100 to \$120/hr
Scientist .....	\$100 to \$120/hr
Technician .....	\$100 to \$120/hr
Word Processing, Clerical .....	\$75/hr
Digital Communications Specialist .....	\$90/hr
Project Admin/Accounting Assistant .....	\$90/hr

**Other**

Groundwater Sampling Equipment (Includes Operator)	\$170/hr
Professional or Technical Testimony .....	200% of regular rates
Technical Overtime (if required) .....	150% of regular rates



Notwithstanding the above, services do not include travel time, and staff time spent traveling does not constitute a reimbursable expense. Contractor shall not be entitled to reimbursement for any expenses except as specifically set forth in This Paragraph. The following expenses may be reimbursed if they are incurred after prior written approval of the Administrator:

1. Transportation (mileage, air, travel, car rental), lodging, meals, and incidentals at rates not to exceed those established by the State of California Department of Human Resources Maximum Lodging Reimbursement Rates for All Represented Employees and Meals and Incidentals (In-State/Out-of-State Travel). Mileage shall be reimbursed at the then-current IRS Business Mileage Rate. Air travel shall be coach or equivalent. A mid-sized or equivalent car shall be used for car rentals.
  - a. Cost plus 15%
2. Copies.
  - a. \$0.20/each
3. Outside Services/Rentals.
  - a. Cost plus 15%
4. Services by Associate Firms.
  - a. Cost plus 15%
5. Substinance:
  - a. Cost plus 15%

Provided, however, that the total amount of compensation to be paid to Consultant for the services required by this Agreement shall not exceed **Three Hundred Four Thousand, Three-Hundred Eighty-Five dollars (\$304,385)**. In the determination of hourly fees, time allotments shall be calculated to one-tenth of an hour.

**B.** The compensation set forth above includes reimbursement for all expenses incurred by Consultant in the performance of this Agreement.

#### **IV. METHOD OF PAYMENT**

**A.** Within thirty (30) days of the completion of each subtask identified in Paragraph I in a manner that is satisfactory to the Administrator, the Consultant shall submit an invoice detailing the services provided, the person(s) providing the service, the amount of time spent by each person providing the service calculated to the one-tenth of an hour, the rate per hour charged for each person providing service, and an itemization of the actual expenses for which reimbursement is requested. Any claim for additional services pursuant to Paragraph II shall also include a copy of the Administrator's written approval in advance of such services being provided. If requested by the County, Consultant shall provide any further documentation to verify the compensation and reimbursement sought by Consultant.

**B.** Within fifteen (15) calendar days of the receipt of Consultant's detailed invoice, the

Administrator shall either authorize payment or advise Consultant in writing of any concerns that the Administrator has with the invoice and any need for further documentation.

C. Within thirty (30) calendar days of the Administrator's authorization for payment of an invoice, the County Auditor-Controller shall either issue the payment or advise Consultant in writing of any concerns that the County Auditor-Controller has with the request and any need for further documentation.

## **V. REPORTS**

A. Consultant shall provide such reports as are required elsewhere by this Agreement, and such additional information and reports relating to the services otherwise required by this Agreement as are reasonably requested by the Administrator, as the times and in the manner specified by this Agreement, or by the Administrator if not so specified. Any other provision of this Agreement notwithstanding, should Consultant fail to provide any report required by this Agreement in a timely manner and as otherwise set forth in this Agreement, County may withhold any payments otherwise due Consultant pursuant to this Agreement, and any other agreement between Consultant and County, until such report is properly submitted as determined by the Administrator.

B. County shall provide Consultant with all information pertinent to the services required of Consultant by this Agreement which is requested by Consultant and which is within County's possession. No charge will be made for these materials.

## **VI. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the County, and Consultant agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. Consultant assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge will be made for any of the foregoing.

## **VII. RECORDS; ACCESS, RETENTION**

Consultant shall retain and make available for review by the County and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all pending audits and proceedings are completed, whichever is later. Consultant shall make such records available for inspection and copying by the County and its designees at any reasonable

time. At least thirty (30) calendar days prior to any destruction of these records following the four years, Consultant shall notify the Administrator. Upon such notification, the Administrator shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

## **VIII. DISPUTES**

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Consultant. The decision of the County Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to Consultant, Consultant appeals the decision in writing to the County Board of Supervisors. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting Consultant's position. In connection with any appeal proceeding under this paragraph, Consultant shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the County Board of Supervisors at a regular Board meeting. Pending a final decision of the dispute, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the County Administrative Officer's decision. The decision of the County Board of Supervisors on the appeal shall be final for purposes of exhaustion of administrative remedies.

## **IX. TERM AND TERMINATION**

**A.** The term of this Agreement shall be from **December 17, 2019** through **December 31, 2021** unless sooner terminated as hereinafter provided.

**B.** Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon Consultant default, the County reserves the right to purchase or obtain the supplies or services elsewhere, and Consultant shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

**C.** This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Consultant pursuant to this Agreement. If the County's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Consultant, in which event the County shall have no obligation to pay the Consultant any further funds or provide other consideration and the Consultant

shall have no obligation to provide any further services pursuant this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay Consultant in accordance with this Agreement for all services performed to the satisfaction of the Administrator before such termination and for which funds have appropriated as required by law.

**D.** This Agreement may be terminated for any reason by either party at any time during its term, by giving 45 days' written notice to the other party.

**E.** If Consultant, or any of its officers, agents, employees, Consultants, subConsultants, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Consultant.

**F.** Upon termination of this Agreement or suspension of work by either County or Consultant, Consultant shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Consultant shall become the sole and exclusive property of Yolo County and Consultant shall be entitled to receive compensation for any work completed on such documents and other materials determined by the Administrator to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Consultant such as sketches, copy, dummies and all preparatory work for which Consultant is not compensated by the County shall remain the sole and exclusive property of the Consultant.

**G.** During and following the term of this Agreement, Consultant shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Consultant was compensated by the County without the express written permission of the Administrator.

## **X. APPLICABLE LAWS**

**A.** In the performance of the services required by this Agreement, Consultant shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.

**B.** This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. Consultant waives any removal rights it might have under State or Federal law.

## **XI. NON-DISCRIMINATION IN SERVICES AND BENEFITS**

Consultant certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

## **XII. CONSULTANT'S RESPONSIBILITIES**

**A.** Consultant shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

**B.** With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the Consultant, any subConsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Consultant and/or any subConsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

**C.** Any subConsultants must agree to be bound to the Consultant and the County of Yolo in the same manner and to the same extent as Consultant is bound to the County of Yolo under this Agreement. All subConsultants must further agree to include the same requirements and provisions of this agreement, including the indemnity and insurance requirements, with any sub-subConsultant to the extent they apply to the scope of the Sub-subConsultant's work.

In providing any defense under this Paragraph, Consultant shall use counsel reasonably acceptable to the County Council.

### **XIII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

**A.** During the term of this Agreement, Consultant shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:

**[note: the following limits need to be reviewed based upon the scope of services, nature of the Consultant, etc.; please review with Risk Management]**

- a. **Comprehensive General Liability** – \$1,000,000/occurrence and \$2,000,000/aggregate
- b. **Automobile Liability** – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) (include coverage for Hired and Non-owned vehicles)
- c. **Professional Liability/Malpractice/Errors and Omissions** – \$1,000,000/occurrence and \$2,000,000/aggregate (If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, the Consultant must provide this insurance. If not, then this requirement automatically does not apply.)
- d. **Workers' Compensation** – Statutory Limits/**Employers' Liability** - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)

2. The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages. [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

- a. The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.

b. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Consultant changes insurance carriers Consultant shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Consultant changes to a new carrier prior to receipt of any payments due.

4. The Consultant shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Administrator (ten (10) days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.

8. The policies shall cover all activities of Consultant, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Consultant's insurance coverage shall be primary, including as respects the County, its officers, agents,

employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.

10. The Consultant shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.

- B.** Prior to commencing services pursuant to this Agreement, Consultant shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C.** During the term of this Agreement, Consultant shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.
- D.** Consultant agrees to include with all subConsultants in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subConsultant's work. SubConsultants hired by Consultant must agree to be bound to Consultant and the County of Yolo in the same manner and to the same extent as Consultant is bound to the County of Yolo under the Agreement. All subConsultants must further agree to include these same provisions with any sub-subConsultant. Consultant shall require all SubConsultants to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Consultant will provide proof of compliance to the County of Yolo.
- E.** Consultant shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the expiration of this Agreement. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.



#### **XIV. WORKERS' COMPENSATION**

Consultant shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County in a form substantially as set forth below.

#### **WORKERS' COMPENSATION CERTIFICATE**

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Consultant affirmatively represents that she/he has the requisite legal authority to do so on behalf of Consultant, both the person executing this Agreement on behalf of Consultant and Consultant understand that the County is relying on this representation in entering into this Agreement.

#### **XV. NOTICE**

**A.** All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Consultant at their respective addresses as follows:

Consultant:                   Luhdorff & Scalmanini Consulting Engineers, Inc.  
  Attn: Chief Executive Officer  
  500 First Street  
  Woodland, CA 95776  
  Tel. (530) 661-0109

County:                        County of Yolo  
  County Administrator's Office  
  Attn: CSA Manager  
  625 Court Street, Room 202  
  Woodland, CA 95695  
  Tel. (530) 666-8150

**B.** Any party may change the address to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

C. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

## **XVI. CONFLICT OF INTEREST**

A. Consultant shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Consultant's obligations and responsibilities hereunder. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Consultant completes performance of the services required of it under this Agreement.

C. Consultant agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Consultant will immediately inform the County and provide all information needed for resolution of the question.

## **XVII. COVENANT AGAINST CONTINGENT FEES**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **XVIII. AUDITS**

A. Consultant shall be subject to examination and audit by the State or the County, or both, throughout the term of this Agreement and thereafter for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. Consultant agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this Agreement, and agrees to provide County and/or State with any and all relevant

information requested.

**B.** Any and all books, records, and facilities maintained by Consultant related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such records may be interviewed. All expenditures of State and federal funds furnished to Consultant pursuant to this Agreement are subject to audit by County, State and/or Federal representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Paragraph C below.

**C.** Should Consultant expend \$500,000 or more in Federal funds during any fiscal year, Consultant shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the Consultant's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision), and provided in a form satisfactory to the Administrator.

Consultant shall provide this Audit Report no later than July 31 of each year. In the event that this Agreement expires or is terminated on a date other than December 31, Consultant shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. Consultant shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period, and are made available to the State and/or County upon request.

**D.** Should an Audit Report or any State or County audit determine that Consultant has mispent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Consultant in the amount of such audit findings and withhold any payment otherwise due under this Agreement until Consultant repays such amount. Consultant shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should Consultant fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from Consultant against any amounts that would otherwise be due from the County to Consultant pursuant to this Agreement or any other agreement or source.

**E.** Any failure or refusal by Consultant to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

## **XIX. ASSIGNMENT AND SUBCONTRACTS**

The services and obligations required of Consultant under this Agreement are not assignable in whole or in part. In addition, Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the Administrator. If any portion of the services required of Consultant are subcontracted, the subConsultant(s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the County for all work undertaken by subConsultants.

## **XX. STATUS OF CONSULTANT**

**A.** It is understood and agreed by all the parties hereto that Consultant is an independent Consultant and that no relationship of employer-employee exists between the County and Consultant. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of the County. Consultant hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

**B.** It is further understood and agreed by all the parties hereto that neither Consultant nor Consultant's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

**C.** It is further understood and agreed by all the parties hereto that Consultant must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Consultant's assigned personnel.

## **XXI. AMENDMENT**

This Agreement may be amended only by written instrument signed by the County and Consultant.

## **XXII. WAIVER**

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

## **XXIII. AUTHORIZED REPRESENTATIVE**

The person executing this Agreement on behalf of Consultant affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Consultant and to bind Consultant to the terms and conditions of this Agreement. Both the person executing this

Agreement on behalf of Consultant and Consultant understand that the County is relying on this representation in entering into this Agreement.

#### **XXIV. PUBLIC RECORDS ACT**

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

#### **XXV. ADDITIONAL PROVISIONS**

**A.** Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Consultant to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

**B.** Except where specifically stated otherwise in this document, the promises in this document benefit the County and Consultant only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any “legitimate claim of entitlement” with the meaning and rights that phrase has been given by case law.

**C.**

1. By signing this agreement, the Consultant agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to, 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
2. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - b. Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2(b) herein;
  - d. Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
  - e. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and
  - f. Will included a clause entitled, “Debarment and Suspension Certification” that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. If the Consultant is unable to certify to any of the statements in this certification, the Consultant shall submit an explanation to the County program funding this Agreement, and the County shall have the option of terminating this Agreement immediately or at any time thereafter, upon giving Consultant written notice of such termination, if the explanation is not found satisfactory by the County in its sole discretion.
  4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
  5. If the Consultant knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement at any time upon giving Consultant written notice of such termination.

## **XXVI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the County and Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

**CONSULTANT**

By *Vicki Kretsinger Grabert*  
Vicki Kretsinger Grabert  
Chief Executive Officer

**COUNTY OF YOLO**

By \_\_\_\_\_  
Don Saylor, Chair  
Board of Supervisors

Attest:  
Clerk of the Board  
Board of Supervisors

By \_\_\_\_\_  
Deputy (Seal)

Approved as to Form:  
Philip J. Pogledich, County Counsel

By: *P. J. Pogledich*  
Philip J. Pogledich, County Counsel