



**RESOURCE  
MANAGEMENT AGENCY  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One  
PETE VANDER POEL  
District Two  
AMY SHUKLIAN  
District Three  
EDDIE VALERO  
District Four  
DENNIS TOWNSEND  
District Five

**AGENDA DATE:** November 5, 2019

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
CONTACT PERSON: Celeste Perez    PHONE: (559) 624-7010				

**SUBJECT:** Approve an Amendment to Agreement No. 28813 with Provost and Pritchard Consulting Group for Seville & Yettem Water System Improvements Project

**REQUEST(S):**  
That the Board of Supervisors:

1. Approve an Amendment to Agreement No. 28813 with Provost and Pritchard Consulting Group to increase the amount of the Agreement by \$40,000 to \$322,200 for Engineering and Construction Management Consulting Services for the Construction of Phase 1 of the Seville & Yettem Water System Improvements Project; and
2. Authorize the Chairman to execute the First Amendment to Agreement No. 28813.

**SUMMARY:**  
Tulare County is the lead agency for the Seville and Yettem Water System Improvements Project (the "Project"). The County has undertaken this project in part under its court appointed temporary receivership of the Seville Water System. The Seville Water System has been under the receivership of Tulare County acting for the Seville Water Company since June 11, 2009, which was most recently renewed through June 30, 2021 under an updated Court Order dated June 17, 2019 and previously approved under Resolution 2019-0465. The Resource Management Agency operates and maintains the Seville Water System for the County.

The County is also the lead agency on the Seville and Yettem Water System Improvement Project (the "Project"), which is primarily broken into two phases. Phase 1 of the Project is to design and construct a new community based municipal storage

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tank, water distribution system, and appurtenances in the community of Seville. The new municipal system will replace the existing distribution system, which has excessive leaks and requires the community be in a continuous “boil water” status. Phase 2 of the Project consists of a new well, an interconnection pipeline between the water systems in Yettem and Seville, and water meters in Yettem.

Provost and Pritchard Consulting Group (“Provost and Pritchard”) are providing construction phase services for the construction of Phase 1 of the Project, including review of RFI’s and submittals, daily site visits by a qualified construction manager, construction and materials testing, and assistance with requirements and reports under the funding agreement, under Tulare County Agreement No. 28813 (the “Agreement”).

The Phase 1 construction schedule has been extended by 80 calendar days (as of October 22, 2019) due to construction delays, including from weather and a prolonged process to secure an encroachment permit for water lines crossing the Alta Irrigation District canals in the community. These delays have caused the County to issue change orders for additional working days by the Contractor, which in turn increases the number of days of construction management needed under the Agreement. The proposed amendment adds \$40,000 to the proposed agreement and moves unused funds from other tasks related to bidding phase services and construction and materials testing to Task 4 which includes construction management. This results in an additional \$55,538 total for Task 4, which provides for approximately 47 additional working days.

The Construction of Phase 1 of the Project is being funded by a financial assistance agreement between the County and the California Water Resources Control Board (“Water Board”) under Water Board Agreement No. D17-02094 (the “Funding Agreement”), as approved under Resolution No. 2018-0276. The Funding Agreement covers a variety of costs associated with Phase 1, including the past purchase of the tank and well sites, construction, project administration, staff time, contingencies, and construction phase services, including those provided under the Agreement.

The proposed amendment also changes the Time for Performance/Term clause of the Agreement. As written, the agreement potentially provides for three (3) possible termination dates, as it was intended to coincide with the termination of the grant agreement. This amendment sets the termination date as May 1, 2020, which is the date set for the completion of construction under the Funding Agreement.

Provost and Pritchard was selected for this project after the County issued a Request for Proposals (RFP) to provide engineering and consulting services for the Project. Provost and Pritchard previously completed the design for Phase 1 and Phase 2 under a separate contract.

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**FISCAL IMPACT/FINANCING:**

There will be No Net County Cost to the General Fund.

Total grant funding for the construction of Phase 1 of the Project is \$4,028,896 under Water Board Agreement No. D17-02094, which includes the \$292,200 for construction phase services by Provost and Pritchard under TC Agreement No. 28813. The funding agreement also includes \$55,096 for other project contingencies and \$113,650 for other construction management costs including permitting fees. The proposed additional \$40,000 would be split between the other project contingencies and the other construction management costs.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

This program links to Strategic Initiative 1: Safety and Security, which includes a goal to provide a safe and adequate water supply. This new system will greatly improve the safety of the water distribution system for the community of Seville and is a step towards the overall project, which will increase the adequacy of the water supply for Seville and the safety of the water supply for Yettem.

**ADMINISTRATIVE SIGN-OFF:**



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Reed Schenke, P.E.  
Director

cc: County Administrative Office

- Attachment(s)
- A. Proposed First Amendment to TC Agreement 28813 with Provost and Pritchard Consulting Group
  - B. TC Agreement 28813 with Provost and Pritchard Consulting Group for Engineering Services for Phase 1 of the Yettem and Seville Water System Consolidation and Improvement Project

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVE AN ) Resolution No. \_\_\_\_\_  
AMENDMENT TO AGREEMENT NO. ) Agreement No. \_\_\_\_\_  
28813 WITH PROVOST AND PRITCHARD )  
CONSULTING GROUP FOR SEVILLE & )  
YETTEM WATER SYSTEM )  
IMPROVEMENTS PROJECT )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD NOVEMBER 5, 2019,  
BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Approved an Amendment to Agreement No. 28813 with Provost and Pritchard Consulting Group to increase the amount of the Agreement by \$40,000 to \$332,200 for Engineering and Construction Management Consulting Services for the Bidding and Construction of Phase 1 of the Seville & Yettem Water System Improvements Project; and
2. Authorized the Chairman to execute the First Amendment to Agreement No. 28813.

# **Attachment “A”**

Proposed First Amendment to TC Agreement 28813 with Provost and Pritchard Consulting Group

**FIRST AMENDMENT TO TULARE COUNTY AGREEMENT NO. 28813 FOR  
SEVILLE & YETTEM WATER SYSTEM IMPROVEMENTS PROJECT**

THIS FIRST AMENDMENT TO TULARE COUNTY AGREEMENT NO. 28813 is entered into as of \_\_\_\_\_, 2019 between the COUNTY OF TULARE, referred to as "COUNTY", and PROVOST AND PRITCHARD ENGINEERING GROUP, INC., referred to as "CONSULTANT", with reference to the following:

WHEREAS, the County and Consultant entered into Tulare County Agreement No. 28813 as of February 16, 2018 for professional services related to the construction of Phase 1 of the Yettem and Seville Water System Consolidation and Improvement Project; and

WHEREAS, the County and Consultant provided in Tulare County Agreement No. 28813 for mutually acceptable changes in the scope, character, or complexity of the work to be accommodated by a supplemental agreement; and

WHEREAS, the County and Consultant have determined that additional funding is needed to complete the work under Tulare County Agreement No. 28813; and

WHEREAS, the subject terms and conditions are understood and agreed as set forth below;

ACCORDINGLY, IT IS AGREED:

1. **Clause 2: TIME FOR PERFORMANCE/TERM** of Tulare County Agreement No. 28813 is hereby replaced with the following:

TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in EXHIBIT A, will commence within five days of receipt of a written notice to proceed issued following acceptance of this Agreement by the County. The schedule is detailed in EXHIBIT E. This agreement shall terminate on **May 1, 2020** ~~October 1, 2019, the closeout date of the funding agreement, or the latest amendment of the closeout date thereto~~ unless otherwise terminated as provided in this agreement. Mutually acceptable changes in the scope, character, or complexity of the work if such changes become desirable or necessary as the work progresses will be accommodated by an amendment to the agreement. Corresponding warranted adjustments in payment will be made based upon the incorporated rate schedule.

2. **Clause 3: PAYMENT FOR SERVICES** is hereby amended to increase the total amount payable to Consultant by County under this Agreement, including all expenses, from \$292,200 to \$332,200. All other terms and conditions of **Clause 3: PAYMENT FOR SERVICES** shall remain in full force and effect.

3. **Exhibit D (“Compensation for Engineer’s Services”)** of Tulare County Agreement No. 28813 is hereby replaced with the attached Exhibit D Amendment 1.
4. Except as modified by this First Amendment, all terms and conditions of Tulare County Agreement No. 28813 as previously amended shall remain in full force and effect.
5. This agreement shall become effective as of the date first above written.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: Jason T. Britt,  
County Administrative Officer/  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

CONSULTANT  
Provost & Pritchard Engineering Group, Inc.

By Matthew W Kemp  
Name: Matthew W. Kemp  
Title Vice President

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

Approved as to Form  
County Counsel

By [Signature]  
Deputy

Matr # 20181144



# EXHIBIT D Amendment 1

## Compensation for Engineer's Services

1. The fees for the Engineer's services are described below:

Estimated Fee	
Phase	Estimated Fee
Task 1: Project Administration	\$10,500
Task 2: Bidding Phase Services	\$9,500 \$8,962
Task 3: Engineering Services During Construction	\$44,500
Task 4: Construction Management and Construction Review of Distribution System and Storage Tank	\$177,200 \$232,738
Task 5: Construction and Materials Testing	\$50,500 \$35,500
<b>Total Fee:</b>	<b>\$292,200</b> <b>\$332,200</b>

2. The Engineer's invoices shall include a breakdown of the services provided and the invoices shall only include work that has been completed. The invoiced charges shall be based on Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

3. A copy of the Engineer's current Standard Rate Schedule is attached.

4. The Engineer's billing shall not exceed ~~\$292,200~~ \$332,200. Any approved adjustments to the fees shall be made by written amendment.

**PROVOST & PRITCHARD CONSULTING GROUP  
STANDARD FEE SCHEDULE  
Effective 1/1/2018**

(hourly rates)

This schedule supersedes previously published fee schedules as of the effective date

ENGINEERING STAFF:

Assistant Engineer \$ 90.00 - \$110.00  
Associate Engineer \$115.00 - \$135.00  
Senior Engineer \$140.00 - \$170.00  
Principal Engineer \$175.00 - \$215.00

SPECIALISTS:

Assistant Environmental Specialist \$ 80.00 - \$105.00  
Associate Environmental Specialist \$112.00 - \$142.00  
Senior Environmental Specialist \$145.00 - \$170.00  
Principal Environmental Specialist \$180.00 - \$210.00  
Associate GIS Specialist \$ 90.00 - \$110.00  
Senior GIS Specialist \$115.00 - \$145.00  
Associate Geologist/Hydrogeologist \$110.00 - \$135.00  
Senior Geologist/Hydrogeologist \$145.00 - \$175.00  
Water Resources Specialist \$115.00 - \$145.00

PLANNING STAFF:

Assistant Planner/CEQA-NEPA Specialist \$ 70.00 - \$ 95.00  
Associate Planner/CEQA-NEPA Specialist \$100.00 - \$125.00  
Senior Planner/CEQA-NEPA Specialist \$135.00 - \$160.00  
Principal Planner/CEQA-NEPA Specialist \$165.00 - \$190.00

TECHNICAL STAFF:

Assistant Technician \$ 70.00 - \$ 90.00  
Associate Technician \$ 95.00 - \$115.00  
Senior Technician \$125.00 - \$140.00

CONSTRUCTION SERVICES:

Associate Construction Manager \$110.00 - \$130.00  
Senior Construction Manager \$135.00 - \$157.00  
Principal Construction Manager \$165.00 - \$195.00  
Construction Manager Prevailing Wage (1) (2) \$137.00 - \$162.00

SUPPORT STAFF:

Administrative Assistant \$ 60.00 - \$080.00  
Project Administrator \$ 70.00 - \$090.00  
Project Manager \$120.00  
Intern \$ 60.00

SURVEYING SERVICES:

LSIT Surveyor \$ 90.00 - \$110.00

Licensed Surveyor \$120.00 - \$155.00

	<u>Prev. Wage (1)</u>
1 Man Survey Crew \$160.00	\$185.00
2 Man Survey Crew \$225.00	\$265.00
2 Man Survey Crew including LS \$260.00	\$270.00
1 Man CORS Survey Crew \$175.00	
2 Man CORS Survey Crew \$225.00	
UAV (Drone) Services \$200.00	
(Field Work not including survey equipment billed at individual standard rate plus vehicle as appropriate)	

EXPERT WITNESS: As quoted.

TRAVEL TIME (for greater than 1 hour from employee's base office): \$80/hr (unless the individual's rate is less)

PROJECT COSTS:

Mileage IRS value + 0%

Outside Consultants Cost + 10%

Direct Costs Cost + 0%

(1) Prevailing wage rates shown for San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties, other counties as quoted.

(2) Overtime for Construction Services prevailing wage will be calculated at 125% of the standard prevailing wage rate.

# **Attachment “B”**

TC Agreement 28813 with Provost and Pritchard Consulting Group for Engineering Services for Phase 1 of the Yettem and Seville Water System Consolidation and Improvement Project

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR THE YETTEM  
AND SEVILLE WATER SYSTEM CONSOLIDATION AND IMPROVEMENT  
PROJECT**

THIS AGREEMENT, is entered into as of February 16, 2018, between the COUNTY OF TULARE, referred to as "County", and Provost and Pritchard Engineering Group, Inc. d/b/a Provost and Pritchard Consulting Group, referred to as "Consultant" or "Contractor", incorporated within the State of California in 1972, with reference to the following:

WHEREAS,

A. County is the lead agency to design and construct the Yettem and Seville Water System Consolidation and Improvement Project (the "Project") which is to be constructed in phases; and

B. County previously undertook a competitive selection process including a request for proposals and selected Consultant to provide planning and engineering services related to the Project; and

C. Consultant included within its proposal that it would be qualified and able to provide additional services beyond the initial request related to the Project including construction and bidding phase engineering services and construction management services and it would prepare a supplemental scope of services for those tasks if requested; and

D. County and Consultant previously entered into Tulare County Agreement No. 26005 as amended for engineering, planning, and other consulting services related to the design, governance, and other pre-construction portions of the Project; and

E. Phase 1 of the Project is to construct a new water distribution system, municipal storage tank, and appurtenances in the unincorporated community of Seville in northeastern Tulare County; and

F. County has entered into Water Board Grant Agreement No. D17-02094, also known as Tulare County Agreement No. \_\_\_\_\_, (the "Grant Agreement") with the California State Water Resources Control Board ("Water Board") to provide grant funding to construct Phase 1 of the Project, also known as Water Board Project No. 5400550-001C, including engineering services and construction management services; and

G. County and Consultant now wish to enter into a professional services agreement for project administration, bidding phase services, construction phase services, construction

management services, and construction and materials testing related to the construction of Phase 1 of the Project.

ACCORDINGLY, IT IS AGREED:

1. SERVICES. Consultant will provide professional engineering and consulting services, more particularly described in EXHIBIT A ("Scope of Work"). All work performed and billed to the County by the Consultant shall be grant eligible in accordance with the Grant Agreement, which is provided as EXHIBIT B, unless otherwise directed by the County in writing.

2. TIME FOR PERFORMANCE/TERM. Time is of the essence in this Agreement. The services as described in EXHIBIT A, will commence within five days of receipt of a written notice to proceed issued following acceptance of this Agreement by the County. The schedule is detailed in EXHIBIT E. This agreement shall terminate on October 1, 2019, the closeout date of the funding agreement, or the latest amendment of the closeout date thereto unless otherwise terminated as provided in this agreement. Mutually acceptable changes in the scope, character, or complexity of the work if such changes become desirable or necessary as the work progresses will be accommodated by an amendment to the agreement. Corresponding warranted adjustments in payment will be made based upon the incorporated rate schedule.

3. PAYMENT FOR SERVICES. Consultant will be compensated for actual costs (including labor costs, employee benefits, overhead and other direct costs) incurred by the Consultant in the performance of the tasks and activities as detailed in EXHIBIT A at the rates specified in the attached EXHIBIT D ("Compensation for Engineer's Services"). Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in Exhibit D, unless additional reimbursement is provided for in an amendment to this Agreement. In no event will Consultant be reimbursed for overhead costs at a rate that exceeds County's approved overhead rate set forth in the EXHIBIT D. In the event, that County determines that a change to the work from that specified in EXHIBIT A or otherwise in the Agreement is required, the contract time or actual costs reimbursable by County shall be adjusted by amendment to this Agreement to accommodate the changed work.

The compensation to be provided to Consultant under this Agreement will be reduced due to any inability to provide services, whether such an inability is due to Consultant activities or other activities or circumstances beyond the control of Consultant.

County must approve budget changes in writing prior to any budget adjustment or amendment.

By the fifteenth day of the second (2nd) month of the project and thereafter, each month, Consultant shall submit monthly invoice statements stating the services provided and the actual costs of the previous month. Invoices shall detail the date and number of hours worked and provide a description of the work performed. Invoices shall clearly reference the project name and the County's project manager. All invoices shall be submitted by mail or email to the following address:

Tulare County Resource Management Agency  
Attention: Sandra Sabin  
5961 South Mooney Boulevard  
Visalia, CA 93277  
Email: [ssabin@co.tulare.ca.us](mailto:ssabin@co.tulare.ca.us) CC: [RMA-AP@co.tulare.ca.us](mailto:RMA-AP@co.tulare.ca.us)

The Resource Management Agency will review and approve all invoices prior to payment by the Auditor's Office. County will make payment within 30 days of receipt of approved invoices submitted in compliance with this Agreement.

Consultant shall submit to the Tulare County Resource Management Agency, monthly status reports on the progress of the project.

Within forty-five (45) days after completion of the entire project, Consultant shall provide a written report and a final invoice to County with a summary of Consultant services and work performed under this Agreement and a summary of charges as a result of this Agreement. Any claim for payment or adjusted compensation not invoiced by the Consultant by this date shall be considered waived and shall not be recompensed. Within thirty (30) days of County approval of the final invoice and report, County will endeavor to pay Consultant the remaining amount owed Consultant as supported by bills and receipts or Consultant shall repay County any overpayment paid to Consultant pursuant to this Agreement.

The total amount payable to Consultant by County under this Agreement, including all expenses, shall not exceed \$292,200.

Salary increases will be reimbursable if the new salary is within the salary range identified in EXHIBIT D and is approved by County's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases which are the direct result of changes in the prevailing wage rates are reimbursable.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4. GENERAL AGREEMENT TERMS AND CONDITIONS: County's "General Agreement Terms and Conditions" are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein and can be found in the attached EXHIBIT H. In case of a conflict between the terms and conditions set forth in this Agreement, and the terms and conditions set forth in the General Agreement Terms and Conditions, the provisions of this Agreement shall govern.

5. BOOKS, DOCUMENTS, PAPERS, AND RECORDS. Consultant will maintain complete and accurate books, documents, papers and records with respect to the services rendered and the costs incurred under this Agreement, including records with respect to any payments to employees or subcontractors. All such records will be prepared in accordance with generally accepted accounting procedures, will be clearly identified, and will be kept readily accessible. Upon request, Consultant will make such records available for inspection by the County, State, Water Board, the Comptroller General of the United States, other jurisdictional agency, or duly authorized representatives for the purpose of making audit, examination, excerpts, and/or transcriptions of such records during the agreement period and continuing for a period of five (5) years from the date of final payment under this Agreement. The requirements of this section shall also apply to any subconsultants or subcontractors of Consultant who perform work or receive payment in connection with this Agreement. All books, documents, papers and records shall be sufficiently organized, clear, and detailed to allow an appropriate audit, if necessary, to be conducted and completed.

6. PERFORMANCE REQUIREMENTS. Consultant shall be held to the same goals, milestones, performance measurements, laws, regulations, and requirements that apply to the Consultant's Services, as entered into by County in the Grant Agreement, a draft of which is attached hereto as Exhibit B. Upon receipt by the County, the final executed Grant Agreement between the County and State shall be substituted for the draft. The County will deliver a copy of the final executed Grant Agreement to Consultant for inclusion. If the final grant agreement is materially different, County and Consultant shall act in good faith to enter into an amendment to this agreement incorporating the material differences in the final funding agreement.



7. NON-ASSIGNABILITY. Unless otherwise provided in this Agreement, County is relying on the personal skill and expertise of Consultant and no part of this Agreement may be assigned by Consultant, except that services may be subcontracted to reputable and qualified subcontractors as otherwise provided for in this agreement. Subcontracts exceeding \$25,000 in cost shall contain all provisions of this agreement. Any substitution of subconsultants must first be approved in writing by the County's Contract Administrator.

8. NOTICE. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

County:

Tulare County Resource Management Agency  
Attention: Ross W. Miller, P.E., Contract Administrator  
5961 South Mooney Boulevard  
Visalia, CA 93277

Fax No.: (559) 730-2653      Confirming No.: (559) 624-7000  
Email: rmiller@co.tulare.ca.us

Consultant:

Provost & Pritchard Consulting Group  
Attention: Matt Kemp, P.E.  
286 West Cromwell Avenue  
Fresno, CA 93711

Fax No.: (559) 449-2715      Confirming No.: (559) 449-2700  
Email: mkemp@ppeng.com

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail will be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph. The above stated Consultant address is to be the main working office location for the duration of this agreement.

9. JURISDICTION/VENUE. This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement must be brought in Tulare County, California. Consultant waives the removal provisions of California code of Civil Procedure Section 394.

10. EXHIBITS AND RECITALS. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

11. PROFESSIONAL STANDARDS. By submitting final documents for approval by County, Consultant represents that said documents are accurate. Consultant will be responsible to County for the professional quality, adequacy, and completeness of the services, studies, and reports provided, and shall exercise due professional care to provide that such services, studies and reports will be suitable for the intended purposes.

Consultant will perform the services provided in this Agreement in a manner consistent with the professional skill and care ordinarily exercised by members of the planning, engineering, and environmental profession practicing in the State of California under similar conditions.

Where applicable and in accordance with California law and the Grant Agreement, the responsible consultant/engineer shall sign and seal reports and engineering data furnished by him/her.

12. VITAL PERSONNEL. Personnel listed in EXHIBIT F are considered the vital personnel on Consultant's project team. The Contract Administrator must be notified of any intended changes to the list and given an opportunity to object and to discuss any concerns or objections. Vital personnel are defined as any Consultant employee or Sub-Consultant that are authorized by Consultant to represent Consultant in dealings with the County.

13. COMPUTER SERVICES. The Consultant shall provide computer services as shown in EXHIBIT G.

14. PATENT RIGHTS AND COPY RIGHTS. Applicable patent rights provisions described in 48 CFR 27, Subpart 27.3 regarding rights to inventions shall apply to this agreement. The County may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the County shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes. This section shall supersede the language of Paragraph 17 – Works for Hire in Exhibit H - County of Tulare's General Agreement Terms and Conditions.

15. OWNERSHIP OF DOCUMENTS. Tracings, plans, specifications, maps and reports prepared or obtained under the terms of this agreement shall be delivered to and become the property of the County, and that basic survey notes and sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to the County without restriction or limitation on their use. County will indemnify and hold Consultant,

its employees and subconsultants harmless for any reuse by County of documents produced under this agreement for any other projects without the written approval of Consultant. Final reports shall be provided to the County in hardcopy and as an electronic Portable Document Format (PDF) file. Other electronic files shall be provided in electronic format using standard software.

16. DISPUTE RESOLUTION. If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

17. CONFIDENTIALITY OF DATA. All financial, statistical, personal, technical, or other data and information relative to the County's operations, which are designated confidential by the County and made available to the Consultant in order to carry out this contract, shall be protected by the Consultant from unauthorized use and disclosure.

Permission to disclose information on one occasion or by public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this article.

18. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The consultant warrants that this contract was not obtained or secured through rebates, kickbacks or

other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion to terminate the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

Consultant further agrees to comply with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). Consultant will report to County all reported or suspected violations thereof, including those that occur during the construction of this project.

19. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING. The Consultant certifies to the best of his or her knowledge and belief that:

a. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure From to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

20. AUDIT REVIEW PROCEDURES. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the County's Chief Accounting Officer.

Not later than 30 days after issuance of the final audit report, Consultant may request a review by County's Chief Accounting Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this contract.

Consultant and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

21. CLAIMS FILED BY CONSTRUCTION CONTRACTOR. If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

22. FEDERAL ENVIRONMENTAL STANDARDS, ORDERS, AND REQUIREMENTS. The Consultant and the County agree that all work to be performed under this Agreement must comply with all applicable federal environmental standards, orders, or requirements, including, but not limited to, those issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Consultant further agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the date of this agreement. In doing so, Consultant further agrees:

1. As a condition for the award of contract, to notify the County of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, including County, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

23. ENERGY EFFICIENCY. The Consultant and the County agree that all work to be performed under this Agreement must comply with any and all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

24. FUNDING REQUIREMENTS. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only, if sufficient funds are made available to County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County governing board that may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

County has the option to void the contract by mutual agreement, subject to approval by the Water Board, to amend the contract to reflect any reduction of funds.

25. SAFETY. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

Pursuant to authority contained in Section 591 of the Vehicle Code, County has determined that such areas are within the limits of the project and are open to public traffic.

Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

26. NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappeasable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

27. INSPECTION OF WORK. Consultant and any subconsultant shall permit County and the Water Board to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

28. RETENTION OF FUNDS. No retainage will be withheld by the Resource Management Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime Consultants and subconsultants.

29. PREVAILING WAGE. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.



When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

THE Parties, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

By *J. Steve Smithley*  
Chairman, Board of Supervisors

ATTEST: *Michael C. Spata*,  
County Administrative Officer/  
Clerk of the Board of Supervisors

By *Milany Rucello*  
Deputy Clerk



CONSULTANT

By *Markus W Kemp*

Title *VICE PRESIDENT*

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form  
County Counsel

By *[Signature]* *2018 11-14*  
Deputy *8/24/18*

# EXHIBIT A

## SCOPE OF WORK

### Project Understanding:

#### **Project Understanding**

The County of Tulare (“County”) has divided the Yettem and Seville Water System Improvement Project into two phases of construction. Phase 1 will consist of the Seville distribution system replacement (base bid) and the Seville storage tank (add alternate bid). Phase 2 will consist of the Yettem storage tank site improvements, new well and supply pipeline, and interconnection pipeline between Yettem and Seville. The County has requested a proposal for services during Phase 1 bidding and construction. The scope of services includes the following:

- Task 1: Project Administration
- Task 2: Bidding Phase Services
- Task 3: Engineering Services During Construction for Distribution System Replacement and Storage Tank
- Task 4: Construction Management and Review of Distribution System and Storage Tank
- Task 5: Construction and Materials Testing

The scope of services and fee estimate assumes the storage tank add alternate will be awarded.

#### **Scope of Services**

Our proposed scope of services for this project is segregated into multiple phases, described below.

#### Task 1: Project Administration

The scope of services under this phase includes providing project administration tasks associated with the funding agreement. It is assumed that the project administration tasks will take place over a period of 8 months for the construction contract and up to 3 additional months for project closeout. The following tasks are included:

- Project control, scheduling and reporting
- Coordinating reporting with subconsultants on invoicing and reporting
- Attend bi-weekly conference call meetings with the SWRCB (up to one hour in length) for a period of 8 months and attend monthly conference call meetings with the SWRCB for up to 3 months during project closeout.

#### Task 2: Bidding Phase Services

The scope of services under this phase includes assisting the County during the bidding process for Distribution System and Storage Tank. The following tasks are included:

- Attend pre-bid meeting at County RMA office.

- Review Requests for Information (RFIs) from prospective bidders during the bid period and prepare responses. Assist with the preparation of up to three (3) addenda to plan holders to address RFIs.

Assumptions:

- The bidding duration will be 30 to 45 calendar days.
- The County will administer the bidding process, including: printing and selling plans and specifications, maintaining a plan holders list, receiving RFIs and issuing addenda, scheduling a pre-bid meeting, conducting bid opening and reviewing and evaluating bid proposals for compliance with bid document requirements and the Public Contract Code.

Task 3: Engineering Services During Construction

The scope of services under this phase includes providing engineering services during the construction phase for Distribution System and Storage Tank. The following tasks are included:

- Engineer will attend pre-construction conference.
- Prepare conformed technical specifications and construction drawings.
- Review and approve contractor submittals prior to the start of construction. Review of up to 50 submittals and up to 10 re-submittals are included.
- Make periodic site visits while construction is active to observe the progress of work (one site visit per month is assumed); including a site visit for substantial completion and a final walk-through. A total of 8 site visits are included in the scope of services.
- Review and approve up to 10 monthly progress payment requests.
- Respond to contractor RFI's and provide project engineer's clarifications and interpretations during construction.
- Assist with preparing up to 10 contract change orders.
- Review the contractor's completion documents. Prepare record drawings based on "as-built" information furnished by the Contractor and the County. Provide two hard copies of record drawings (size 22"x34" on bond paper) and an electronic copy to the County for permanent records.

Assumptions:

- The construction duration will be 250 calendar days to substantial completion and an additional 30 calendar days to construction contract closeout. Closeout of the funding agreement may take up to 3 months after substantial completion.
- Preparation of conformed front-end specifications will be prepared by the County.
- Submittals, RFI's and change orders will be transmitted electronically (no hard copies).
- Contract change orders may require minimal drafting time to revise or prepare new drawings.
- Preparation of an O&M manual is not included in the scope of services.

Task 4: Construction Management with Review of Distribution System and Storage Tank

The scope of services under this phase includes providing construction management for the entire construction contract and daily construction review of both the distribution system and the storage tank during construction. It is assumed that the construction contract duration will be 250 calendar days (160 working days) to substantial completion and an additional 30 calendar days to construction contract closeout. Closeout of the funding agreement may take up to 3 months after substantial completion.

#### Construction Management

- Assist the County with review of contract documents.
- Schedule and conduct pre-construction conference.
- Act as the County's primary point of contact with Contractor. Coordinate efforts of the County, project engineer, contractor, and subcontractors.
- Prepare weekly meeting agenda, conduct meeting, and provide meeting minutes. Maintain accurate set of record documents. Prepare and process monthly progress payment summary for signature and issuance by the County.
- Submit final punch list and project closeout checklist to the contractor. The County and Contractor will attend the punch list walkthrough site meeting.

#### Construction Review

- Provide daily construction review by qualified construction inspector during construction of the distribution system and storage tank; including daily reports and photos. The estimated fees are based on the following assumptions:
  - A total of 160 trips to the project site
  - Storage tank construction will be predominantly completed during the first 5 months of construction, we will provide 6 hours of onsite review per work day, plus 1 hour of roundtrip travel time and reimbursable mileage expense (at the current IRS rate).

#### Assumptions:

- Construction management and field review services will be included together.
- The County will administer the construction contract and administer the funding agreement with the State Water Resources Control Board (SWRCB), including preparation of reimbursement claims.
- The County will hire a third-party labor compliance consultant to perform all wage labor compliance monitoring and enforcement.
- The County will hire a biologist to conduct pre-construction surveys and monitoring during construction.
- The Contractor will prepare a Storm Water Pollution Prevention Plan (SWPPP) and Dust Control Plan (DCP) for construction. The County will setup online permit coverage with the SWRCB on the SMARTS website. The Contractor will be responsible for obtaining a dust control permit with the San Joaquin Valley Air Pollution Control District (SJVAPCD).

- An Authority to Construct (ATC) permit will be required for the standby generator. The Contractor will submit an application to the SJVAPCD and obtain a permit on behalf of the County after the generator submittal is approved.
- The Contractor will obtain all necessary construction permits. The Contractor will prepare a traffic control plans and obtain approval from the County and Caltrans (if applicable).
- As-built surveys and elevation certification for flood insurance are not included in the scope of services.

#### Task 5: Construction and Materials Testing

The scope of services under this phase includes hiring BSK & Associates (“BSK”) to provide materials engineering, sampling and acceptance testing. The estimated fee calculated has been estimated for budgeting purposes. An updated fee estimate can be provided after BSK has an opportunity to review the bid plan set. The following tasks are included:

- Provide technician at project site for soils and asphalt concrete observation and compaction testing, compaction tests, soil sample pickup for compaction curve, reinforcement steel placement inspection, concrete sampling and testing, sample pickup and delivery.
- Laboratory testing for the following:
  - Concrete compressive strength tests
  - Compaction curves (for base rock)
  - Compaction curves (for site soils)
  - Asphalt specific gravity
  - Bacteriological tests

#### **Time and Materials**

Provost & Pritchard Consulting Group will perform the services on a time and materials basis, in accordance with our Standard Fee Schedule in effect at the time services are rendered. These fees will be invoiced monthly as they are accrued, and our total fees, including reimbursable expenses, will not exceed our estimate below without additional authorization.

**EXHIBIT B**  
**GRANT AGREEMENT**

Water Board Agreement No. D17-02094



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## DRINKING WATER

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COUNTY OF TULARE

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION GRANT

REPLACE SEVILLE WATER DISTRIBUTION SYSTEM

PROJECT NO. 5400550-001C

AGREEMENT NO. D17-02094

AMOUNT: \$4,028,896.00

ELIGIBLE START DATE: MARCH 27, 2018  
COMPLETION OF CONSTRUCTION DATE: APRIL 1, 2019  
FINAL DISBURSEMENT REQUEST DATE: OCTOBER 1, 2019  
RECORDS RETENTION END DATE: APRIL 1, 2055

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WHEREAS,

1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
  - Section 1452 of the federal Safe Drinking Water Act (42 USC § 300j-12) (Federal Act)
  - Chapter 4.5 of Part 12 of Division 104 of the California Health and Safety Code (State Act)
  - Section 79724 of the Water Code (Prop 1)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act, State Act, and Prop 1, and establishes the terms and conditions of a financial assistance agreement.
3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
4. The State Water Board proposes to assist in funding the costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act and Prop 1.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

Subject to the satisfaction of any conditions precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board.

Upon execution, the term of the Agreement shall begin on the Eligible Start Date and extend through the Records Retention End Date.

ARTICLE I DEFINITIONS

1.1 Definitions.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Additional Payments" means the Additional Payments described in Section 3.2(c) of this Agreement.

"Agreement" means this Grant, including all exhibits and attachments.

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete.

"Days" means calendar days unless otherwise expressly indicated.

"Deputy Director" means the Deputy Director of the Division.

"District Office" means District Office of the Division of Drinking Water of the State Water Resources Control Board.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.

"Division of Drinking Water" means the Division of Drinking Water of the State Water Board.

"DWSRF" means the Drinking Water State Revolving Fund.

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Event of Default" means the occurrence of any one or more of the following events:

- a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- b) Failure to operate the System or the Project without the Division's approval;
- c) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- d) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect; or the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; or the Recipient's entering into a general assignment for the benefit of creditors; or any action in furtherance of any of the foregoing;
- e) Initiation of resolutions or proceedings to terminate the Recipient's existence;
- f) A determination pursuant to Gov. Code § 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

"Final Disbursement Request Date" means the date after which date, no further Project Funds disbursements may be requested.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees or equipment.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project).

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, and including the Intended Use Plan in effect as of the Eligible Start Date.

"Project" means the Project financed by this Agreement as described in Exhibit A, Exhibit A-FBA, and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, plus capitalized interest.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board pursuant to this Agreement.

"Recipient" means County of Tulare.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records pursuant to Section 2.17 of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"SRF" means the Drinking Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other

properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

"System Obligation" means any debt obligation payable from Revenues.

"Year" means calendar year unless otherwise expressly indicated.

#### 1.2 Exhibits Incorporated.

All exhibits to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement.

### ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

The Recipient represents, warrants, and commits to the following as of the Eligible Start Date set forth on the first page hereof and continuing thereafter for the term of this Agreement.

#### 2.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient shall comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for financial assistance.

#### 2.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. This Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

#### 2.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the first page hereof.

#### 2.4 No Litigation.

There are no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

#### 2.5 Solvency.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. As of the date set forth on the first page hereof, Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. Recipient is able to pay its debts as they become due.

#### 2.6 Legal Status and Eligibility.

Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Recipient shall maintain its eligibility for funding under this Agreement.

#### 2.7 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt.

#### 2.8 Completion of Project.

The Recipient shall expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA.

#### 2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A.

#### 2.10 Notice.

- (a) The Recipient shall notify the Division in writing to the Deputy Director of the Division within five (5) working days of the occurrence of any of the following events:
  - 1) Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
  - 2) Change in the status of the Recipient as the appointed receiver of the Seville Water Company as stated in the Order Granting Petition for Order Further Extending Appointment of Tulare County as Receiver of Seville Water Company, case No. 09-233080, Superior Court, County of Tulare;
  - 3) Change of ownership of the System or change of management or service contracts, if any, for operation of the System;
  - 4) Loss, theft, damage, or impairment to the Revenues or the System;



- 5) Listed Events or Events of Default, except as set forth in subdivisions (b) or (c) of this section; or
  - 6) Failure to observe or perform any covenant in this Agreement.
- (b) The Recipient shall notify the Division in writing within ten (10) working days of the following:
- 1) Material defaults on System Obligations;
  - 2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
  - 3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
  - 4) Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence, circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System, consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
  - 5) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
  - 6) Rating changes on outstanding System Obligations; or
  - 7) Enforcement actions by the Division of Drinking Water;
- (c) The Recipient shall notify the Division promptly of the following:
- (1) The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
  - (2) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - (3) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - (4) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction as specified in Exhibit A;
  - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;

- (6) Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
  - (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
  - (8) Any events requiring notice to the Division pursuant to the provisions of Exhibit E to this Agreement; or
  - (9) Completion of Construction of the Project, and actual Project Completion.
- (d) [Reserved].
- (e) The Recipient shall notify the Division within 24 hours of any discovery of any potential tribal cultural resource and/or archeological or historical resource. Notice shall be addressed to the Deputy Director of the Division and contact via phone at (916) 327-9978 or email to [CleanWaterSRF@waterboards.ca.gov](mailto:CleanWaterSRF@waterboards.ca.gov) and/or [DrinkingWaterSRF@waterboards.ca.gov](mailto:DrinkingWaterSRF@waterboards.ca.gov). Should a potential tribal cultural resource and/or archeological or historical resource be discovered during construction, the Recipient shall ensure that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division.

#### 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding the status of any such challenge.

#### 2.12 Project Access.

The Recipient shall ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by Exhibit A and Exhibit A-FBA, and all reports, disbursement requests, and supporting documentation submitted hereunder.

#### 2.13 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient shall expeditiously initiate Project operations.

2.14 Continuous Use of Project; Lease, Sale, Transfer Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

2.15 Project Reports.

- (a) Status Reports. The Recipient shall provide expeditiously status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports must accompany any disbursement request and are a condition precedent to any disbursement. At a minimum the reports will contain the following information:
- (1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
  - (2) A description of compliance with environmental requirements;
  - (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
  - (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate District Office of the Division of Drinking Water on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must address the following:
- (1) Describe the Project,
  - (2) Describe the water quality problem the Project sought to address,
  - (3) Discuss the Project's likelihood of successfully addressing that water quality problem in the future, and
  - (4) Summarize compliance with environmental conditions, if applicable.

If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

- (c) As Needed Reports. The Recipient shall provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

The Recipient shall report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10)

calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient shall comply with 40 CFR § 33.301.

2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient shall:
- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall maintain separate books, records and other material relative to the Project. The Recipient shall also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction ("Records Retention Term End Date"). The Recipient shall require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient shall allow and shall require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section shall survive the term of this Agreement.

2.18 Audit.

- (a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division

- (b) Audit disallowances will be returned to the State Water Board.

### ARTICLE III FINANCING PROVISIONS

#### 3.1 Contingent Disbursement.

The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

#### 3.2 Amounts Payable by the Recipient.

- (a) Repayments. Repayments are waived, as provided in Exhibit B.
- (b) Project Costs. The Recipient shall pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) Additional Payments. The Recipient shall pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

#### 3.3 [Reserved.]

#### 3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.

#### 3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
  - (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed. The Recipient must submit a disbursement request for costs incurred prior to the date this

Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.

- (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)
  - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.
  - (4) The Recipient shall not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
  - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
  - (6) The Recipient shall not be entitled to interest earned on undisbursed funds.
  - (7) The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
  - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

### 3.6 Withholding of Disbursements and Material Violations.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold the disbursement of all or any portion of the Project Funds upon the occurrence of any of the following events:

- a. The Recipient's failure to maintain reasonable progress on the Project;
- b. Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or repayment of debt service on System Obligations;
- c. Commencement of litigation or a judicial or administrative proceeding related to the System, Project, or Revenues that the State Water Board determines may impair the timely completion of the Project;

- d. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- e. A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement,
- f. The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
- g. An Event of Default;

### 3.7 Rates, Fees and Charges.

The Recipient shall, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the use of the System during each Fiscal Year that are reasonable, fair, and nondiscriminatory and that will be at least sufficient to yield Revenues during each Fiscal Year in an amount sufficient to cover Operations and Maintenance Costs and to meet the covenants and requirements of the Recipient's outstanding System Obligations and the Recipient's obligations under this Agreement. The Recipient may from time to time make adjustments of such rates, fees, and charges as it deems necessary, but shall not reduce such rates, fees or charges then in effect unless the Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

### 3.8 Financial Management System and Standards.

The Recipient shall comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

### 3.9 Accounting and Auditing Standards.

The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient shall maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

### 3.10 Other Assistance.

If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient shall notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding shall be remitted to the State Water Board.

## ARTICLE IV MISCELLANEOUS PROVISIONS

### 4.1 Amendment and Integration.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

This Agreement constitutes the complete and final agreement between the parties. No prior oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

#### 4.2 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

#### 4.3 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

#### 4.4 Competitive Bidding

Recipient shall adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

#### 4.5 Compliance with Law, Regulations, etc.

The Recipient shall, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Recipient shall:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;
- (c) Comply with and require compliance with the list of state laws attached as Exhibit H.
- (d) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and
- (e) Comply with and require its contractors and subcontractors to comply with the list of federal laws attached as Exhibit E.

#### 4.6 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

#### 4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project



Funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

#### 4.8 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.
- (d) This section 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

#### 4.9 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

#### 4.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

#### 4.11 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive

Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. The Recipient shall also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and shall cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

4.12 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

4.13 Reserved.

4.14 Non-Discrimination Clause.

- a) The Recipient shall comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.
- b) If Project Funds are used to acquire or improve real property, the Recipient shall include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- c) The Recipient shall comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- d) The Recipient's obligations under this section shall survive the term of this Agreement.

During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- e) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.  
The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- f) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

#### 4.15 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

#### 4.16 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during its useful life in accordance with all applicable state and federal laws, rules, and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

Recipient agrees that for any policy of insurance concerning or covering the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing the State Water Board, its officers, agents, employees, and servants as additional insured; and shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

#### 4.17 Permits, Subcontracting, and Remedies.

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Recipient shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

The Recipient shall not contract or allow subcontracting with excluded parties. The Recipient shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/fwa/dbp.shtml](http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml).

#### 4.18 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

#### 4.19 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

#### 4.20 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### 4.21 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

#### 4.22 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.

#### 4.23 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

4.24 Termination; Repayment; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time during the term of this Agreement, at the option of the State Water Board, upon an Event of Default.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.
- (c) [Reserved].

4.25 Timeliness.

Time is of the essence in this Agreement.

4.26 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

4.27 Useful Life.

The Recipient warrants that the economic useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit B.

4.28 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

4.29 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**COUNTY OF TULARE:**

By: \_\_\_\_\_  
Name: J. Steven Worthley  
Title: Chairman of the Board

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

**STATE WATER RESOURCES CONTROL BOARD:**

By: \_\_\_\_\_  
Name: Leslie Laudon  
Title: Deputy Director  
Division of Financial Assistance

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

EXHIBIT A – SCOPE OF WORK

1. Eligible Start Date. The Eligible Start Date is March 27, 2018.
2. Start of Construction Date. The Recipient agrees to start construction no later than the estimated date of July 1, 2018.
3. Completion of Construction Date. The Completion of Construction date is hereby established as April 1, 2019. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
4. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
5. Records Retention End Date is April 1, 2055.
6. Incorporated by reference into this Agreement are the following documents:
  - (a) the Final Plans & Specifications, dated February 12, 2018 and; Addenda Nos. 1, 2, and 3 issued March 13, 2018; March 16, 2018; and March 19, 2018, respectively, which are the basis for the construction contract to be awarded by the Recipient to Brough Construction, Inc.
  - (b) the Drinking Water System Permit No. PT0005467;
7. Reporting. Status Reports due at least quarterly.
8. Project Objective.

The Project objective is to replace the existing water distribution system within the community of Seville. The existing distribution system serving the community of Seville is approximately 100 years old and far beyond its estimated useful life. Recent drought conditions have exacerbated the situation and the community continues to experience water outages. Seville's residents are on an indefinite boil water notice due to the depressurizing of the water system and potential introduction of bacteriological contamination via broken pipes. The long-term solution of the community consists of two phases. This Project, Phase 1, includes the replacement of Seville's distribution system, including the storage tank and other appurtenances. Phase 2 will consist of the infrastructure needed to consolidate into the neighboring Yettem Water System.

9. Scope of Work.

Approximately 14,540 feet of 8-inch pipe will be installed within the community, along with water supply meters, gate valves, and fire hydrants. The Project's scope includes a 211,000-gallon storage tank and a new Supervisory Control and Data Acquisition (SCADA) system, however construction of these elements is contingent on available funding.

10. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain

EXHIBIT A – SCOPE OF WORK

the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



“Funding for this Replace Seville Water Distribution System Project has been provided in full or in part by the Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

The Project sign may include another agency’s required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

The Recipient shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”



EXHIBIT A-FBA – FINAL BUDGET APPROVAL

Table 1: Approved Construction Bid Amount

CONTRACTOR	AMOUNT BID	APPROVED COSTS
Brough Construction, Inc.	\$3,208,508	\$3,208,508

1 - BUDGET

Table 2: Approved Final Project Budget

PROJECT COST TABLE	
TYPE OF WORK	APPROVED BUDGET (\$)
A. Construction	
Brough Construction, Inc.	3,208,508.00
Construction Subtotal	3,208,508.00
B. Pre-Purchased Material/Equipment	0.00
C. Land Purchase	41,411.00
D. Contingency	228,021.00
E. Allowances	
Planning	0.00
Design	0.00
Bid Documents and Project Advertisement	0.00
Construction Management	405,850.00
Administration	145,106.00
Value Engineering	0.00
Labor Compliance	0.00
Allowances Subtotal	550,956.00
TOTAL (Subtotal A+B+C+D+E)	\$4,028,896.00

Note: Adjustments may be made between line items on the final disbursement.

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

2 - PROJECT ELIGIBILITY DETERMINATION

The eligibility determinations and conditions of approval identified below are based on the review of:

- Stamped and Signed Final Plan and Specifications (P and S) for the Project received 5/8/2018 (stamped by engineer 2/12/2018); and
- Addenda Nos. 1, 2, and 3 issued March 13, 2018; March 16, 2018; and March 19, 2018, respectively.

The eligibility determination for the bid items shown in the schedule of values provided by the Recipient are as follows:

Table 3: Eligibility Determination Agreement:

Bid Item	Description	Percent Eligibility
1	Mobilization, Insurance and Bonds	100% <sup>1,2</sup>
2	Prepare Implement Stormwater Pollution Prevention Plan	100%
3	Prepare and Implement Dust Control Plan	100%
4	Worker Protection	100%
5	Traffic Control	100%
6	Utility Potholing and New Water Service Locating	100%
7	Exclusionary Fencing	100%
8	Miscellaneous Facilities and Operations	100%
9	8" Polyvinyl Chloride (PVC), C-900, DR-18, Water Main	100%
10	6" PVC, C-900, DR-18 Water Main	100%
11	Install 18" Steel Casing	100%
12	8" Gate Valve	100%
13	6" Gate Valve	100%
14	1" Water Service and Meter	100%
15	1" Water Service	100%
16	2" Water Service	100%
17	2" Water Service, Meter and Reduced Pressure Backflow Preventer	100%
18	Fire Hydrant Assembly	100%
19	Air Valve Assembly	100%
20	Permanent Blow-Off Assembly	100%
21	Temporary Blow-Off Assembly	100%
22	Bacteriological Sampling Station	100%
23	Seville Well Site Improvements	100%
24	Water Distribution System Testing	100%
25	Temporary Trench Resurfacing (Main)	100% <sup>3</sup>
26	Type "A" Permanent Trench Resurfacing (Main)	100% <sup>3</sup>
27	Type "B" Permanent Trench Resurfacing (Main)	100% <sup>3</sup>
28	Abandon Existing Water System	100%
29	Trenchless Installation of 8" High-Density Polyethylene (HDPE) Water Main (at Alta Irrigation District Crossing)	100%
30	Trenchless Installation of 6" HDPE Water Main (at Alta Irrigation District Crossing)	100%
Add Alternate No. 1		
31	Mobilization, Insurance and Bonds	100% <sup>1,2</sup>
32	Clearing and Grubbing	100%

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

Bid Item	Description	Percent Eligibility
33	Site Grading	100%
34	Chain Link Fence and Access Gates	100%
Add Alternate No. 2		
35	Mobilization, Insurance and Bonds	100%
36	Standby Portable Generator	100%
Add Alternate No. 3		
37	Mobilization, Insurance and Bonds	100%
38	Site Piping, Valves and Appurtenances	100%
39	211,000-Gallon Water Storage Tank	100%
40	High Service Pump Station	100%
41	Hydro-Pneumatic Tank	100%
42	Chlorination Equipment and Enclosure	100%
43	Class 2 Aggregate Base Surfacing	100%
44	Electrical, Controls and Lighting	100%
45	Startup and Testing	100%
46	Operations and Maintenance Manuals	100%
47	Record Drawings	100%

Bid items as shown in the schedule of values provided by the recipient.

Eligibility Determination Conditions of Approval

1. Necessary insurance directly related to the construction contract and extending throughout the period of the construction contract will be eligible for DWSRF financing. This includes builder risk insurance, public liability insurance, fire, and Project specific insurance.
2. Earthquake insurance and "Act of God" insurance are ineligible for funding.
3. Asphalt pavement, corresponding improvements, and excavation and refill materials due to trenching are limited to replacement of the trench width plus one foot on each side of the trench disturbed due to the construction work of the subject contract only. Full lane width paving or slurry seal is eligible only if required by ordinance or code.
4. The cost of local permits and licenses other than those issued by the Recipient are eligible for DWSRF financing.
5. The approved contingency may not be increased above the approved contingency shown in Table 2. Any unclaimed construction or allowance costs may also be used towards approved construction change orders. The change order approval may not: (1) increase the maximum amount of the financing agreement based on Table 2: Approved Construction Budget, (2) increase the term of the financing agreement, or (3) result in a substantial change in the Project scope.
6. Review of the P and S by the Division is conducted to determine eligibility and administrative compliance with the Policy. Issuance of the FBA does not relieve the Recipient and the design engineer of their legal liability for the adequacy of the design.

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

3 – PROJECT COMPLETION

Project Completion Report

The project completion report shall contain the following:

1. A description of the final constructed project.
2. A description of the water quality or quantity problem the project sought to address.
3. A discussion of the project's likelihood of successfully addressing that water quality or quantity problem in the future, and
4. Summarize compliance with environmental conditions, if applicable.

Project Completion Reporting

1. The recipient must notify the appropriate Division of Drinking Water (DDW) District Office and the Division of Financial Assistance that its project was completed by submitting a Project Completion Report to the Division with a copy to the DDW District Office.
2. The Project Completion Report must be submitted on or before the due date established per Section XIV.B.2 of the DWSRF Policy.

EXHIBIT B – FUNDING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is four million twenty-eight thousand eight hundred ninety-six dollars and no cents (\$4,028,896.00).
2. Project Financing. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to four million twenty-eight thousand eight hundred ninety-six dollars and no cents (\$4,028,896.00), all of which is anticipated to be a grant. The estimated amount of principal that will be due to the State Water Board under this Agreement is zero dollars and no cents (\$0.00).
3. Budget costs are contained in the Project Cost Table, which is part of Exhibit A-FBA.
4. The useful life of this Project is at least 30 years.

EXHIBIT C – RESERVED

EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

**Technical:**

1. If deemed necessary, the Recipient shall submit a water supply permit/permit amendment application to the Division of Drinking Water Tulare District Office prior to operation of the new distribution system and/or storage tank.
2. Recipient shall implement volumetric pricing and begin charging volumetric rates no later than one year following the project completion date.

**Environmental:**

1. Recipient shall implement the Action Items identified in the letter titled Response to Comments, Project Design Recommendations for Phase 1 of Seville and Yettem Water System Improvements Project, Tulare County, California, dated February 21, 2018.
2. If archaeological features or materials are unearthed during any phase of project activities, all work in the immediate vicinity of the find shall halt until Recipient has contacted the Division and the significance of the resource has been evaluated. Any mitigation measures that may be deemed necessary must have the approval of the Division, and shall be implemented, pursuant to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716, by a qualified archaeologist representing the Recipient prior to the resumption of construction activities.
3. If human remains are exposed by activity related to the Project, the Recipient must comply with California State Health and Safety Code, Section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to California Public Resources Code, Section 5097.98.

EXHIBIT E – RESERVED



EXHIBIT F – RESERVED

EXHIBIT G – RESERVED

## EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

Recipient represents that complies with the following conditions precedent and shall continue to maintain compliance:

(a) Monthly Water Diversion Reporting

If Recipient is a water diverter, Recipient must maintain compliance with Water Code section 5103, subdivision (e)(2)(A) by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.

(b) Public Works Contractor Registration with Department Of Industrial Relations

To bid for public works contracts, Recipient and Recipient's subcontractors must register with the Department of Industrial Relations as required by Labor Code sections 1725.5 and 1771.1.

(c) Volumetric Pricing & Water Meters

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must charge each customer for actual water volume measured by water meter according to the requirements of Water Code sections 526 and 527. Section 527 further requires that such suppliers not subject to section 526 install water meters on all municipal and industrial service connections within their service area by 2025.

(d) Urban Water Management Plan

If Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that this Project complies with the Urban Water Management Planning Act (Water Code, § 10610 et seq.). This shall constitute a condition precedent to this Agreement.

(e) Urban Water Demand Management

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must comply with water conservation measures established by SBx7-7. (Water Code, Sec. 10608.56.)

(f) Delta Plan Consistency Findings

If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient must submit certification of project consistency with the Delta Plan to the Delta Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

(g) Agricultural Water Management Plan Consistency

If Recipient is an agricultural water supplier as defined by Water Code section 10608.12, Recipient must comply with Agricultural Water Management Planning requirements as mandated by Water Code section 10852.

(h) Charter City Project Labor Requirements

If Recipient is a charter city as defined in Labor Code section 1782, subdivision (d)(2), Recipient will comply with the requirements of Labor Code section 1782 and Public Contract Code section 2503 as discussed in the following subparts (1) and (2).

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

(1) Prevailing Wage

Recipient certifies that it is eligible for state funding assistance notwithstanding Labor Code section 1782.

Specifically Recipient certifies that no charter provision nor ordinance authorizes a construction project contractor not to comply with Labor Code's prevailing wage rate requirements, nor, within the prior two years (starting from January 1, 2015 or after) has the city awarded a public works contract without requiring the contractor to comply with such wage rate requirements according to Labor Code section 1782.

(2) Labor Agreements

Recipient certifies that no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

# EXHIBIT C

## PROFESSIONAL SERVICES CONTRACTS INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

### A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

### B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:

- a. The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
- b. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
- c. CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

*d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after written notice has been provided to the County.*

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

## **EXHIBIT D**

### **Compensation for Engineer's Services**

1. The fees for the Engineer's services are described below:

	Estimated Fee
Phase	Estimated Fee
Task 1: Project Administration	\$10,500
Task 2: Bidding Phase Services	\$9,500
Task 3: Engineering Services During Construction	\$44,500
Task 4: Construction Management and Construction Review of Distribution System and Storage Tank	\$177,200
Task 5: Construction and Materials Testing	\$50,500
<b>Total Fee:</b>	<b>\$292,200</b>

2. The Engineer's invoices shall include a breakdown of the services provided and the invoices shall only include work that has been completed. The invoiced charges shall be based on Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

3. A copy of the Engineer's current Standard Rate Schedule is attached.

4. The Engineer's billing shall not exceed \$292,200. Any approved adjustments to the fees shall be made by written amendment.

**PROVOST & PRITCHARD CONSULTING GROUP  
STANDARD FEE SCHEDULE  
Effective 1/1/2018**

(hourly rates)

This schedule supersedes previously published fee schedules as of the effective date

ENGINEERING STAFF:

Assistant Engineer \$ 90.00 - \$110.00

Associate Engineer \$115.00 - \$135.00

Senior Engineer \$140.00 - \$170.00

Principal Engineer \$175.00 - \$215.00

SPECIALISTS:

Assistant Environmental Specialist \$ 80.00 - \$105.00

Associate Environmental Specialist \$112.00 - \$142.00

Senior Environmental Specialist \$145.00 - \$170.00

Principal Environmental Specialist \$180.00 - \$210.00

Associate GIS Specialist \$ 90.00 - \$110.00

Senior GIS Specialist \$115.00 - \$145.00

Associate Geologist/Hydrogeologist \$110.00 - \$135.00

Senior Geologist/Hydrogeologist \$145.00 - \$175.00

Water Resources Specialist \$115.00 - \$145.00

PLANNING STAFF:

Assistant Planner/CEQA-NEPA Specialist \$ 70.00 - \$ 95.00

Associate Planner/CEQA-NEPA Specialist \$100.00 - \$125.00

Senior Planner/CEQA-NEPA Specialist \$135.00 - \$160.00

Principal Planner/CEQA-NEPA Specialist \$165.00 - \$190.00

TECHNICAL STAFF:

Assistant Technician \$ 70.00 - \$ 90.00

Associate Technician \$ 95.00 - \$115.00

Senior Technician \$125.00 - \$140.00

CONSTRUCTION SERVICES:

Associate Construction Manager \$110.00 - \$130.00

Senior Construction Manager \$135.00 - \$157.00

Principal Construction Manager \$165.00 - \$195.00

Construction Manager Prevailing Wage (1) (2) \$137.00 - \$162.00

SUPPORT STAFF:

Administrative Assistant \$ 60.00 - \$080.00

Project Administrator \$ 70.00 - \$090.00

Project Manager \$120.00

Intern \$ 60.00



SURVEYING SERVICES:

LSIT Surveyor \$ 90.00 - \$110.00

Licensed Surveyor \$120.00 - \$155.00

	<u>Prev. Wage (1)</u>
1 Man Survey Crew \$160.00	\$185.00
2 Man Survey Crew \$225.00	\$265.00
2 Man Survey Crew including LS \$260.00	\$270.00
1 Man CORS Survey Crew \$175.00	
2 Man CORS Survey Crew \$225.00	
UAV (Drone) Services \$200.00	
(Field Work not including survey equipment billed at individual standard rate plus vehicle as appropriate)	

EXPERT WITNESS: As quoted.

TRAVEL TIME (for greater than 1 hour from employee's base office): \$80/hr (unless the individual's rate is less)

PROJECT COSTS:

Mileage IRS value + 0%

Outside Consultants Cost + 10%

Direct Costs Cost + 0%

(1) Prevailing wage rates shown for San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties, other counties as quoted.

(2) Overtime for Construction Services prevailing wage will be calculated at 125% of the standard prevailing wage rate.

# **EXHIBIT E**

## **SCHEDULE**

## Exhibit E: Schedule

### **ENGINEERING CONSULTING SERVICES FOR BIDDING AND CONSTRUCTION PHASE OF SEVILLE AND YETTEM WATER SYSTEM PROJECT**

The following schedule is based on the Notice to Proceed being issued to the Contractor by August 31, 2018. If issuance of the Notice to Proceed is later, the dates below will be modified to account for the actual Notice to Proceed date.

Bidding and Construction Completion  
Project Administration and Closeout

March 22, 2018  
November 22, 2019

# EXHIBIT F

## VITAL PERSONNEL

### ENGINEERING CONSULTING SERVICES FOR BIDDING AND CONSTRUCTION PHASE OF SEVILLE AND YETTEM WATER SYSTEM PROJECT

#### **Provost & Pritchard**

Project Manager/Engineer:

Matthew Kemp, PE

Design Engineer:

Nick Jacobson, PE

Principal Construction Manager

Rick Darnley

Land Surveyor:

Tim Odom, PLS

#### **Subconsultants**

Electrical Engineer:

Kevin Pezzoni, PE, (Miller Pezzoni &  
Associates, Inc.)

Geotechnical Engineer:

On Man Lau, PE (BSK & Associates)

**EXHIBIT G**  
**COMPUTER SERVICES**

<b>Item</b>	<b>Format/Denotation</b>
Email	Required for each "Vital Personnel" listed
Computer Aided Drafting	Auto Cad
Word Processing	MS Word
Spreadsheet	MS Excel
Project Schedule	MS Excel
Final Report	PDF (and Hardcopy)

# **EXHIBIT H**

## **COUNTY OF TULARE'S GENERAL AGREEMENT TERMS AND CONDITIONS**

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**1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** CONTRACTOR is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.

**2. DISALLOWANCE:** If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

**3. LIABILITY OF COUNTY:** COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

**4. QUALIFIED PERSONNEL:** CONTRACTOR shall utilize only competent personnel under the supervision

of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**5. INDEPENDENT CONTRACTOR STATUS:** The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

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Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

**6. COMPLIANCE WITH LAW:** CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

**7. LICENSES AND PERMITS:** CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

**8. GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

**9. RECORDS AND AUDIT:** CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

**10. CONFLICT OF INTEREST:**

(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and

appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

**11. INSURANCE:** The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

**12. INDEMNIFICATION AND DEFENSE:**

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by



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COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition

precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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**13. TERMINATION:**

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement,

or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement

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for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

**14. LOSS OF FUNDING:** It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

**15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under

this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

(a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;

(c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

**16. FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**17. WORKS FOR HIRE:** CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s)

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for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

**18. WORK PRODUCT:** All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

**19. TIME OF ESSENCE:** The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

**20. CONFIDENTIALITY:** CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with

CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified COUNTY that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

**21. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

**22. DISPUTES AND DISPUTE RESOLUTION:** CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

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**23. PROPERTY TAXES:** Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

**24. FURTHER ASSURANCES:** Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

**25. CONSTRUCTION:** This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

**26. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

**27. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

**28. WAIVERS:** The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

**29. ORDER OF PRECEDENCE:** In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

**30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

**31. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

**32. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

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**33. DRUG-FREE WORKPLACE POLICY:** CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

**34. RECYCLED PAPER CONTENT:** To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

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