

Yolo Subbasin Groundwater Agency

Services Agreement

This Agreement is entered into as of the date last signed and dated below by and between Yolo Subbasin Groundwater Agency, a public entity organized and existing under the Joint Exercise of Powers Act, Cal. Government Code § 6500 *et seq.*, a local government agency (“Agency”), and _____, (“Contractor”), who agree as follows:

1 Scope of Work

Contractor shall perform the work and render the services described in the attached Exhibit A (the “Work”). Contractor shall provide all labor, services, equipment, tools, materials, and supplies required or necessary to properly, competently and completely perform the Work. Contractor shall determine the method, details and means of doing the Work.

2 Payment

2.1 Agency shall pay to Contractor a fee based on **[check one]**:

Contractor’s time and expenses necessarily and actually expended or incurred on the Work in accordance with Contractor’s fee schedule on the attached Exhibit A.

The fee arrangement described on the attached Exhibit A.

The total fee for the Work shall not exceed \$_____. There shall be no compensation for extra or additional work or services by Contractor unless approved in writing by Agency. Contractor’s fee includes all of Contractor’s costs and expenses related to the Work.

2.2 At the end of each month, Contractor shall submit to Agency an invoice for the Work performed during the preceding month. The invoice shall include a brief description of the Work performed, the dates of Work, number of hours worked and by whom (if payment is based on time), payment due, and an itemization of any reimbursable expenditures. If the Work is satisfactorily completed and the invoice is accurately computed, Agency shall pay the invoice within 30 days of its receipt.

3 Term

3.1 This Agreement shall take effect on the above date and continue in effect until completion of the Work, unless sooner terminated as provided below. Time is of the essence in this Agreement. Agency recognizes that Contractor's performance must be governed by sound professional practices in a manner consistent with the Standard of Care. If Exhibit A includes a Work schedule or deadline, then Contractor shall complete the Work in accordance with the specified schedule or deadline, which may be extended by Agency by written agreement for good cause shown by Contractor. If Exhibit A does not include a Work schedule or deadline, then Contractor shall perform the Work diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress

of the Work.

3.2 This Agreement may be terminated at any time by Agency upon 10 days advance written notice to Contractor. In the event of such termination, Contractor shall be fairly compensated for all work performed to the date of termination as calculated by Agency based on the above fee and payment provisions. Compensation under this section shall not include any termination-related expenses, cancellation or demobilization charges, or lost profit associated with the expected completion of the Work or other such similar payments relating to Contractor's claimed benefit of the bargain.

4 Performance of Work by Contractor

4.1 Contractor represents that it is specially trained and experienced, and possesses the skill, ability, knowledge and certification, to competently perform the Work provided by this Agreement. Agency has relied upon Contractor's training, experience, skill, ability, knowledge and certification as a material inducement to enter into this Agreement. In providing services under this Agreement, Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality ("Standard of Care"). All Work performed by Contractor shall be in accordance with that degree of care and shall meet the same profession currently practicing under similar circumstances at the same time and in the same or similar locality ("Standard of Care").

4.2 The following individuals are designated as key personnel and are considered to be essential to the successful performance of the work hereunder:_____. Contractor agrees that these individuals may not be removed from the Work or replaced without compliance with the following sections:

4.2.1 If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, Contractor shall immediately notify Agency and shall, subject to Agency's concurrence, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

4.2.2 Each request for approval of substitutions shall be in writing and shall contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request shall also contain a complete resume for the proposed substitute and other information requested or needed by Agency to evaluate the proposed substitution. Agency shall evaluate Contractor's request and Agency shall promptly notify Contractor of its decision in writing.

5 Conflict of Interest

Contractor (including principals, associates and professional employees) represents and acknowledges that (a) it does not now have and shall not acquire any direct or indirect investment, interest in real property or source of income that would be affected in any manner or degree by the performance of Contractor's services under this agreement, and (b) no person having any such interest shall perform any portion of the Work. The parties agree that Contractor is not a designated employee within the meaning of the Political Reform Act and Agency's conflict of interest code because Contractor will perform the Work independent of

the control and direction of the Agency or of any Agency official, other than normal contract monitoring, and Contractor possesses no authority with respect to any Agency decision beyond the rendition of information, advice, recommendation, or counsel.

6 Contractor Records

6.1 Contractor shall keep and maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records and documents evidencing or relating to the Work and invoice preparation and support for a minimum period of three years (or for any longer period required by law) from the date of final payment to Contractor under this Agreement. Agency may inspect and audit such books and records, including source documents, to verify all charges, payments, and reimbursable costs under this Agreement.

6.2 In accordance with California Government Code section 8546.7, the parties acknowledge that this Agreement, and performance and payments under it, are subject to examination and audit by the California State Auditor for three years following final payment under the Agreement.

7 Ownership of Documents

All works of authorship and every report, study, spreadsheet, worksheet, plan, design, blueprint, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, CAD data file, computer software and any other document or thing prepared, developed or created by Contractor under this Agreement, excluding any standard designs, details, specifications and other intellectual property to which the Contractor held the copyright prior to performing services for this Project, and provided to Agency ("Work Product") shall be the property of Agency, and Agency shall have the rights to use, modify, reuse at its sole risk, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product without further compensation to Contractor or any other party, upon payment of all invoices due and owing to Contractor. Contractor may retain a copy of any Work Product and use, reproduce, publish, display, broadcast and distribute any Work Product and prepare derivative and additional documents or works based on any Work Product; provided, however, that Contractor shall not provide any Work Product to any third party without Agency's prior written approval, unless compelled to do so by legal process. If any Work Product is copyrightable, Contractor may copyright the same, except that, as to any Work Product that is copyrighted by Contractor, Agency reserves a royalty-free, nonexclusive and irrevocable license to use, reuse at its sole risk, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product. If Agency reuses or modifies any Work Product for a use or purpose other than that intended by the scope of work under this Agreement, then Agency shall hold Contractor harmless against all claims, damages, losses and expenses arising from such reuse or modification. For any Work Product provided to Agency in paper format, upon request by Agency at any time (including, but not limited to, at expiration or termination of this Agreement), Contractor agrees to provide the Work Product to Agency in a readable, transferable and usable electronic format generally acknowledged as being an industry-standard format for information exchange between computers (e.g., Word file, Excel spreadsheet file, AutoCAD file).

8 Confidentiality of Information

8.1 To the maximum extent allowed by applicable law, Contractor shall keep in strict confidence all confidential, privileged, trade secret, and proprietary information, data and other materials in any format generated, used or obtained by the Agency or created by Contractor in connection with the performance of the Work under this Agreement (the “Confidential Material”). Contractor shall not use any Confidential Material for any purpose other than the performance of the Work under this Agreement, unless otherwise authorized in writing by Agency. Contractor also shall not disclose any Confidential Material to any person or entity not connected with the performance of the Work under this Agreement, unless otherwise authorized in advance in writing by Agency. If there is a question if Confidential Material is protected from disclosure or is a public record or in the public domain, the party considering disclosure of such materials shall consult with the other party concerning the proposed disclosure.

8.2 Contractor, and its officers, employees, agents, and subcontractors, shall at all times take all steps that are necessary to protect and preserve all Confidential Material. At no time shall Contractor, or its officers, employees, agents, or subcontractors in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any Confidential Material to any person or entity unless specifically authorized in writing by the Agency or by order of a court or regulatory entity with jurisdiction over the matter. Contractor, and its officers, employees, agents, and subcontractors shall protect the Confidential Material and treat it as strictly confidential in accordance with applicable law, Agency policies and directives, and best industry security practices and standards.

8.3 If any person or entity, other than Agency or Contractor, requests or demands, by subpoena, discovery request, California Public Records Act request or otherwise, Confidential Material or its contents, the party to whom the request is made will immediately notify the other party, so that the parties may collectively consider appropriate steps to protect the disclosure of those materials. The parties agree to take all steps reasonably necessary to preserve the confidential and privileged nature of the Confidential Material and its content. In the event that the parties cannot agree whether to oppose or comply with a disclosure demand, the opposing party may oppose the demand at its sole cost and expense, in which event the party favoring disclosure will refrain from disclosing the demanded Confidential Material until such time as a final agreement regarding disclosure is reached or, if an agreement is not reached, a judicial determination is made concerning the demand.

8.4 Unless otherwise directed in writing by the Agency, upon contract completion or termination, Contractor must destroy all Confidential Materials (written, printed and/or electronic) and shall provide a written statement to the Agency that such materials have been destroyed.

9 Compliance with Laws

9.1 General. Contractor shall perform the Work in compliance with all applicable federal, state and local laws and regulations. Contractor shall possess, maintain and comply with all federal, state and local permits, licenses and certificates that may be required for it to perform the Work. Contractor shall comply with all federal, state and local air pollution control laws and regulations applicable to the Contractor and its Work (as required by California Code of Regulations title 13, section 2022.1). Contractor shall be responsible for the safety of its workers and Contractor shall comply with applicable federal and state worker

safety-related laws and regulations. Contractor shall not be responsible for the acts or omissions of the construction contractor or construction subcontractor or supplier of any tier, of the employees or agents or any other persons performing any of the construction work which, according to generally accepted construction practices, is the contractor's responsibility, including, but not limited to, the general means and methods of construction, job site conditions, security and safety throughout the entire time and course of construction of the project.

9.2 California Labor Code Compliance for Pre- and Post-Construction Related Work and Maintenance.

9.2.1 This section 9.2 applies if the Work includes either of the following:

9.2.1.1 Labor performed during the design, site assessment, feasibility study and pre-construction phases of construction, including, but not limited to, inspection and land surveying work, and labor performed during the post-construction phases of construction, including, but not limited to, cleanup work at the jobsite. (See California Labor Code section 1720(a).) If the Work includes some labor as described in the preceding sentence and other labor that is not, then this section 9.2 applies only to workers performing the pre-construction and post-construction work.

9.2.1.2 "Maintenance" work, which means (i) routine, recurring and usual work for the preservation, protection and keeping of any Agency facility, plant, building, structure, utility system or other property ("Agency Facility") in a safe and continually usable condition, (ii) carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve any Agency Facility in a safe, efficient and continuously usable condition, including repairs, cleaning and other operations on Agency machinery and equipment, and (iii) landscape maintenance. "Maintenance" excludes (i) janitorial or custodial services of a routine, recurring or usual nature, and (ii) security, guard or other protection-related services. (See California Labor Code section 1771 and 8 California Code of Regulations section 16000.) If the Work includes some "maintenance" work and other work that is not "maintenance," then this section 9.2 applies only to workers performing the "maintenance" work.

9.2.2 Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works as may be required by the Labor Code and applicable state regulations. (See California Labor Code division 2, part 7, chapter 1 (sections 1720-1861), which is incorporated in this Agreement by this reference.) The state-approved prevailing rates of per diem wages are available at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Contractor also shall comply with Labor Code sections 1775 and 1813, including provisions that require Contractor to (a) forfeit as a penalty to Agency up to \$200 for each calendar day or portion thereof for each worker (whether employed by Contractor or any subcontractor) paid less than the applicable prevailing wage rates for any labor done under this Agreement in violation of the Labor Code, (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage, and (c) forfeit as a penalty to Agency the sum of \$25 for each worker (whether employed by Contractor or any subcontractor) for each calendar day during which the worker is required or permitted to work more than 8 hours in any one day and 40 hours

in any one calendar week in violation of Labor Code sections 1810 through 1815.

9.2.3 If the Work includes labor during pre- or post-construction phases as defined in section 9.2.1.1 above and the amount of the fee payable to Contractor under section 2 of this Agreement exceeds \$25,000, Contractor must be registered and qualified to perform public work with the Department of Industrial Relations pursuant section 1725.5 of the Labor Code.

Contractor's Public Works Contractor Registration Number: _____

9.2.4 If the Work includes maintenance as defined in section 9.2.1.2 above and the amount of the fee payable to Contractor under section 2 of this Agreement exceeds \$15,000, Contractor must be registered and qualified to perform public work with the Department of Industrial Relations pursuant section 1725.5 of the Labor Code.

Contractor's Public Works Contractor Registration Number: _____

d. *Intentionally omitted.*

10 Indemnification.

10.1 Contractor shall indemnify, defend, protect, and hold harmless Agency, and its officers, board member, employees ("Indemnitees") from and against any and all claims, liability, losses, damages and expenses (including all attorney, expert witness and Contractor fees, and litigation costs) (collectively a "Claim") to the extent caused by the negligence, recklessness, or willful misconduct of Contractor or its employees, agents or subcontractors in performing work or services pursuant to this Agreement. The Parties also acknowledge that this Agreement is subject to California Civil Code 2782.8 as amended and effective January 1, 2018. Contractor shall only be required to reimburse INDEMNITEES for defense fees and costs (including reasonable attorney's fees), in proportion to Contractor's proven acts of negligence and further, only to the extent such fees and costs were directly attributable to INDEMNITEES' defense of a suit based on Contractor's proven negligence. The duty to indemnify is limited as provided in this section. However, this indemnity provision will not apply to any Claim arising from the sole or active negligence or willful misconduct of Agency or its employees. Contractor's obligations under this indemnification provision shall survive the termination of, or completion of Work under, this Agreement.

10.2 This section 10.2 applies if the Contractor is a "design professional" as that term is defined in Civil Code section 2782.8. If a court or arbitrator determines that the incident or occurrence that gave rise to the Claim was partially caused by the fault of an Indemnitee, then in no event shall Contractor's total costs incurred pursuant to its duty to defend Indemnitees exceed Contractor's proportionate percentage of fault as determined by a final judgment of a court or final decision of arbitrator.

11 Insurance

Types & Limits. Contractor at its sole cost and expense shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

<i>Type</i>	<i>Limits</i>	<i>Scope</i>
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Commercial general liability	\$1,000,000 per occurrence & \$2,000,000 aggregate	at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury
Automobile liability	\$1,000,000 per accident	at least as broad as ISO Business Auto Coverage (Form CA 00 01)
Workers' compensation	Statutory limits	
Employers' liability	\$1,000,000 per accident	
Professional liability*	\$1,000,000 per claim	

*Required only if Contractor is a licensed engineer, land surveyor, geologist, architect, doctor, attorney or accountant.

11.1 Other Requirements. The general and automobile liability policy(ies) shall be endorsed to name Agency, its officers, employees, volunteers and agents as additional insureds regarding liability arising out of the Work. Contractor's coverage shall be primary and apply separately to each insurer against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Agency's insurance or self-insurance, if any, shall be excess and shall not contribute with Contractor's insurance. Each insurance policy shall be endorsed to state that coverage shall not be canceled, except after 30 days (10 days for non-payment of premium) prior written notice to Agency. Insurance is to be placed with admitted insurers with a current A.M. Best's rating of A:VII or better unless otherwise acceptable to Agency. Workers' compensation insurance issued by the State Compensation Insurance Fund is acceptable. Contractor agrees to waive subrogation that any insurer may acquire from Contractor by virtue of the payment of any loss relating to the Work. Contractor agrees to obtain any endorsement that may be necessary to implement this subrogation waiver. The workers' compensation policy must be endorsed to contain a subrogation waiver in favor of Agency for the Work performed by Contractor.

11.2 Proof of Insurance. Upon request, Contractor shall provide to Agency the following proof of insurance: (a) certificate(s) of insurance evidencing this insurance; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf of the insurer(s), and certifying the additional insured coverage.

12 General Provisions

12.1 **Entire Agreement; Amendment.** The parties intend this writing to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the Work. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the Work,

except those other documents (if any) that are expressly referenced in this Agreement. This Agreement may be amended only by a subsequent written contract approved and signed by both parties.

12.2 **Independent Contractor.** Contractor's relationship to Agency is that of an independent contractor. All persons hired by Contractor and performing the Work shall be Contractor's employees or agents. Contractor is a (licensed engineer, land surveyor, geologist, architect, doctor, attorney, accountant, etc.). Contractor and its officers, employees and agents are not Agency employees, and they are not entitled to Agency employment salary, wages or benefits. Contractor shall pay, and Agency shall not be responsible in any way for, the salary, wages, workers' compensation, unemployment insurance, disability insurance, tax withholding, and benefits to and on behalf of Contractor's employees. Contractor shall, to the fullest extent permitted by law, indemnify Agency, and its officers, and employees, volunteers from and against any and all liability, penalties, expenses and costs resulting from any adverse determination by the federal Internal Revenue Service, California Franchise Tax Board, other federal or state agency, or court concerning Contractor's independent contractor status or employment-related liability.

12.3 **Subcontractors.** No subcontract shall be awarded nor any subcontractor engaged by Contractor without Agency's prior written approval. Contractor shall be responsible for requiring and confirming that each approved subcontractor meets the minimum insurance requirements specified in section 11 of this Agreement. Any approved subcontractor shall obtain the required insurance coverages and provide proof of same to Agency in the manner provided in section 11 of this Agreement.

12.4 **Assignment.** This Agreement and all rights and obligations under it are personal to the parties. The Agreement may not be transferred, assigned, delegated or subcontracted in whole or in part, whether by assignment, subcontract, merger, operation of law or otherwise, by either party without the prior written consent of the other party. Any transfer, assignment, delegation, or subcontract in violation of this provision is null and void and grounds for the other party to terminate the Agreement.

12.5 **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Agency to Contractor shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

12.6 **Severability.** If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.

12.7 **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California. The county and federal district court where Agency's office is located shall be venue for any state and federal court litigation concerning the enforcement or construction of this Agreement.

12.8 **Notice.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (d) by email with confirmed receipt. Such notices, etc. shall be addressed as follows:

Agency:

Yolo Subbasin Groundwater Agency
Attn: Kristin Sicke, Executive Officer
Yolo Subbasin Groundwater Agency, 34274 California 16, Woodland, CA 95695
E-mail: ksicke@yolosga.org

Contractor:

(name)
(address)
(E-mail)

Notice given as above will be deemed given (a) when delivered in person, (b) three days after

deposited in prepaid, first class U.S. mail, (c) on the date of delivery as shown on the overnight courier service receipt, or (d) upon the sender's receipt of an email from the other party confirming the delivery of the notice, etc. Any party may change its contact information by notifying the other party of the change in the manner provided above.

- 1.1 **Signature Authority.** Each party represents and confirms that the person signing this Agreement is authorized to act on behalf of the party for whom that person signs. The Parties may execute and deliver this Agreement and documents necessary to perform it, including task orders and amendments, in any number of original or facsimile counterparts. When each Party has signed and delivered at least one counterpart to the other Party, each counterpart shall be deemed an original and, taken together, the counterparts shall constitute one and the same document, which shall be binding and effective.

Yolo Subbasin Groundwater Agency:

Dated: _____

By: _____
Kristin Sicke, Executive Officer

(Entity Name):

Dated: _____

By: _____
(Name), (Title)