

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF MENDOCINO AND EKI ENVIRONMENT AND WATER, INC., IN THE AMOUNT OF \$94,500, FOR CONSULTING SERVICES FOR THE DROUGHT RESILIENCE PLAN DEVELOPMENT AND DROUGHT TASK FORCE PARTICIPATION PROJECT, FOR THE TERM BEGINNING UPON EXECUTION OF THE AGREEMENT THROUGH JUNE 30, 2025**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and EKI Environment and Water, Inc., a California Corporation, hereinafter referred to as the "CONSULTANT".

**WITNESSETH**

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent CONSULTANTS to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONSULTANT for its consulting services; and,

WHEREAS, CONSULTANT is willing to provide such services on the terms and conditions set forth in this Agreement and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONSULTANT to provide the services described in Exhibit A, and CONSULTANT accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- |           |  |
|-----------|--|
| Exhibit A | Definition of Services                 |
| Exhibit B | Payment Terms                          |
| Exhibit C | Insurance Requirements                 |
| Exhibit D | Mendocino County ePayables Information |
| Exhibit E | State Funding Agreement Provisions     |

Certain terms and provisions are required to be a part of this agreement since COUNTY is utilizing state funding to pay for the services of CONSUTANT described in Exhibit "A". These terms and provisions are located in Exhibit "E" of this Agreement and, for the purpose of this AGREEMENT only, shall control and supersede any provisions to the contrary located in the body of the AGREEMENT.

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date") and shall continue through June 30, 2025.

The compensation payable to CONSULTANT hereunder shall not exceed ninety four thousand five hundred dollars (\$94,500) for the term of this Agreement.

**IN WITNESS WHEREOF**

**DEPARTMENT FISCAL REVIEW:**

Howard N. Dashiell 5/2/2024  
HOWARD N. DASHIELL DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: 0326 (HO)

Line Item: 862189

Grant: ☒ Yes ☐ No

Grant No.: DWR 46-15669

**CONSULTANT/COMPANY NAME**

By: Andree Lee

Date: May 2, 2024

**NAME AND ADDRESS OF CONSULTANT:**

EKI Environment & Water, Inc.

2001 Junipero Serra Blvd, Ste. 300

Daly City, CA 94014

**COUNTY OF MENDOCINO**

By: Maureen Mulheren  
MAUREEN MULHEREN, Chair  
BOARD OF SUPERVISORS

Date: 05/21/2024

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**ATTEST:**

DARCIE ANTLE, Clerk of said Board

By: Armap  
Deputy 05/21/2024

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Clerk of said Board

By: Armap  
Deputy 05/21/2024

**COUNTY COUNSEL REVIEW:**

APPROVED AS TO FORM:

By: Maureen Mulheren  
COUNTY COUNSEL

Date: 05/02/2024

**INSURANCE REVIEW:**

By: Darcie Antle  
Risk Management

Date: 05/02/2024

**EXECUTIVE OFFICE/FISCAL REVIEW:**

By: [Signature]  
Deputy CEO or Designee

Date: 05/02/2024

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: \_\_\_\_\_

## **GENERAL TERMS AND CONDITIONS**

1. **INDEPENDENT CONSULTANT:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONSULTANT is an Independent CONSULTANT. CONSULTANT is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONSULTANT nor for any obligations or liabilities incurred by CONSULTANT.

CONSULTANT shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONSULTANT shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONSULTANT's failure to pay such amounts.

In carrying out the work contemplated herein, CONSULTANT shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent CONSULTANTS and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONSULTANT does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and COUNTY laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standard of care set out in Paragraph 35 of this Agreement.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONSULTANT is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONSULTANT, withhold from payments to CONSULTANT hereunder federal and state income taxes and pay said sums to the federal and state governments.



2. **INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), CONSULTANT shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONSULTANT's performance or its obligations under this Agreement, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subconsultants.
3. **INSURANCE AND BOND:** CONSULTANT shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONSULTANT shall provide Workers' Compensation insurance, as applicable, at CONSULTANT's own cost and expense and further, neither the CONSULTANT nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONSULTANT affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONSULTANT further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONSULTANT shall require all subCONSULTANTS similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subCONSULTANTS' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
  - a. In performing services under this Agreement, CONSULTANT shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONSULTANT shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONSULTANT's failures to comply with such laws, ordinances, codes and regulations.
  - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONSULTANT's performance of this

Agreement, CONSULTANT shall immediately notify Mendocino County Risk Manager's Office by telephone. CONSULTANT shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONSULTANT's sub-CONSULTANT, if any; (3) name and address of CONSULTANT's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONSULTANT further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONSULTANT as provided in Exhibit B hereto as funding permits.

If COUNTY over pays CONSULTANT for any reason, CONSULTANT agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONSULTANT under this Agreement or any other Agreement.

In the event CONSULTANT claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, which disallowance is due to the actions or omissions of CONSULTANT, the CONSULTANT shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONSULTANT under this Agreement or any other Agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONSULTANT to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

- 7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONSULTANT.
- 8. OWNERSHIP OF DOCUMENTS: CONSULTANT hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals,

plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONSULTANT, the CONSULTANT's subconsultants or third parties at the request of the CONSULTANT (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONSULTANT shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONSULTANT agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONSULTANT hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONSULTANT's services as set forth in Exhibit A of this Agreement have been fully performed or paid for.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written

confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: Mendocino County Water Agency  
340 Lake Mendocino Drive  
Ukiah, CA 95482  
Attn: Amber Fiset

To CONSULTANT: EKI Environment and Water, Inc.  
2001 Junipero Serra Blvd.  
Daly City, CA 94014  
Attn: Amir Mani

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONSULTANT shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONSULTANT certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
  - a. CONSULTANT shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
  - b. CONSULTANT shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
  - c. If requested to do so by the COUNTY, CONSULTANT shall provide the COUNTY with access to copies of all of its records pertaining or relating to



its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
  - e. The CONSULTANT shall include the provisions set forth in this paragraph in each of its subcontracts.
13. **DRUG-FREE WORKPLACE:** CONSULTANT and CONSULTANT's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONSULTANT nor CONSULTANT's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONSULTANT or any employee of CONSULTANT is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONSULTANT, within five days thereafter, shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. **ENERGY CONSERVATION:** CONSULTANT agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONSULTANT shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONSULTANT shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONSULTANT shall file copies of same with the County Executive Office.

CONSULTANT represents and warrants to COUNTY that CONSULTANT and its employees, agents, and any subCONSULTANTS have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. **AUDITS; ACCESS TO RECORDS:** The CONSULTANT shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONSULTANT.

The CONSULTANT shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONSULTANT in

the performance of this Agreement. If such books and records are not kept and maintained by CONSULTANT within the County of Mendocino, California, CONSULTANT shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONSULTANT shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONSULTANT's books and records, including, but not limited to, travel, lodging and subsistence costs. CONSULTANT shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONSULTANT with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONSULTANT shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONSULTANT's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONSULTANT shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONSULTANT under this Agreement.
18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONSULTANT without cause at any time upon giving to the CONSULTANT notice. Such notice shall be in writing and may be issued by any COUNTY officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONSULTANT's work, the CONSULTANT shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONSULTANT for its consulting services shall not exceed \$94,500 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

20. **NON-APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONSULTANT. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONSULTANT prior to CONSULTANT's receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONSULTANT shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire Agreement between COUNTY and CONSULTANT relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other Agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.
26. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual Agreement of the parties. No

supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

28. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONSULTANT may not be adequately performing its obligations under this Agreement or that CONSULTANT may fail to complete the Services as required by this Agreement, COUNTY may request from CONSULTANT prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONSULTANT's performance. CONSULTANT shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONSULTANT acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. **SUBCONTRACTING/ASSIGNMENT:** CONSULTANT shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any Agreement that violates this Section shall confer no rights on any party and shall be null and void.
  - b. Only the department head or his or her designee shall have the authority to approve subCONSULTANT(s).
  - c. CONSULTANT shall remain fully responsible for compliance by its subCONSULTANTS with all the terms of this Agreement, regardless of the terms of any Agreement between CONSULTANT and its subCONSULTANTS.
30. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
31. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. **INTELLECTUAL PROPERTY WARRANTY:** CONSULTANT warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONSULTANT



PRODUCTS”) to be provided by CONSULTANT in the performance of this Agreement, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONSULTANT hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONSULTANT PRODUCTS to the extent reasonably necessary to use the CONSULTANT PRODUCTS in the manner contemplated by this Agreement.

CONSULTANT further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONSULTANT PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONSULTANT PRODUCT, CONSULTANT shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this Agreement.

In the case of any such claim of infringement, CONSULTANT shall either, at its option, (1) procure for COUNTY the right to continue using the CONSULTANT Products; or (2) replace or modify the CONSULTANT Products so that they become non-infringing, but equivalent in functionality and performance.

33. **ELECTRONIC COPIES:** The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
34. **COOPERATION WITH COUNTY:** CONSULTANT shall cooperate with COUNTY and COUNTY staff in the performance of all work hereunder.
35. **PERFORMANCE STANDARD:** CONSULTANT shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONSULTANT's profession. COUNTY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of CONSULTANT's work by COUNTY shall not operate as a waiver or release. If COUNTY determines that any of CONSULTANT's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.



36. ATTORNEYS' FEES: In any action to enforce or interpret the terms of this Agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

## EXHIBIT A

### DEFINITION OF SERVICES

CONSULTANT shall provide the following services:

#### **Task 1 – Grant Administration**

Task 1 is listed to keep task numbering consistent with the approved grant. Task 1 will be performed by COUNTY and is not included in CONSULTANT's Scope of Work or Budget.

#### **Task 2 – Drought Resilience Plan (DRP) Development**

Task 2 includes all planning efforts related to the development of a SB 552 compliant DRP, including required analyses, preparation of the administrative draft of the plan, and revisions based on COUNTY, County Drought Task Force (CDTF), and public comments. Task 2 also includes efforts to document the work performed under this task in monthly invoices, quarterly progress reports, the final report, and the post-project completion report.

CONSULTANT will develop the DRP based on DRP elements identified in DWR's County DRP Guidebook, dated March 2023 (Guidebook). CONSULTANT will cooperate with University of California Cooperative Extension (UCCE) and COUNTY to facilitate the development of the DRP and accomplish this task.

##### Subtask 2.1 – Develop Draft DRP

CONSULTANT will develop a SB 552-compliant DRP that includes the following elements:

1. *Drought and Water Shortage Risk Assessment:* Based on available data, CONSULTANT will construct a risk matrix that categorizes vulnerability factors identified in the Physical and Social Vulnerability Checklists provided in DWR's County Drought Resilience Plan Guidebook. The risk matrix will include the likelihood of each vulnerability occurring, the potential consequences of each vulnerability factor, and the County's capacity to address the identified drought and water shortage related risks. CONSULTANT will hold one to two virtual meetings with COUNTY, UCCE and, as needed, with stakeholders to discuss and adjust the results of the assessment and identify water stakeholders with jurisdiction over the highest risk areas.
2. *Short-Term Response Actions:* CONSULTANT will develop a comprehensive portfolio of short-term response actions aimed at addressing the most critical risks to public health and safety during a water shortage event and develop screening criteria to evaluate the potential short-term response actions. Design

and implementation of these actions will be performed with the understanding of the supervisory and facilitative role of COUNTY and will accompany identified financial and administrative resources needed to undertake such activities. Prioritization of short-term response actions will be determined based on feasibility of implementation, as determined through discussions with COUNTY, UCCE, and key water stakeholders and discussion at CDTF meetings.

3. *Long-Term Mitigation Strategy and Actions:* CONSULTANT will work with COUNTY, UCCE, and identified water stakeholders to develop long-term mitigation strategies, including preventive measures, for areas identified in the risk assessment and being susceptible to drought and water shortage conditions. CONSULTANT will develop screening criteria based on feedback from COUNTY and/or UCCE. Long-term strategies will be discussed at one or more CDTF meetings with a particular focus on their potential implementation, including the collaboration and resources needed to successfully accomplish them. Prioritization of long-term mitigation strategies will be determined through discussions with COUNTY, UCCE, and key water stakeholders and at CDTF meetings.
4. *Implementation Considerations:* After a portfolio of short-term response actions and long-term mitigation strategies is developed, CONSULTANT will develop an implementation roadmap based on feedback from COUNTY, UCCE, key water stakeholders, and discussion at CDTF meetings. The implementation roadmap will identify specific triggers and criteria for activating each action. Additionally for each action, the implementation plan will identify the lead agency and potential partners for implementation, a strategy to communicate with County residents, required funding, permitting, and other details deemed necessary by COUNTY and UCCE. Expected benefits and timeline for implementation will also be developed for each action or strategy. CONSULTANT will hold up to two (2) meetings with COUNTY and UCCE and up to two (2) virtual interviews with water stakeholders to discuss short-term response actions, long-term mitigation strategies, and implementation considerations. Additional interviews may be conducted as needed in coordination with COUNTY.

CONSULTANT will compile all information and analyses described above, including tables, figures, and graphics as applicable, into a draft DRP document. The draft DRP shall be ready to post for public review within ten months of beginning the Project.

Subtask 2.1 Deliverables:

- Request for Information to COUNTY
- Draft DRP

- Monthly Invoices
- Four (4) Quarterly Progress Reports, inclusive of the Final Report
- Project Completion Report

#### Subtask 2.1 Assumptions:

- For the Drought and Water Shortage Risk Assessment, CONSULTANT will rely on publicly available data and local information, to the extent that data and information are provided by COUNTY.
- Monthly invoicing, progress reports, final report, and post-project completion report will detail all work efforts under Task 2.
- CONSULTANT will submit the Project Completion to the County within 30 calendar days of submittal of the Final DRP to DWR, but no later than 30 June 2025.
- Meetings will be held remotely unless otherwise specified.

#### Subtask 2.2 – Submit Final DRP

Prior to publishing the draft DRP, CONSULTANT will hold one in-person public workshop during a CDTF meeting to discuss the DRP and explain the commenting process. The commenting period will be determined following a discussion with COUNTY to provide sufficient time for public review while also leaving adequate time for plan adjustments and submittal. Following the public comment period, CONSULTANT will incorporate public or COUNTY comments, as appropriate, and prepare a Final DRP for COUNTY to upload to the DWR portal, or otherwise submit to DWR. The Final DRP shall be submitted to COUNTY within twelve months of beginning the Project.

#### Subtask 2.2 Deliverables:

- Presentation materials for one (1) public workshop
- Final DRP

#### Subtask 2.2 Assumptions:

- COUNTY will provide comments on the draft DRP in a timely manner.
- For budgeting purposes, preparation of public workshop materials and in-person attendance is included under Subtask 3.1 as attendance of one CDTF meeting.
- The Final DRP will be submitted to COUNTY within twelve months of project initiation.
- COUNTY will submit the final DPR to DWR.
- Monthly invoicing, progress reports, final report, and post-project completion report related to this task is undertaken and budgeted under subtask 2.1 for better streamlining.
- Meetings will be held remotely unless otherwise specified.

### **Task 3 – Drought Task Force Outreach and Engagement**

This task includes all work efforts to maintain regularly scheduled CDTF meetings during the course of the contract, as well as supporting outreach, engagement, and education efforts to improve participation in the existing CDTF. CONSULTANT will coordinate

closely with COUNTY and UCCE to enhance education and outreach efforts under this project. CONSULTANT will develop an outreach and engagement outline in a call with COUNTY and UCCE that will include a schedule for holding several targeted and public meetings throughout the DRP developing period, designate potential topics, identify session leads, and estimate the required level of effort to maximize the outreach within the confines of available grant funding.

CDTF "Core" Members include:

1. County departments involved in or affected by water shortages – Executive Office, Water Agency, Transportation, Public Health, and Office of Emergency Services
2. Major Public Water Suppliers (PWS) – City of Ukiah, City of Fort Bragg, City of Willits, Russian River Flood Control and Conservation Improvement District, Mendocino City Community Services District (MCCSD)
3. Ukiah Valley Basin Groundwater Sustainability Agency (UVBGS); and,
4. Mendocino County Resources Conservation District (MCRCD).

COUNTY also seeks participation and membership from Tribes, smaller Public Water Systems, domestic well owners, and residents of state small water systems.

#### Subtask 3.1 – Convene CDTF Meetings

CONSULTANT will determine a meeting schedule (a minimum of four meetings during the contract) and topics for the CDTF necessary to develop the DRP and guide the DRP progress. CONSULTANT will prepare meeting materials for each CDTF meeting. CONSULTANT will collaborate with COUNTY, UCCE, and Core members to maximize their venues of communication for noticing of these meetings and encouraging public participation. Notices, agendas, and meeting materials will be made available in both English and Spanish. CONSULTANT will work with COUNTY and UCCE, as needed, to facilitate Spanish translation via online attendance.

Subtask 3.1 Deliverables:

- Records that invited membership are inclusive of those listed in SB 552 (e.g., a compiled document with email invitations, posted meeting notices, etc.).
- Meeting materials for four (4) CDTF meetings to discuss DRP development.
- Monthly Invoices
- Four (4) Quarterly Progress Reports, inclusive of the Final Report
- Project Completion Report

Subtask 3.1 Assumptions:

- CONSULTANT will attend the first three (3) CDTF meetings virtually and one (1) CDTF meeting in-person to hold the public workshop detailed under Subtask 2.2.
- Monthly invoicing, progress reports, final report, and post-project completion report will detail all work efforts under Task 3.
- CONSULTANT will submit the Project Completion to COUNTY within 30 calendar days of submittal of the Final DRP to DWR, but no later than 30 June 2025.
- Meetings will be held remotely unless otherwise specified.



### Subtask 3.2 – Outreach and Engagement

CONSULTANT will actively collaborate with stakeholders to jointly coordinate outreach to domestic well owners through their respective channels, improving the effectiveness of public noticing. CONSULTANT, in coordination with COUNTY and UCCE, will hold up to 8 meetings and interviews with selected groups of stakeholders identified based on CDTF participation and DRP development process. Additionally, CONSULTANT will participate in up to two public meetings and/or workshops for drought planning education led by UCCE staff. CONSULTANT will also prepare outreach materials related to DRP development to be disseminated by COUNTY through the COUNTY drought website, direct emails or mailers, and/or other channels. This subtask also includes documentation of these efforts.

#### Subtask 3.2 Deliverables:

- Documentation of past and planned CDTF meetings and conducted outreach and engagement.

#### Subtask 3.2 Assumptions:

- CONSULTANT will prepare for and conduct up to eight (8) virtual interviews with selected groups of stakeholders.
- CONSULTANT will virtually participate in two (2) public workshops led by UCCE.
- Monthly invoicing, progress reports, final report, and post-project completion report related to this task is undertaken and budgeted under subtask 3.1 for better streamlining.

[END OF DEFINITION OF SERVICES]

## **EXHIBIT B**

### **PAYMENT TERMS**

1. COUNTY shall pay CONSULTANT for all work required in the satisfactory completion of this Agreement in accordance with the labor rates identified in Table 1 below. Such labor rates shall be set for the life of the Agreement.
2. CONSULTANT's statement of charges shall be submitted to the COUNTY on a monthly basis.
3. Partial payments shall be made to the CONSULTANT by the COUNTY on a monthly basis in accordance with applicable charges for time-and-expense work that may be authorized by the COUNTY. In no event shall the amount paid to the CONSULTANT exceed the contract amount without prior written approval of the COUNTY.
4. Payments for work completed by CONSULTANT will be made by COUNTY within 30 days of receipt of CONSULTANT's invoice.
5. CONSULTANT agrees to adhere to the following invoicing procedure:
  - CONSULTANT will prepare periodic invoices providing a summary of CONSULTANT'S work, including covered dates of service, and copies of invoices from any sub-contractors.
  - All charges accumulated within the COUNTY's fiscal year, July 1 through June 30, not previously invoiced, shall be invoiced, and received by COUNTY, by the second Friday of July.

**Table 1 - Budget Estimate for Proposed Scope of Work**

TASKS	Consultant Labor					TOTAL (Rounded to Nearest \$100)
	OFC - Andree Lee/Anona Dutton	SNR - Amir Mani	G1 - Vanessa De Anda	G3 - Sarah Hodson	G4 - Jean Hirayama	
	\$359	\$309	\$251	\$217	\$194	(\$)
<b>Task 1 - Grant Administration</b>	-	-	-	-	-	0
<b>Subtotal</b>	0	0	0	0	0	\$ -
<b>Task 2 - Drought Resilience Plan Development</b>						
Subtask 2.1 – Develop Draft DRP	10	47	24	87	68	\$56,200
Subtask 2.2 – Submit Final DRP	2	8	4	10	4	\$7,200
<b>Subtotal</b>	12	55	28	97	72	\$63,400
<b>Task 3 - Drought Task Force Outreach and Engagement</b>						
Subtask 3.1 – Convene CDTF Meetings	2	31	6	26	0	\$17,500
Subtask 3.2 – Outreach and Engagement	2	22	0	28	0	\$13,600
<b>Subtotal</b>	4	53	6	54	0	\$31,100
<b>TOTAL:</b>	<b>16</b>	<b>108</b>	<b>34</b>	<b>151</b>	<b>72</b>	<b>\$ 94,500</b>

**Notes:**

- (a) "Other Direct Costs" includes direct expenses, as listed below, incurred in connection with the work and will be reimbursed at cost plus ten percent (10%) for items such as:
- a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
  - b. Consultants, soils engineers, surveyors, drillers, laboratories, and contractors. Note: Subconsultant cost markup has already been incorporated into subconsultant hourly rates.
  - c. Rented vehicles, local public transportation and taxis, travel and subsistence.
  - d. Special fees, insurance, permits, and licenses applicable to the work.
  - e. Outside computer processing, computation, and proprietary programs purchased for the work.

[END OF PAYMENT TERMS]

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONSULTANT's indemnity obligations under Paragraph 2 of this Agreement.

CONSULTANT shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence / \$2,000,000 annual aggregate.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONSULTANT shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

## EXHIBIT D

### MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please email  
[Auditorap@mendocinocounty.gov](mailto:Auditorap@mendocinocounty.gov)



## EXHIBIT E

### STATE FUNDING AGREEMENT PROVISIONS

1. Accounting: Consultant and subconsultants shall maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State of California (hereinafter referred to as "State") at any and all reasonable times.
2. Acknowledgement of Credit and Signage: Consultant shall include appropriate acknowledgement of credit to the State for its support when promoting the project or using any data and/or information developed under this Agreement. Acknowledgement shall include the Department of Water Resources color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the State Department of Water Resources."
3. Audits: All records of Consultant and its subconsultants related to this Agreement shall be preserved for examination and audit by State for at least three (3) years after termination or expiration of this Agreement.
4. Conflict of Interest: Employees of Consultant, working on behalf of the County under this Agreement, may be required by the State to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.
5. Drugfree Workplace Certification: By signing this Agreement, Consultant and its subconsultants hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by the Government Code section 8355.
  - b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:
    - i. The dangers of drug abuse in the workplace,
    - ii. Consultant's policy of maintaining a drug-free workplace,
    - iii. Any available counseling, rehabilitation, and employee assistance programs, and
    - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

- c. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Agreement:
    - i. Will receive a copy of Consultant's drug-free policy statement, and
    - ii. Will agree to abide by terms of Consultant's condition of employment, contract, or subcontract.
6. Indemnification: Consultant and its subconsultants shall name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
7. Inspection of Project by State: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts.
8. Labor Code Compliance: Consultant affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its subcontractors aware of this provision.
9. Nondiscrimination: During the performance of this Agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital/domestic partner status, gender identity, and denial of medical and family care leave or pregnancy disability leave. Consultant and its subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subconsultants shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12990.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Agreement by reference. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
10. Invoicing: Invoices submitted by Consultant shall include the following information:
  - Costs incurred for work performed under the contract during the period identified in the particular invoice.
  - Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.

- Invoices must be itemized based on the Tasks specified in the Agreement between Consultant and County. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
  - One set of sufficient evidence (i.e., receipts, copies of checks, timesheets) must be provided for all costs included in the invoice.
  - Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources for excluded employees. These rates may be found at:  
<http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.  
Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred.
11. Overhead and Indirect Costs: Overhead and indirect costs are not eligible for reimbursement under this Agreement. "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 funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include but are not limited to: central service costs; general administration of the Consultant; non-project-specific accounting and personnel services performed within the Consultant's organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition; conference fees; and, generic overhead or markup. This prohibition applies to the Consultant and any subcontract or sub-agreement for work that will be reimbursed pursuant to this Agreement.