

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: May 16, 2019

Item description/summary:

Agreement with Yuba County Health and Human Services for partial funding of the 2019 OPUD Pool Season. In prior years, Yuba County Health and Human Services has assisted in supplementing the District by providing funding for the Pool Season, specifically towards swimming lessons and other physical activities. With the exception of minor modifications regarding the statistical information our staff are required to gather on behalf of HHS, the agreement is the same as the one we signed last year, and should require little or no review by OPUD Legal Counsel. The agreement is attached. OPUD will offer services outlined in the agreement to include adult/senior swim and exercise sessions/classes.

Fiscal Analysis:

Funding is in the amount of \$17,000.

Employee Feedback

None

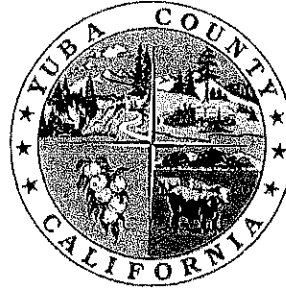
Sample Motion:

Move to approve the agreement between Yuba County Health & Human Services for partial OPUD 2019 pool season funding.

Prepared by:

John Tillotson, P.E., General Manager

The County of Yuba



HEALTH & HUMAN SERVICES DEPARTMENT

Jennifer Vasquez, Director

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901
Phone: (530) 749-6311 FAX: (530) 749-6281

May 6, 2019

John C. Tillotson, P.E.
General Manager
Olivehurst Public Utility District
1970 9th Avenue
Post Office Box 670
Olivehurst, CA 95961

RE: Agreement with County of Yuba

Dear Mr. Tillotson:

Enclosed please find two (2) original Agreements with Yuba County, on behalf of its Health and Human Services Department, for the term of June 1, 2019, through August 31, 2019 for swimming lessons and other physical activities.

Dr. Rice informed you already regarding the requested change from County Counsel to Attachment A. We added A.1.5.1 through A.1.5.5.

I would greatly appreciate it if you would sign (but not date) the Agreements where indicated on page 3.

The required insurance coverage we have on file will expire on 7/1/2019. Please provide us with the updated one when you receive your new insurance coverage.

Please return the signed original Agreements to: Doris Robertson, Administrative Analyst, Yuba County Health and Human Services Department, 5730 Packard Avenue, Suite 100, Marysville, CA 95901.

Upon receipt of the signed original documents I will submit the Agreements for execution. I will return a copy of the fully executed Agreement to you when signed.

If you have any questions, please contact Homer Rice, MPH, PhD and Health Administrator at (530)749-6385.

Sincerely,

Doris Robertson

Doris Robertson
Administrative Analyst

Enclosures

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for services ("Agreement") is made as of the Agreement date set forth below by and between the County of Yuba, a political subdivision of the State of California ("the COUNTY"), on behalf of its Health and Human Services Department, and Olivehurst Public Utility District ("CONTRACTOR").

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A," Provision A-1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A," Provisions A-2 through A-3.

2. TERM.

Commencement Date: June 1, 2019

Termination Date: August 31, 2019

The term of this Agreement shall become effective on June 1, 2019, and shall continue in force and effect for a period of three (3) month(s) unless sooner terminated in accordance with the terms of this Agreement.

CONTRACTOR understands and agrees that there is no representation, implication, or understanding that the services provided by CONTRACTOR pursuant to this Agreement will be purchased by COUNTY under a new agreement following expiration or termination of this Agreement, and CONTRACTOR waives all rights or claims to notice or hearing respecting any failure to continue purchase of all or any such services from CONTRACTOR.

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B." The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B."

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless an exception to this requirement is provided in Attachment "A," Provision A-4.

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C."

6. GENERAL PROVISIONS.

The General Provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said General Provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the General Provisions.

7. DESIGNATED REPRESENTATIVES.

The Health and Human Services Department Director is the representative of the COUNTY and will administer this Agreement for the COUNTY. The General Manager of Olivehurst Public Utility District is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A – Services
- Attachment B – Payment
- Attachment C – Additional Provisions
- Attachment D – General Provisions
- Attachment E – Insurance Provisions

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9. TERMINATION.

COUNTY and CONTRACTOR shall each have the right to terminate this Agreement upon ten (10) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on _____, 2019.

"COUNTY"

"CONTRACTOR"

COUNTY OF YUBA

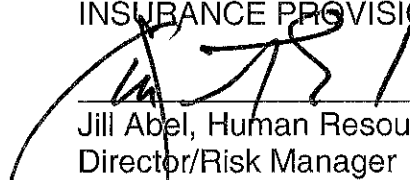
OLIVEHURST PUBLIC UTILITY DISTRICT

Timothy J. McCoy,
Purchasing Agent

John C. Tillotson, P.E.,
General Manager
Tax ID: 94-6003628
State ID: 69-0930354

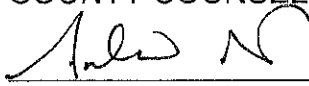


INSURANCE PROVISIONS APPROVED:



Jill Abel, Human Resource
Director/Risk Manager

**APPROVED AS TO FORM:
COUNTY COUNSEL**



Michael J. Ciccozzi,
County Counsel

RECOMMENDED FOR APPROVAL:

Jennifer Vasquez, Director
Yuba County Health and Human
Services Department

ATTACHMENT A

SERVICES

- A.1 SCOPE OF SERVICES AND DUTIES.** Contractor shall:
- A.1.1** Provide certified lifeguards and the pool facility in which to conduct swimming lessons;
 - A.1.2** Provide appropriate number of lifeguards to ensure safety of swimmers;
 - A.1.3** Provide four (4) two week sessions of swimming lessons to Yuba County children from 9:00 a.m. to 12:00 noon, Monday through Friday. Lessons to children five (5) years of age and younger will be provided free of charge;
 - A.1.4** Provide four (4) two week sessions of water exercise programs such as water aerobics, water polo, volleyball, etc., in the afternoons and on weekends, pending client interest;
 - A.1.5** Provide COUNTY with statistical data for the participants of the swim and exercise programs at the end of the season to gauge success of the respective programs, such data will include:
 - A.1.5.1** Numbers and age ranges for clients participating in open swim activities.
 - A.1.5.2** Number of swim passes used.
 - A.1.5.3** Number and age ranges for clients participating in swim lessons.
 - A.1.5.4** Number of clients over 6 participating in sponsored swim lessons.
 - A.1.5.5** Number of clients participating in sponsored adult exercise programs.
 - A.1.6** Allow COUNTY staff to set up educational displays at the pool area during swimming lessons provided under this Agreement; and
 - A.1.7** Allow COUNTY staff to hand out water safety equipment to participants.

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A.2 TIME SERVICES RENDERED.

The pool shall remain open during regularly scheduled pool hours from June 9, 2018, through August 11, 2019, except for closures due to health, safety and weather events. CONTRACTOR shall schedule the swimming lessons to be provided under this Agreement in such a manner as to commence during the stated time frame.

The parties anticipate that the regularly scheduled pool hours will be 12:00 pm – 5:00 pm. CONTRACTOR may change this schedule with COUNTY approval.

A.3 MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

A.4 FACILITIES FURNISHED BY COUNTY.

CONTRACTOR shall, at his/her sole cost and expense, furnish all facilities, equipment, and other materials, which may be required for furnishing services pursuant to this Agreement.

A.5 CONTRACTOR RIGHT TO CLOSE POOL IF NECESSARY.

CONTRACTOR will not be in violation of this Agreement or incur any liability to COUNTY if it closes the pool or is unable to perform any other obligation under this Agreement because of any required pool maintenance or repairs, any emergency or other unsafe conditions, or any other circumstance as described in Attachment "C," Provision C.7 Force Majeure.

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ATTACHMENT B

PAYMENT

COUNTY shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. COUNTY shall pay CONTRACTOR a contract fee not to exceed Seventeen Thousand Dollars (\$17,000.00) for services. In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed Seventeen Thousand Dollars (\$17,000.00) without a formal written amendment to this Agreement approved by the COUNTY.

B.1.1 CONTRACTOR shall submit a one-time invoice for payment of services. COUNTY shall remit payment for services rendered to CONTRACTOR within thirty (30) days from receipt of the invoice from CONTRACTOR.

B.2 FISCAL PROVISIONS. In the event that CONTRACTOR does not open the swimming pool to the public for the time frame of June 9, 2019 through August 11, 2019, CONTRACTOR agrees to reimburse COUNTY the entire amount paid immediately upon written notice by COUNTY.

B.3 TRAVEL COSTS. COUNTY shall not pay CONTRACTOR for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the COUNTY representative (Operative Provision 7) and then COUNTY shall pay CONTRACTOR per diem rates in effect on the date of invoice upon presentation of invoices.

B.4 AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended by both parties in advance of performing additional services.

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ATTACHMENT C

ADDITIONAL PROVISIONS

- C.1 FUNDING.** CONTRACTOR and COUNTY agree that this Agreement may, at the sole discretion of the COUNTY, be determined null, void, and not be enforceable if all or part of the federal or state funds secured by COUNTY for the purposes of this Agreement are not made available to COUNTY.
- C.2 HEALTH AND SAFETY STANDARDS.** CONTRACTOR agrees to adhere to all health and safety standards as set forth by the State of California and/or the County of Yuba, including standards set forth in the Injury and Illness Prevention Program.
- C.3 CHILD ABUSE/ADULT ABUSE.** CONTRACTOR warrants that CONTRACTOR is knowledgeable of the provisions of the Child Abuse and Neglect Reporting Act (Penal Code section 11165 et seq.) and the Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code section 15600 et seq.) requiring reporting of suspected abuse. CONTRACTOR agrees that CONTRACTOR and CONTRACTOR's employees will execute appropriate certifications relating to reporting requirements.
- C.4 DRUG FREE WORKPLACE.** CONTRACTOR warrants that it is knowledgeable of the provisions of Government Code section 8350 et seq. in matters relating to providing a drug-free work place. CONTRACTOR agrees that CONTRACTOR will execute appropriate certifications relating to Drug Free Workplace.
- C.5 INSPECTION.** CONTRACTOR's performance, place of business, and records pertaining to this Agreement are subject to monitoring, inspection, review, and audit by authorized representatives of COUNTY, the State of California, and the United States government.
- C.6 CIVIL RIGHTS.** CONTRACTOR warrants that it is aware and understands that the California Department of Social Services, in accordance with Division 21 of the Manual of Policies and Procedures, requires subcontractors that provide services for welfare programs comply with the nondiscrimination statutes as specified in Provision D.12 of this Agreement. CONTRACTOR is hereby informed that additional Civil Rights information and resources are available to CONTRACTOR on the California Department of Social Services, Civil Rights Bureau, website: <http://www.cdss.ca.gov/inforesources/Civil-Rights> and CONTRACTOR agrees to advise subcontractors of this website source of Civil Rights information.
- C.7 FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or

cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

- C.8 LAW, POLICY AND PROCEDURES, LICENSES, AND CERTIFICATES.** CONTRACTOR agrees to administer this Agreement in accordance with all applicable local, county, state, and federal laws, rules, and regulations applicable to their operations. CONTRACTOR shall further comply with all laws including, but not limited to, those relevant to wages and hours of employment, occupational safety, fire safety, health, sanitation standards and directives, guidelines, and manuals related to this Agreement. All issues shall be resolved using reasonable administrative practices and judgment. CONTRACTOR shall keep in effect all licenses, permits, notices, and certificates required by law and by this Agreement.
- C.9 RECORDS.** CONTRACTOR agrees to maintain and preserve, and to be subject to examination and audit for a period of three (3) years after termination of Agreement to the COUNTY's Auditor and/to any duly authorized fiscal agent of the COUNTY, any books, documents, papers, and records of CONTRACTOR which are relevant to this Agreement for the purpose of making an audit, or an examination, or for taking excerpts and transcriptions.
- C.10 HAZARDOUS MATERIALS.** CONTRACTOR shall identify all hazardous materials as required under the California Code of Regulations and the State Health Safety Code. CONTRACTOR shall provide Material Safety Data Sheets for all products that may contain hazardous materials to the COUNTY.
- C.11 ACCEPTANCE.** All work performed and completed under this Agreement is subject to the acceptance of the COUNTY or its authorized representatives. Failure by the CONTRACTOR to take corrective action within twenty-four (24) hours after personal or telephonic notice by the COUNTY's representative on items affecting essential use the facility, safety, or the preservation of property, and within ten (10) days following written notice on other deficiencies, will result in the COUNTY taking whatever corrective action it deems necessary. All costs resulting from such action by the COUNTY will be claimed against CONTRACTOR.
- C.12 CONFIDENTIALITY.** CONTRACTOR must maintain compliance with confidentiality regulations. At no time shall CONTRACTOR's employees, agents, or representatives in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any information that is confidential to the COUNTY. CONTRACTOR and its employees, agents, and representatives shall protect such information and treat it as strictly confidential.
- C.13 DEBARMENT.** COUNTY has verified that the CONTRACTOR does not hold any debarment or suspension filings as verified at www.sam.gov. If a new debarment

action arises during the term of this Agreement, COUNTY reserves the right to suspend or terminate this contract without penalty.

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ATTACHMENT D

GENERAL PROVISIONS

- D.1 INDEPENDENT CONTRACTOR STATUS.** At all times during the term of this Agreement, the following apply:
- D.1.1** All acts of CONTRACTOR shall be performed as an independent Contractor and not as an agent, officer or employee of COUNTY. It is understood by both CONTRACTOR and COUNTY that this Agreement is by and between two (2) independent parties and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.
 - D.1.2** CONTRACTOR shall have no claim against COUNTY for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.
 - D.1.3** CONTRACTOR is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medicare payments.
 - D.1.4** As an independent contractor, CONTRACTOR is not subject to the direction and control of COUNTY except as to the final result contracted for under this Agreement. COUNTY may not require CONTRACTOR to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.
 - D.1.5** CONTRACTOR may provide services to others during the same period service is provided to COUNTY under this Agreement.
 - D.1.6** If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the CONTRACTOR.
 - D.1.7** As an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- D.2 LICENSES, PERMITS, ETC.** CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed. Failure of the CONTRACTOR to comply with this provision shall authorize the COUNTY to immediately terminate this Agreement notwithstanding any other provision in this Agreement to the contrary.
- D.3 TIME.** CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
- D.4 INDEMNITY.** CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or sub-contractors.
- D.5 CONTRACTOR NOT AGENT.** Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.
- D.6 ASSIGNMENT PROHIBITED.** CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.
- D.7 PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

- D.8 STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONTRACTOR's profession.
- D.9 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest," as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.
- D.10 TAXES.** CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.
- D.11 TERMINATION.** Upon termination of this Agreement as otherwise provided herein, CONTRACTOR shall immediately cease rendering service upon the termination date and the following shall apply:
- D.11.1** CONTRACTOR shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- D.11.2** COUNTY shall have full ownership and control of all such writings or other communications delivered by CONTRACTOR pursuant to this Agreement.
- D.11.3** COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR

completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

CONTRACTOR may terminate its services under this Agreement upon thirty (30) days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY.

D.12 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.13 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this Agreement, above, CONTRACTOR agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data

shall become the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this Agreement.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.19 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.19.1 NUMBER AND GENDER. In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.19.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.20 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.21 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties

specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

- D.22 MODIFICATION.** No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.
- D.23 COUNTERPARTS.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- D.24 OTHER DOCUMENTS.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.
- D.25 PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- D.26 JURISDICTION.** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.
- D.27 CONTROLLING LAW.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.
- D.28 TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and each covenant and term a condition herein.
- D.29 AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.30 CONFLICT OF INTEREST. Neither a COUNTY employee whose position in COUNTY enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement.

CONTRACTOR may be subject to the disclosure requirements of the COUNTY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONTRACTOR's financial interest. The County Administrator shall determine in writing if CONTRACTOR has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.

D.31 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

Yuba County Health and Human
Services Department
Attn: Jennifer Vasquez, Director
5730 Packard Avenue, Suite 100
P.O. Box 2320
Marysville, CA 95901

With a copy to:

County Counsel
County of Yuba
915 8th Street, Suite 111
Marysville, CA 95901

If to "CONTRACTOR":

John C. Tillotson, P.E.
General Manager
Olivehurst Public Utility District
1970 9th Avenue
P.O. Box 670
Olivehurst, CA 95961

ATTACHMENT E

INSURANCE PROVISIONS

- E.1 INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, or employees.
- E.2 MINIMUM SCOPE AND LIMIT OF INSURANCE.** Coverage shall be at least as broad as:
- E.2.1 Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - E.2.2 Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 - E.2.3 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.
 - E.2.4 Professional Liability (Errors and Omissions) Insurance** as appropriate to CONTRACTOR's profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
- If the CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.
- E.3 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
- E.4 Additional Insured Status.** COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work

or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

- E.5 Primary Coverage.** For any claims related to this contract, **CONTRACTOR's insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
- E.6 Notice of Cancellation.** Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**
- E.7 Waiver of Subrogation.** CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.
- E.8 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- E.9 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.
- E.10 Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:
- E.10.1** The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - E.10.2** Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - E.10.3** If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

E.11 Verification of Coverage. CONTRACTOR shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

E.12 Subcontractors. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

E.13 Special Risks or Circumstances. COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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