

Agreement No. __ - ____

Subaward Agreement Between the County of Yolo and the Yolo County Flood Control and Water Conservation District Regarding Yolo County Temporary Tank and Water Hauling Project

This Agreement (the “Agreement”) is dated for reference purposes only as of June 6., 2023 and is entered into by and between the County of Yolo, a political subdivision of the State of California (the “County”), and Yolo County Flood Control and Water Conservation District (“District”), an independent special district created by the California Legislature. The County and the District are referenced in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. The County and its Office of Emergency Services secured a commitment from the California Department of Water Resources (“DWR”) from the Small Community Drought Relief Program to provide \$885,669 in funding for financing the Yolo County Water Hauling and Water System Improvement Project through a funding agreement signed between the County and DWR in February, 2023 (Grant Agreement No. 4600015007, hereafter “Funding Agreement”).

B. The County’s Board of Supervisors approved Resolution 23-19 on February 7, 2023, authorizing its Office of Emergency Services to take such actions as necessary related to the Funding Agreement. The Funding Agreement is attached hereto as Exhibit A and incorporated herein by reference.

C. The Yolo County Water Hauling and Water System Improvement Project involves several different projects to address dry well concerns in the County, as specified in Exhibit A (Work Plan) of the Funding Agreement, including “Task 1 – Project Administration, Task 2 – Tank Installation, Task 3 – Water Deliveries and Task 4 – Tank Removal,” which collectively provide for purchasing above-ground water tanks, installing them on private properties, and providing hauled water for Yolo County residents, whose wells have gone dry due to the ongoing drought.

Tasks 1 through 4 includes all work related to the temporary tank and water hauling project, as more particularly described in the scope of services, attached hereto as Exhibit B and incorporated herein by reference (hereafter referred to as “the Project”).

D. The Funding Agreement authorizes \$559,500 in grant funding for the Project (Tasks 1 through 4.)

NOW, THEREFORE, in consideration of the foregoing Recitals and in consideration of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. **Definitions.**

- A. “Costs” or “Project Costs” shall have the same meaning as the term “Eligible Project Cost” in Section 8 of the Funding Agreement.
- B. “Effective Date” means the date this Agreement is signed on behalf of the last of the Parties to do so.
- C. “Project Schedule” means completion of the Project no later than June 30, 2024 in accordance with the schedule the District provided in Exhibit B hereto.

II. **Recitals.** The foregoing Recitals set forth above are incorporated into the body of this Agreement as if set forth in full in this Section.

III. **Term; Termination.** The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2024, commensurate with the deadline to expend grant funds pursuant to the Funding Agreement, unless earlier terminated or extended written agreement of the Parties as provided herein.

- A. Termination for Cause. Subject to the right to cure under Paragraph 11 of the Funding Agreement, the County may terminate this Agreement and be relieved of any payment obligations should the District fail to perform the requirements of this Agreement and applicable portions of the Funding Agreement at the time and in the manner provided in these agreements and attachments thereto, including but not limited to reasons of default under Paragraph 11 of the Funding Agreement.
- B. Termination without Cause. The County may terminate this Agreement without cause on 30 days’ advance written notice if DWR terminates the Funding Agreement without cause as provided in Paragraph D.41 of the Funding Agreement. The District shall be reimbursed for all costs reasonably incurred up to the date of termination.

IV. **The District’s Obligations.**

Subject to reimbursement by the County pursuant to this Agreement, District shall provide the following services and discharge related responsibilities as described below:

- A. Temporary Tank and Water Hauling.
 - 1. The District will provide administration, invoicing and reporting. Project administration includes working with the Office of Emergency Services to oversee dry well inspections and deliveries, water deliveries and other activities related to the project. Invoicing includes, preparing and submitting invoices and appropriate backup documentation to the Office of Emergency Services describing the work completed and listing the costs incurred during the billing cycle. Reporting includes preparing and

submitting quarterly progress reports to the Office of Emergency Services in the manner required by the Funding Agreement for the tasks covered by this Agreement.

2. The District will purchase and install above-ground plastic water tanks ranging on size from 2,500 to 3,000 gallons, delivering them to households, contracting the installation work, installing tanks along with booster pumps if needed, and connecting the tanks to household water lines. Documentation for all tank installation activities, including tank size, date, and drop-off location, shall be recorded. This task also includes completing the Environmental Information Form and CEQA documents and obtaining other permits (if needed) and submitting them to the Office of Emergency Services.
 3. The District will contract and provide non-potable hauled water weekly or biweekly that will be arranged as needed to Yolo County residents with reported dry wells. Water deliveries shall not exceed 50 gallons per person per day. Water haulers must use trucks that comply with the California Air Resources Control Board Truck and Bus Regulations through a Certification of Operation. Water haulers may have some inactive trucks without a certification. These inactive trucks may be used to provide sufficient hauled water capability on a limited, temporary basis to respond to water outages during this drought. Documentation for all hauling activities, including volume transported, date and drop-off location will be recorded.
 4. The District will remove tanks from properties once the tanks have been disconnected from the existing domestic water systems at the end of the terms of this agreement.
 5. Competitive Bidding. In consultation and coordination with the County to the extent necessary, the District will complete a competitive bidding or other solicitation process required for public projects under California law and consistent with the County's Procurement Procedures for the completion of Tasks 1 through 4.
- B. The District, at its sole cost and expense, shall obtain and maintain throughout the entire term of this Agreement the insurance set forth in **Exhibit C** attached hereto.

The District shall not commence any work associated with the Project until it has submitted all the insurance required and such insurance has been approved by the County. All insurance shall be sent to the County's Procurement Division at procurement@yolocounty.org for review and approval.

- C. The District shall keep, and provide to County or its agents upon request, accurate financial records (including invoices) necessary to enable County to review the District expenditure of funds provided pursuant to this Agreement. These records

shall demonstrate the funding has been used for Project Costs relating to the Project. The District shall maintain all such records for in accordance with the requirements of Exhibit G to the Funding Agreement.

- D. Per California Government Code section 8546.7, expenditures pursuant to this Agreement are subject to the examination and audit of the California State Auditor. The District will provide notice of the completion of any required third party (e.g., state or federal) audits and provide access to such audits upon request.
 - E. Acknowledgment of Credit and Signage. The District shall include appropriate acknowledgement of credit to the State of California for its support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at the Project site(s) or at the District's headquarters and 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."
 - F. To the extent not expressly required in this Agreement, the District further acknowledges and agrees to comply with the requirements of the Funding Agreement, including but not limited to the requirements set forth in Exhibit D (Standard Conditions) of the Funding Agreement regarding the accounting and deposit of grant funds, compliance with the Americans with Disabilities Act, budget contingency, the California Environmental Quality Act (CEQA), the Child Support Compliance Act, conflict of interest prohibitions, and final inspection and certification of the Project by a registered civil engineer.
- V. **County Obligations; Reimbursement.** County agrees to provide up to \$559,500 in funding for the Project to the District on a reimbursement basis.
- A. The District shall submit invoices not more often than monthly and not less frequently than quarterly for allowable costs incurred for the Project. Upon the receipt of proper invoices, the County agrees to process payments in accordance with this Agreement and the Funding Agreement. All invoices shall be submitted using detailed invoices that include current and cumulative costs (including cost sharing) and that otherwise meet all requirements of the Funding Agreement
 - B. All reimbursement payments shall be considered provisional and subject to adjustment if necessary as a result of an adverse audit finding against the District or if DWR refuses to provide full or partial reimbursement to the County of costs incurred. The District also agrees that it must immediately return to the County any funds expended by the District under this Agreement that are later determined by DWR, the County, or representatives thereof not to have been allowable under applicable State or local federal laws and regulations.
- VI. **Indemnity.** The District hereby agrees to defend, indemnify and hold harmless the County and its respective officers, agents and employees from any and all claims, losses

or liabilities arising or alleged to arise in connection with the Project, including but not limited to its duty to implement the Project and its sole and exclusive responsibility to comply with all applicable laws relating to Project implementation (including compliance with the California Environmental Quality Act and Prevailing Wage Laws), The County shall not have any liability for claims relating to the Project or other matters within the responsibility of the District. In the event of any claim or litigation within the scope of this provision, the District shall retain Counsel reasonably acceptable to the County Counsel to defend the County. This provision shall survive the termination of this Agreement.

VII. **Nondiscrimination.** During the performance of this Agreement, the District and its contractors or subcontractors 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. The District and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The District and its contractors or subcontractors 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. The District and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

VIII. **Drug-Free Workplace Certification.** By signing this Agreement, the District, its contractors or subcontractors 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. The County'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 Funding Agreement:

- i. Will receive a copy of the County's drug-free policy statement, and
- ii. Will agree to abide by terms of the County's condition of employment, contract, or subcontract.

- IX. **Relationship of Parties.** The District and its contractors, subcontractors, and other vendors shall perform all services under this Agreement as independent contractors, and not as employees, officers or agents of the County.
- X. **Cooperation; Supremacy Clause.** The Parties agree to cooperate as needed to ensure timely completion of the Project. In the event of a conflict between the terms of this Agreement and any of the documents included as exhibits, including but not limited to the Funding Agreement, the parties shall meet and confer to reconcile the conflict in a manner that, to the greatest feasible extent, ensures full state reimbursement to the County of costs reimbursed to the District for performance of the Project.
- XI. **Choice of Law.** This Agreement will be governed and construed in accordance with the laws of the State of California.
- XII. **Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during the receiving Party's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to County:

Kristin Weivoda
Chief of Emergency Services
625 Court Street, Room 202
Woodland, CA 95695
Telephone: (530) 406-4933
Email: Kristin.Weivoda@yolocounty.org

If to the District:

Kristin Sicke
General Manager
34274 State Highway 16
Woodland, CA 95695
Telephone: (530) 662-0265 ext. 112
Email: ksicke@ycfcwcd.org

With courtesy copy to:

Philip J. Pogledich
County Counsel
625 Court Street, Room 201
Woodland, CA 95695
Telephone: 530.666.8172

With courtesy copy to:

- XIII. **Dispute Resolution.** If any dispute arises as to this Agreement, the Parties agree the dispute shall first be submitted to non-binding mediation in Yolo County. Any Party may serve a demand for mediation on another Party or Parties, which such demand shall be in writing. The Party which sends, and the Parties named in, the notice constitute the Dispute Parties, and each shall bear an equal share of mediator fees and any related costs. If any Dispute Party fails to participate in the mediation on the terms set forth in this section, it forfeits any right it may have to seek attorney's fees should it prevail in litigation of the dispute. Nothing contained herein shall prevent any party from (i) seeking and obtaining equitable relief, including, but not limited to, prohibitory or mandatory injunctions or specific performance, nor (ii) filing legal action hereunder.
- XIV. **Remedies; Attorney Fees.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. Venue for any litigation shall be in Yolo County, California and the Parties hereby consent to jurisdiction in Yolo County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- XV. **Assignment; No Third-Party Beneficiaries.** No Party may assign its interest in this Agreement or the rights under it to any third party, voluntarily or otherwise, without the prior written consent of the other two Parties. The Parties do not intend to benefit any third party by this Agreement and only the Parties may enforce it.
- XVI. **Licensure; Permits and Approvals.** The District certifies that it will hold all applicable licenses and/or certifications required for performance of its obligations under this Agreement. The District will obtain all permits and regulatory approvals necessary for the Project.
- XVII. **Waiver.** The waiver by any of the Parties of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by the Parties unless in writing signed by one authorized to bind the Party to be charged with the waiver.
- XVIII. **Severability.** If any term or provision of this Agreement (including all Exhibits hereto) or the application thereof to any person or circumstance shall, to any extent, be invalid or

unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

XIX. **Amendments; Counterparts.** This Agreement may be amended only by a writing executed on behalf of the Parties to be bound. This Agreement may be executed in counterparts, including electronic counterparts, each of which when taken together shall constitute a single agreement.


XX. **Entire Agreement.** All documents referenced as exhibits to this Agreement are hereby incorporated by this reference. In the event of any material discrepancy between the provisions of this Agreement and any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire agreement among Parties with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

District

County

By: _____
Kristin Sicke
General Manager
Yolo County Flood Control
and Water Conservation District

By: 
Gerardo Pinedo
County Administrator
Yolo County Administrator's Office

Date: _____

Date: 5.16.23

Approved as to Form:

Approved as to Form:

By: 4/24/2023

By: 
Philip J. Pogledich, County Counsel