

## **AGREEMENT BETWEEN THE TEHAMA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND DAVIDS ENGINEERING INC.**

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This agreement is entered into between the Tehama County Flood Control and Water Conservation District ("District"), and Davids Engineering Inc. ("Consultant") for the purpose of providing technical services related to improve stream gage infrastructure and data availability as part of the Stream Gage Improvement Program (CalSIP).

### **1. RESPONSIBILITIES OF CONSULTANT**

During the term of this agreement, Consultant shall perform all services and shall meet all requirements and deadlines set forth in Exhibit B – Agreement number 4600016349. The intent of the contract is to have Consultant complete the terms of the attached agreement including all exhibits and provisions. In the event of a conflict between the provisions of the main body of this Agreement and any attached Exhibit(s), the main body of the agreement shall take precedence.

### **2. RESPONSIBILITIES OF THE DISTRICT**

The District shall compensate Consultant for said services pursuant to Section 3 and 4 of this agreement and Exhibit C – Fee Schedule attached hereto and incorporated herein.

### **3. COMPENSATION**

Consultant shall be paid in accordance with the rates set forth in the Fee Schedule, attached hereto as Exhibit B, after satisfactorily completing the duties described in this Agreement. The Maximum Compensation payable under this Agreement shall not exceed \$492,000. Consultant shall not be entitled to payment or reimbursement for any tasks or services performed except as specified herein. Consultant shall have no claim against District for payment of any compensation or reimbursement, of any kind whatsoever, for any service provided by Consultant after the expiration or other termination of this Agreement. Consultant shall not be paid any amount in excess of the Maximum Compensation amount set forth above, and Consultant agrees that District

has no obligation, whatsoever, to compensate or reimburse Consultant for any expenses, direct or indirect costs, expenditures, or charges of any nature by Consultant that exceed the Maximum Compensation amount set forth above. Should Consultant receive any such payment it shall immediately notify District and shall immediately repay all such funds to District. This provision shall survive the expiration or other termination of this Agreement.

4. **BILLING AND PAYMENT**

On or before the 15<sup>th</sup> of each month, Consultant shall submit to District an itemized invoice for all services rendered during the preceding calendar month. District shall make payment of all undisputed amounts within 30 days of receipt of Consultant's invoice. District shall be obligated to pay only for services properly invoiced in accordance with this section.

5. **TERM OF AGREEMENT**

This agreement shall commence on the date of signing and shall terminate March 30, 2027 unless terminated in accordance with Section 6 below.

6. **TERMINATION OF AGREEMENT**

If Consultant fails to perform his/her duties to the satisfaction of the District, or if Consultant fails to fulfill in a timely and professional manner his/her obligations under this agreement, or if Consultant violates any of the terms or provisions of this agreement, then the District shall have the right to terminate this agreement effective immediately upon the District giving written notice thereof to the Consultant. Either party may terminate this agreement on 30 days' written notice. District shall pay Consultant for all work satisfactorily completed as of the date of notice. District may terminate this agreement immediately upon oral notice should funding cease or be materially decreased, or should the Tehama County Board of Supervisors fail to appropriate sufficient funds for this agreement in any fiscal year.

The District's right to terminate this agreement may be exercised by the Executive Director of the Tehama County Flood Control and Water Conservation District.



7. **ENTIRE AGREEMENT; MODIFICATION**

This agreement for the services specified herein supersedes all previous agreements for these services and constitutes the entire understanding between the parties hereto. Consultant shall be entitled to no other benefits other than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Consultant specifically acknowledges that in entering into and executing this agreement, Consultant relies solely upon the provisions contained in this agreement and no other oral or written representation.

8. **NONASSIGNMENT OF AGREEMENT**

Inasmuch as this agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate or sublet any interest herein without the prior written consent of the District.

9. **EMPLOYMENT STATUS**

Consultant shall, during the entire term of this agreement, be construed to be an independent Consultant and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this agreement; provided always, however, that the services to be provided by Consultant shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of the District is to ensure that the services shall be rendered and performed in a competent, efficient, and satisfactory manner. Consultant shall be fully responsible for payment of all taxes due to the State of California or the Federal government, which would be withheld from compensation of Consultant, if Consultant were a District employee. District shall not be liable for deductions for any amount for any purpose from Consultant's compensation. Consultant shall not be eligible for coverage under District's Workers Compensation Insurance Plan nor shall Consultant be eligible for any other District benefit.

10. **INDEMNIFICATION**

Consultant shall defend, hold harmless, and indemnify the District, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees of District), damages, judgments, or decrees by reason of any person's or persons' injury, including death, or property (including property of District) being damaged, arising out of Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, whether by negligence or otherwise. Consultant shall, at its own expense, defend any suit or action founded upon a claim of the foregoing. Consultant shall also defend and indemnify District against any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency against the District with respect to Consultant's "independent contractor" status that would establish a liability for failure to make social security or income tax withholding payments, or any other legally mandated payment.

11. **INSURANCE**

Consultant shall procure and maintain insurance pursuant to Exhibit A, "Insurance Requirements For Consultant," attached hereto and incorporated by reference.

12. **PREVAILING WAGE**

Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services hereunder are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with and to require its subconsultants to fully comply with such Prevailing Wage Laws, to the extent that such laws apply. If applicable, District will maintain the general prevailing rate of per diem wages and other information set forth in Labor Code section 1773 at its principal office, and will make this information available

to any interested party upon request. Consultant shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure of the Consultant or its subconsultants to comply with the Prevailing Wage Laws. Without limiting the generality of the foregoing, Consultant specifically acknowledges that District has not affirmatively represented to Consultant in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a “public work.” To the fullest extent permitted by law, Consultant hereby specifically waives and agrees not to assert, in any manner, any past, present, or future claim for indemnification under Labor Code section 1781.

Consultant acknowledges the requirements of Labor Code sections 1725.5 and 1771.1 which provide that no Consultant or subconsultant may be listed on a bid proposal or be awarded a contract for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5, with exceptions from this requirement specified under Labor Code sections 1725.5(f), 1771.1(a) and 1771.1(n).

If the services are being performed as part of the applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, Consultant acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

### 13. **NON-DISCRIMINATION**

Consultant shall not employ discriminatory practices in the treatment of persons in relation to the circumstances provided for herein, including assignment of accommodations, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

### 14. **GREEN PROCUREMENT POLICY**

Through Tehama County Resolution No. 2021-140, the County adopted the Recovered Organic Waste Product Procurement Policy (available upon request) to (1) protect and

conserve natural resources, water and energy; (2) minimize the jurisdiction's contribution to pollution and solid waste disposal; (3) comply with state requirements as contained in 14 CCR Division 7, Chapter 12, Article 12 (SB 1383); (4) support recycling and waste reduction; and (5) promote the purchase of products made with recycled materials, in compliance with the California Integrated Waste Management Act of 1989 (AB 939) and SB1382 when product fitness and quality are equal and they are available at the same or lesser cost of non-recycled products. Consultant shall adhere to this policy as required therein and is otherwise encouraged to conform to this policy.

15. **COMPLIANCE WITH LAWS AND REGULATIONS**

All services to be performed by Consultant under to this Agreement shall be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Any change in status, licensure, or ability to perform activities, as set forth herein, must be reported to the District immediately.

16. **LAW AND VENUE**

This agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California (excepting any conflict of laws provisions which would serve to defeat application of California substantive law). Venue for any action arising from this agreement shall be in Tehama County, California.

17. **AUTHORITY**

Each party executing this Agreement and each person executing this Agreement in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purposing to act.

18. **NOTICES**

Any notice required to be given pursuant to the terms and provisions of this agreement shall be in writing and shall be sent first class mail to the following addresses:

If to District:                   **Tehama County Flood Control and Water  
Conservation District**  
1509 Schwab Street  
Red Bluff, CA 96080

If to Consultant:               **DAVIDS ENGINEERING INC.**  
1095 Nelson Street, Suite 130  
Chico CA, 95928

Notice shall be deemed to be effective two days after mailing.

19.    **NON-EXCLUSIVE AGREEMENT:**

Consultant understands that this is not an exclusive agreement, and that District shall have the right to negotiate with and enter into agreements with others providing the same or similar services to those provided by Consultant, or to perform such services with District's own forces, as District desires.

20.    **RESOLUTION OF AMBIGUITIES:**

If an ambiguity exists in this Agreement, or in a specific provision hereof, neither the Agreement nor the provision shall be construed against the party who drafted the Agreement or provision.

21.    **NO THIRD PARTY BENEFICIARIES:**

Neither party intends that any person shall have a cause of action against either of them as a third party beneficiary under this Agreement. The parties expressly acknowledge that is not their intent to create any rights or obligations in any third person or entity under this Agreement. The parties agree that this Agreement does not create, by implication or otherwise, any specific, direct or indirect obligation, duty, promise, benefit and/or special right to any person, other than the parties hereto, their successors and permitted assigns, and legal or equitable rights, remedy, or claim under or in respect to this Agreement or provisions herein.



22. **HAZARDOUS MATERIALS**

Consultant shall provide to District all Safety Data Sheets covering all Hazardous Materials to be furnished, used, applied, or stored by Consultant, or any of its Subconsultants, in connection with the services on District property. Consultant shall provide District with copies of any such Safety Data Sheets prior to entry to District property or with a document certifying that no Hazardous Materials will be brought onto District property by Consultant, or any of its Subconsultants, during the performance of the services. District shall provide Safety Data Sheets for any Hazardous Materials that Consultant may be exposed to while on District property.

23. **HARASSMENT**

Consultant agrees to make itself aware of and comply with the County's Harassment Policy, TCPR §8102: Harassment, which is available upon request. The District will not tolerate or condone harassment, discrimination, retaliation, or any other abusive behavior. Violations of this policy may cause termination of this agreement.

24. **STANDARDS OF THE PROFESSION**

Consultant agrees to perform its duties and responsibilities pursuant to the terms and conditions of this agreement in accordance with the standards of the profession for which Consultant has been properly licensed to practice.

25. **LICENSING OR ACCREDITATION**

Where applicable the Consultant shall maintain the appropriate license or accreditation through the life of this contract.

26. **OWNERSHIP OF DOCUMENTS**

All documents, notes, reports, electronic storage media, plans, or any other materials produced by Consultant during the term of this agreement for any purpose related to the agreement shall become the property of the District. Consultant shall deliver, upon full payment by the District for services rendered hereunder, all such materials to District.

Consultant understands and agrees that the District owns all right, title, and interest in any and all work or work product created or generated by Consultant in the scope of Consultant's duties hereunder, including but not limited to, written materials, drawings, digital media, and data collected, that District owns all copyright, trademark, trade secrets and other proprietary rights in said works or work product. Consultant agrees that all copyrightable aspects of any and all such work or work products shall be considered "work made for hire" within the meaning of the Copyright Act of 1976, as amended. Consultant hereby irrevocably grants to District exclusively all right, title, and interest in and said works or work products, or derivative work, and to all copyright or other proprietary rights therein that it may obtain without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of the Consultant. Consultant also acknowledges that the Parties do not intend Consultant to be a joint author of the work or work products, any derivative work, or work product within the meaning of the Copyright Act of 1976, as amended, and that in no event shall Consultant be deemed a joint author thereof. In no event shall Consultant withhold such works, work product, or derivative works, or deny access thereto by, the District in connection with any dispute between the Parties.

**27. AVAILABILITY OF FUNDS**

All funding under this agreement is subject to the availability of Federal, State, and District funds. If at any time during the period covered by this agreement the funding from any source is discontinued or decreased, this agreement shall no longer be binding upon the District or Consultant, effective with the date funding is discontinued or decreased.

**28. COUNTERPARTS, ELECTRONIC SIGNATURES – BINDING**

This agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civil Code §§ 1633.1 to 1633.17), for executing this agreement. The Parties further

agree that the electronic signatures of the Parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

**IN WITNESS WHEREOF**, District and Consultant have executed this agreement on the day and year set forth below.

**Tehama County Flood Control and Water  
Conservation District**

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

\_\_\_\_\_  
Justin Jenson, Deputy Director

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

\_\_\_\_\_  
Purchasing Agent

**Luhdorff & Scalmanini, Consulting  
Engineers**

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

\_\_\_\_\_

\_\_\_\_\_  
Vendor Number

## Exhibit A

### **INSURANCE REQUIREMENTS FOR CONSULTANT**

Consultant 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 described herein and the results of that work by Consultant, his/her agents, representatives, employees or subconsultants. At a minimum, Consultant shall maintain the insurance coverage, limits of coverage and other insurance requirements as described below.

Commercial General Liability (including operations, products and completed operations)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit, or the general aggregate limit shall apply separately to this project/location.

Automobile Liability

Automobile liability insurance is required with minimum limits of \$1,000,000 per accident for bodily injury and property damage, including owned and non-owned and hired automobile coverage, as applicable to the scope of services defined under this agreement.

Workers' Compensation

If Consultant has employees, he/she shall obtain and maintain continuously Workers' Compensation insurance to cover Consultant and Consultant's employees and volunteers, as required by the State of California, as well as Employer's Liability insurance in the minimum amount of \$1,000,000 per accident for bodily injury or disease.

Professional Liability (Consultant/Professional services standard agreement only)

If Consultant is a state-licensed architect, engineer, Consultant, counselor, attorney, accountant, medical provider, and/or other professional licensed by the State of California to practice a profession, Consultant shall provide and maintain in full force and effect while providing services pursuant to this contract a professional liability policy (also known as Errors and Omissions or Malpractice liability insurance) with single limits of liability not less than \$1,000,000 per claim and \$2,000,000 aggregate on a claims made basis. However, if coverage is written on a claims made basis, the policy shall be endorsed to provide coverage for at least three years from termination of agreement.

If Consultant maintains higher limits than the minimums shown above, District shall be entitled to coverage for the higher limits maintained by Consultant.

All such insurance coverage, except professional liability insurance, shall be provided on an "occurrence" basis, rather than a "claims made" basis.

#### Endorsements: Additional Insureds

The Commercial General Liability and Automobile Liability policies shall include, or be endorsed to include "Tehama District, its elected officials, officers, employees and volunteers" as an additional insured.

The certificate holder shall be "District of Tehama."

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions of \$25,000 or more must be declared to, and approved by, the District. The deductible and/or self-insured retentions will not limit or apply to Consultant's liability to District and will be the sole responsibility of Consultant.

#### Primary Insurance Coverage

For any claims related to this project, Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any

insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

#### Coverage Cancellation

Each insurance policy required herein shall be endorsed to state that "coverage shall not be reduced or canceled without 30 days' prior written notice certain to the District."

#### Acceptability of Insurers

Consultant's insurance shall be placed with an insurance carrier holding a current A.M. Best & Company's rating of not less than A:VII unless otherwise acceptable to the District. The District reserves the right to require rating verification. Consultant shall ensure that the insurance carrier shall be authorized to transact business in the State of California.

#### Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance that meets all the requirements stated herein.

#### Material Breach

If for any reason, Consultant fails to maintain insurance coverage or to provide evidence of renewal, the same shall be deemed a material breach of contract. District, in its sole option, may terminate the contract and obtain damages from Consultant resulting from breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Consultant, District may deduct from sums due to Consultant any premium costs advanced by District for such insurance.

#### Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

#### Verification of Coverage

Consultant shall furnish District with original certificates and endorsements effecting coverage required herein. All certificates and endorsements shall be received and

approved by the District prior to District signing the agreement and before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.