

**AGREEMENT NO. \_\_\_ - \_\_\_**

(Agreement for Aquatic Programming Services at Tuli Mem Park)

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **County of Yolo**, a political subdivision of the State of California (“County”) and **The YMCA of Superior California**, a California nonprofit public benefit corporation (“Contractor”).

**WITNESSETH**

**WHEREAS**, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

**WHEREAS**, the County is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert and competent to perform special services such as aquatic programming services; and

**WHEREAS**, the County desires to obtain aquatic center programming services; and

**WHEREAS**, the County has entered into a contract with the State of California Department of Parks & Recreation (State Agreement No C6905014, ‘State contract’), a copy of which has previously been provided to Contractor, which provided certain initial funding for construction of Tuli Mem Park and requires user fees charged at Tuli Mem Park to be in compliance with the terms of the State Contract, ; and

**WHEREAS**, the State contract requires that all subcontracts be governed by and construed in accordance with all applicable laws, regulations, and contractual obligations set forth in the State contract, and that all County subcontractors (including but not limited to Contractor) comply with all terms and conditions of the State contract; and

**WHEREAS**, the County entered into a Memorandum of Understanding and Joint Use Agreement with the Esparto Unified School District (“EUSD MOU”) on or about April 1, 2017 for County to construct the Tuli Mem Park recreation center facilities on land owned by EUSD MOU; and

**WHEREAS**, the EUSD MOU requires certain coordination with the Esparto Unified School District’s use of the Tuli Mem Park grounds and facilities, Contractor has been made aware of the District’s right to use Tuli Mem Park facilities, has been provided a copy of the EUSD MOU, and Contractor agrees to coordinate aquatic center programming based on the requirements of the EUSD MOU; and

**WHEREAS**, the Contractor submitted a proposal to provide aquatic programming services at Tuli Mem Park, an excerpt of which is attached as Exhibit A; and

**WHEREAS**, Contractor has represented and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that

are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County; and

**WHEREAS**, Contractor represents and warrants that neither Contractor, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

**WHEREAS**, Contractor further represents and warrants that no conditions or events now exist which give rise to Contractor or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

**WHEREAS**, Contractor understands that the County is relying upon these representations in entering into this Agreement.

**NOW, THEREFORE**, the County and the Contractor agree as follows:

**I. BASIC SERVICES**

**A.** Contractor shall provide the services set forth below for the Esparto Community Pool at Tuli Mem Park, in accordance with Exhibit A and subject to the requirements of the EUSD MOU, in a manner satisfactory to the Director of General Services or his/her written designee ("Director"). Specifically, Contractor shall serve as the program operator for the pool during the months of May through September by providing a variety of services. The pool shall operate six days per week from Tuesday through Sunday (Director may approve adjustments to this schedule in writing, provided that the adjustments are in accordance with the State contract). Contractor shall provide comprehensive pool staffing, including but not limited to pool safety and lifeguard coverage, which staffing shall be performed in accordance with all applicable California laws for pool safety and lifeguard coverage. These services include the following tasks:

**Task 1: Swim Lessons:** Contractor shall provide group and semi-private swim lessons for children in accordance with the national YMCA swim curriculum. Contractor shall provide twenty-five to forty classes during two four-week summer sessions based on the community survey conducted for this project. Classes shall be held on both mornings and early evenings.

**Task 2: Lap Swimming:** Contractor shall provide specific hours to be available for lap swimmers on four days per week.

**Task 3: Aquatic Exercise:** Contractor shall provide ten to eleven classes per week.

**Task 4: Recreational Swimming:** Contractor shall provide at least 21 hours of

recreational swimming across six days per week of recreational swimming.

**Task 5: Pool Rentals:** Contractor shall facilitate, arrange, and monitor rentals to organizations and individuals who choose to rent the pool for private functions after normal operating hours. Rentals will typically be available on Thursday, Friday, and Saturday evenings. Rates charged and rental offering is subject to Director's approval and the conditions set forth in the State Contract.<sup>1</sup> Contractor shall hold renters responsible for all liabilities incurred in connection with the rental and shall require them to provide evidence of sufficient insurance coverage prior to property rental.

Additionally, pool staffing shall include at least 1 lifeguard per pool during pool operation. Contractor shall accommodate County's directive to modify the programming schedule in accordance with the EUSD MOU property use coordination needs.

**B.** Contractor shall charge users the following fees, provided they are charged in accordance with the State contract. Director may approve in writing adjustments to charged fees, provided the fees charged remain consistent with the requirements of the State contract.

<u>Fees:</u>	
Swim Lessons Participant Fee	\$60.00
Private Lessons Participant Fee	\$110.00
Rentals Fee	\$250.00
Open Swim Youth Fee	\$2.00
Open Swim Adults Fee	\$4.00
Water Ex Fee	\$5.00
Lap Swim Fee	\$5.00
Family Pass Fee	\$180.00
Adult Pass Fee	\$130.00
Youth Pass Fee	\$85.00
10 Punch Pass Fee	\$40.00

**C.** Contractor shall provide all equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.

**D.** The complete contract shall include the following exhibits attached hereto and incorporated herein:

Exhibit A

Proposal Excerpt

In the event of any conflict between any of the provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from Contractor for the County's benefit shall prevail.

**E.** Contractor shall comply with all applicable provisions of the State contract, and

those provisions are incorporated herein as if fully set forth in this place.

F. Contractor shall also comply with the terms and conditions set forth in the County's Accounting Handbook for CBOs and Contract Administration Manual for CBOs (copies of which have previously been provided to Contractor).

G. The Director may approve in writing, modifications of the term, scheduling, billing rates, and allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Paragraph III of this Agreement and the modifications are in accordance with the State Contract.

## II. ADDITIONAL SERVICES

Intentionally left blank.

## III. BUDGET

A. **Budget.** The total amount of compensation to be paid to Contractor for the services required by this Agreement shall not exceed Fifty-One Thousand, Five Hundred Thirty-Seven dollars (\$51,537), in accordance with the budget below. In the determination of hourly fees, time allotments shall be calculated to one-tenth of an hour.

### Position:

Pool Manager .....	\$11,297.72
Head Lifeguard .....	\$6,872.32
Lifeguard .....	\$11,977.00
Swim Instructor .....	\$4,336.50
Water Ex Instructor .....	\$2,081.52
Cashier .....	\$407.00

### Reimbursable Expenses:

Maintenance Supply .....	\$0
Program Supply .....	\$400
Safety Equipment .....	\$3,500
Program Equipment .....	\$125
Promotion .....	\$1,000
Mileage .....	\$200
Staff Food .....	\$600
Training .....	\$0
Staff Uniforms .....	\$250
Y-USA Dues .....	\$387
Reserve .....	\$0
Metro Fees/Liability Insurance .....	\$2,647
Other: Phone/Internet .....	\$0

**B.** For the services described in Paragraph I above, and subject to the condition that the services have been completed in a manner satisfactory to the Director or his/her designee, County will compensate Contractor at up to the following rates, subject to the maximum amounts provided in the budget above:

Pool Manager	\$17.99 per hour
Head Lifeguard	\$15.34 per hour
Lifeguard	\$14.75 per hour
Swim Instructor	\$14.46 per hour
Water Ex Instructor	\$16.52 per hour
Cashier	\$14.16 per hour

In accordance with the budget above, County will reimburse Contractor for actual direct expenses incurred by Contractor during the performance of the tasks described in this Agreement.

Contractor shall apply the user fees collected during the performance of this Agreement to the compensation payable to Contractor by County. Contractor shall report the fees collected during a calendar month on the corresponding invoice to County for services and reimbursable expenses in that month. If the total amount in fees collected exceeds the amount due by County for any calendar month, the invoice will reflect a credit balance, which credit amount shall be rolled over to the next month and applied against the next month's invoice. If the fees collected do not cover the full amount invoiced, County will pay the shortage. Within 30 days of the expiration or earlier termination of this Agreement, Contractor will remit any credit balance to County. Any invoiced amounts not approved by the Director shall be included in the credit balance.

**C.** The compensation set forth above includes reimbursement for all expenses incurred by Contractor in the performance of this Agreement.

#### **IV. METHOD OF PAYMENT**

**A.** Contractor shall monthly submit an invoice detailing the services provided, the person(s) providing the service, the amount of time spent by each person providing the service calculated to the one-tenth of an hour, the rate per hour charged for each person providing service, an itemization of the actual expenses for which reimbursement is requested and a detailed report of the fees collected. If requested by the County, Contractor shall provide any further documentation to verify the compensation and reimbursement sought by Contractor.

**B.** Within fifteen (15) calendar days of the receipt of Contractor's detailed invoice, the Director shall either authorize payment or advise Contractor in writing of any concerns that the Director has with the invoice and any need for further documentation.

**C.** Within thirty (30) calendar days of the Director's authorization for payment of an

invoice, the County Auditor-Controller shall either issue the payment, if any, or advise Contractor in writing of any concerns that the County Auditor-Controller has with the request and any need for further documentation.

## **V. REPORTS**

**A.** Contractor shall provide such reports as are required elsewhere by this Agreement, and such additional information and reports relating to the services otherwise required by this Agreement as are reasonably requested by the Director, as the times and in the manner specified by this Agreement, or by the Director if not so specified. Any other provision of this Agreement notwithstanding, should Contractor fail to provide any report required by this Agreement in a timely manner and as otherwise set forth in this Agreement, County may withhold any payments otherwise due Contractor pursuant to this Agreement, and any other agreement between Contractor and County, until such report is properly submitted as determined by the Director.

**B.** County shall provide Contractor with all information pertinent to the services required of Contractor by this Agreement which is requested by Contractor and which is within County's possession. No charge will be made for these materials.

## **VI. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the County, and Contractor agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. Contractor assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge will be made for any of the foregoing.

## **VII. RECORDS; ACCESS, RETENTION**

Contractor shall retain and make available for review by the County and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all pending audits and proceedings are completed, whichever is later. Contractor shall make such records available for inspection and copying by the County and its designees at any reasonable time. At least thirty (30) calendar days prior to any destruction of these records following the four years, Contractor shall notify the Director. Upon such notification, the Director shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

## VIII. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Contractor. The decision of the County Administrative Officer shall be final for purposes of exhaustion of administrative remedies.

## IX. TERM AND TERMINATION

A. The term of this Agreement shall be from **April 1, 2019** through **December 31, 2019** unless sooner terminated as hereinafter provided.

B. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon Contractor default, the County reserves the right to purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

C. This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Contractor pursuant to this Agreement. If the County's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor, in which event the County shall have no obligation to pay the Contractor any further funds or provide other consideration and the Contractor shall have no obligation to provide any further services pursuant this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay Contractor in accordance with this Agreement for all services performed to the satisfaction of the Director before such termination and for which funds have appropriated as required by law.

D. This Agreement may be terminated for any reason or no reason by either party at any time during its term, by giving 45 days' written notice to the other party.

E. If Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor.

**F.** Upon termination of this Agreement or suspension of work by either County or Contractor, Contractor shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Contractor shall become the sole and exclusive property of Yolo County and Contractor shall be entitled to receive compensation for any work completed on such documents and other materials determined by the Director to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Contractor such as sketches, copy, dummies and all preparatory work for which Contractor is not compensated by the County shall remain the sole and exclusive property of the Contractor.

**G.** During and following the term of this Agreement, Contractor shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Contractor was compensated by the County without the express written permission of the Director.

#### **X. APPLICABLE LAWS**

**A.** In the performance of the services required by this Agreement, Contractor shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.

**B.** This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. Contractor waives any removal rights it might have under State or Federal law.

#### **XI. NON-DISCRIMINATION IN SERVICES AND BENEFITS**

Contractor certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or



other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

## **XII. CONTRACTOR'S RESPONSIBILITIES**

A. Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

B. With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or any subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

C. Any subcontractors must agree to be bound to the Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under this Agreement. All subcontractors must further agree to include the same requirements and provisions of this agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the Sub-subcontractor's work.

In providing any defense under this section, Contractor shall use counsel reasonably acceptable to the County Counsel.

## **XIII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:
  - a. **Comprehensive General Liability** – \$1,000,000/occurrence and \$2,000,000/aggregate
  - b. **Automobile Liability** – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) (include coverage for Hired and Non-

owned vehicles)

c. **Professional Liability/Malpractice/Errors and Omissions** – \$1,000,000/occurrence and \$2,000,000/aggregate (If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, the contractor must provide this insurance. If not, then this requirement automatically does not apply.)

d. **Workers' Compensation** – Statutory Limits/**Employers' Liability** - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)

2. The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages. [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

a. The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.

b. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.

8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

10. The Contractor shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.

**B.** Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

**C.** During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any

other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- D. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor must agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Agreement. All subcontractors must further agree to include these same provisions with any sub-subcontractor. Contractor shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Contractor will provide proof of compliance to the County of Yolo.
- E. Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the expiration of this Agreement. In the event contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

#### **XIV. WORKERS' COMPENSATION**

Contractor shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County in a form substantially as set forth below.

##### **WORKERS' COMPENSATION CERTIFICATE**

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor, both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

## **XV. NOTICE**

**A.** All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Contractor at their respective addresses as follows:

Contractor: The YMCA of Superior California  
Attn: Chief Executive Officer  
1926 V Street  
Sacramento, CA 95818  
Tel: 916-452-9622

County: County of Yolo  
Attn: Director of General Services  
120 West Main Street, Suite D  
Woodland, CA 95695  
Tel: 530-406-4880

**B.** Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

**D.** All notices shall be effective upon receipt and shall be deemed received through delivery if personally served, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

## **XVI. CONFLICT OF INTEREST**

**A.** Contractor shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

**B.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.

**C.** Contractor agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Contractor will immediately

inform the County and provide all information needed for resolution of the question.

## **XVII. COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **XVIII. AUDITS**

**A.** Contractor shall be subject to examination and audit by the State or the County, or both, throughout the term of this Agreement and thereafter for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. Contractor agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this Agreement, and agrees to provide County and/or State with any and all relevant information requested.

**B.** Any and all books, records, and facilities maintained by Contractor related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such records may be interviewed. All expenditures of State and federal funds furnished to Contractor pursuant to this Agreement are subject to audit by County, State and/or Federal representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Paragraph C below.

**C.** Should Contractor expend \$500,000 or more in Federal funds during any fiscal year, Contractor shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the Contractor's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision), and provided in a form satisfactory to the Director.

Contractor shall provide this Audit Report no later than July 31 of each year. In

the event that this Agreement expires or is terminated on a date other than December 31, Contractor shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. Contractor shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period, and are made available to the State and/or County upon request.

**D.** Should an Audit Report or any State or County audit determine that Contractor has misspent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor in the amount of such audit findings and withhold any payment otherwise due under this Agreement until Contractor repays such amount. Contractor shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should Contractor fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from Contractor against any amounts that would otherwise be due from the County to Contractor pursuant to this Agreement or any other agreement or source.

**E.** Any failure or refusal by Contractor to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

## **XIX. ASSIGNMENT AND SUBCONTRACTS**

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the Director. If any portion of the services required of Contractor are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the County for all work undertaken by subcontractors.

## **XX. STATUS OF CONTRACTOR**

**A.** It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

**B.** It is further understood and agreed by all the parties hereto that neither Contractor

nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that Contractor must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.

#### **XXI. AMENDMENT**

This Agreement may be amended only by written instrument signed by the County and Contractor; provided, however, that the County may unilaterally amend this Agreement, in whole or in part, to reflect any changes to the State Contract

#### **XXII. WAIVER**

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

#### **XXIII. AUTHORIZED REPRESENTATIVE**

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

#### **XXIV. PUBLIC RECORDS ACT**

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

#### **XXV. ADDITIONAL PROVISIONS**

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.



**B.** Except where specifically stated otherwise in this document, the promises in this document benefit the County and Contractor only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any “legitimate claim of entitlement” with the meaning and rights that phrase has been given by case law.

**C.**

1. By signing this agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to, 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
2. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - b. Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2(b) herein;
  - d. Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
  - e. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and
  - f. Will included a clause entitled, “Debarment and Suspension Certification” that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.


3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the County program funding this Agreement, and the County shall have the option of terminating this Agreement immediately or at any time thereafter, upon giving Contractor written notice of such termination, if the explanation is not found satisfactory by the County in its sole discretion.
4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
5. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement at any time upon giving Contractor written notice of such termination.

**XXVI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the County and Contractor and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first set forth above.

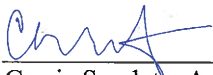
**CONTRACTOR**

By:   
 Thomas J Lowden  
 President & Chief Executive Officer

**COUNTY OF YOLO**

By: \_\_\_\_\_  
 Ryan Pistochini  
 Manager of Procurement

Approved as to Form:  
 Philip J. Pogledich

By:   
 Carrie Scarlata, Assistant County Counsel