

CONTRACT FOR CONSULTANT SERVICES

THIS CONTRACT is made on, \_\_\_\_\_ 2017, by and between the RED BLUFF JOINT UNION HIGH SCHOOL DISTRICT, a political subdivision of the State of California (“District”), and \_\_\_\_\_ a California corporation (“Consultant”).

WITNESSETH:

WHEREAS, the District seeks to obtain the services of an [engineering] consultant in regard to [the utilization of District real property]; and

WHEREAS, in response to the District’s May \_\_, 2017 Request for Proposal (“RFP”) the Consultant has presented a proposal for such services to the District dated \_\_\_\_\_, 2017, which is incorporated herein by reference and attached hereto as Exhibit A (the “Proposal”).

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

a. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in the Proposal. This Contract and the Proposal referred to herein shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions.

b. Consultant enters into this Contract as an independent contractor and not as an employee of the District. The Consultant shall have no power or authority by this Contract to bind the District in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the District. The District shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

c. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. TERM OF CONTRACT

a. The services of Consultant are to commence upon the day of execution of this Contract as set forth above.

b. Consultant's failure to complete work in accordance with any Schedule of Performance which may subsequently be agreed to between Consultant and the District may result in delayed compensation as described in Section 3.

c. The District may, by written instrument signed by the Parties, extend the duration of this Contract for an additional period of time beyond that set forth in any Schedule of Performance. Otherwise this Contract shall terminate on the first yearly anniversary date of the date of execution as set forth above.

### 3. COMPENSATION

a. The Consultant shall be paid monthly for the actual fees, costs and expenses as shown on the attached Schedule of Fees, but in no event shall total compensation exceed \$\_\_\_\_\_.00, without District's prior written approval. No work shall be performed by Consultant in excess of the not-to-exceed compensation amount without the prior written approval of the District. The compensation amount includes a budget of \$\_\_\_\_\_.00 for expenses to be reimbursed from District to Consultant.

b. Said amount shall be paid upon submittal and approval of a monthly billing showing completion of the tasks that month. Consultant shall furnish District with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billings. If Consultant's performance is not in conformity with any Schedule of Performance hereafter agreed to by the parties hereto, payments may be delayed or denied, unless the Consultant's failure to perform in conformity with the Schedule of Performance is a documented result of the District's failure to conform with the Schedule of Performance, or if the Schedule of Performance is extended pursuant to Section 6.

c. If the work is halted at the request of the District, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 4.

### 4. TERMINATION

a. This Contract may be terminated by either party, provided that the other party is given not less than 30 calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

b. The District may temporarily suspend this Contract, at no additional cost to District, provided that the Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If District gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Contract.

c. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to the District for damages sustained by the District by virtue of any breach of this Contract by Consultant, and the District may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the District from Consultant is determined.

d. In the event of termination, the Consultant shall be compensated as provided for in this Contract, except as provided in Section 4.c above. Upon termination, the District shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

5. AMENDMENTS, CHANGES OR MODIFICATIONS

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

6. EXTENSIONS OF TIME

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the District in writing and shall be incorporated in written amendments to this Contract in the manner provided in Section 5. Consultant is not responsible for delays for causes beyond Consultant's reasonable control.

7. PROPERTY OF DISTRICT

a. It is mutually agreed that all materials, whether completed or in progress, prepared by the Consultant under this Contract shall become the property of the District. Consultant may retain copies for their internal use and for marketing purposes. Immediately upon payment of Consultant's final invoice, the District shall be entitled to, and the Consultant shall deliver to the District, all data, drawings, specifications, reports, estimates, summaries and other such materials, whether completed or in progress, as may have been prepared or accumulated to date by the Consultant in performing this Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to the District which is in the Consultant's possession. The District agrees not to reuse the materials for any purpose other than for the Project that it was intended for. The District agrees not to transfer any electronic file(s) to any third parties without the prior written consent of Consultant.

b. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder (the "Work") to be a work made for hire. Consultant acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the District, subject to the provisions in Section 7.a. above.

8. COMPLIANCE WITH LOCAL LAW

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

9. STANDARD OF CARE AND RESPONSIBILITIES OF CONSULTANT

a. Consultant agrees and represents that it is qualified to properly provide the services set forth in the Proposal in a manner which is consistent with the generally accepted standards of Consultant's profession.

b. Consultant agrees and represents it shall use due professional care to ensure that the work performed under this Contract shall be in accordance with applicable federal, State and local law in accordance with Section 17.a hereof.

c. Consultant shall designate a project manager who at all times shall represent the Consultant before the District on all matters relating to this Contract. The project manager shall continue in such capacity unless and until he or she is removed at the request of the District, is no longer employed by Consultant, or is replaced with the written approval of the District, which approval shall not be unreasonably withheld.

#### 10. SUBCONTRACTING

None of the services covered by Contract shall be subcontracted without the prior written consent of the District, which will not be unreasonably withheld. Consultant shall be as fully responsible to the District for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

#### 11. ASSIGNABILITY

Consultant shall not assign or transfer any interest in this Contract without the prior written consent of the District which will not be unreasonably withheld.

#### 12. INTEREST IN CONTRACT

Consultant covenants that neither it, nor any of its employees, agents, contractors, or subcontractors, has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant shall make all disclosures required by the District's conflict of interest code in accordance with the category designated by the District, unless the District determines in writing that Consultant's duties are more limited in scope than is warranted by the category designated by the District code and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with the District conflict of interest code if, at any time after the execution of this Contract, District determines and notifies Consultant in writing that Consultant's duties under this Contract warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the District.

#### 13. MATERIALS CONFIDENTIAL

Materials prepared or assembled by Consultant pursuant to performance of this Contract may be confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the District, except by court order or where by determined to be a public record pursuant to the California Public Records Act.

14. LIABILITY OF CONSULTANT – NEGLIGENCE

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors.

15. INDEMNITY AND LITIGATION COSTS

Contractor shall indemnify, hold harmless and defend District and each of its Board members, officers, officials, employees, and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Contractor, its principals, officers, employees, or agents. The provisions of this paragraph shall survive termination or suspension of this Contract.

16. CONSULTANT TO PROVIDE INSURANCE

a. Consultant shall not commence any work before obtaining, and shall maintain in full force at all times during the duration and performance of this Contract the policies of insurance specified in this Section. Such insurance must have the approval of the District as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.

b. Prior to execution of this Contract and prior to commencement of any work, the Consultant shall furnish the District with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the District. As an alternative to the District's forms, the Consultant's insurer may, subject to the approval of the District, provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by this Section. The Consultant agrees to furnish one copy of each required policy to the District, and additional copies as requested in writing, certified by an authorized representative of the insurer. Approval of the insurance by the District shall not relieve or decrease any liability of Consultant.

c. In the case of the professional liability insurance required by this Section, the Consultant's insurer must provide a complete, certified copy of the policy.

d. In addition to any other remedy the District may have, if Consultant fails to maintain the insurance coverage as required in this Section, the District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the District may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

e. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, or reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the District.

f. Any deductibles, aggregate limits, pending claims or lawsuits which may diminish the aggregate limits, or self-insured retentions, must be declared to, and approved by, the District.

g. Aggregate Limits/Impairment.

If any of the above-required insurance coverages contain annual aggregate limits, Consultant must give the District notice of any pending claim or lawsuit which may diminish the aggregate. Consultant must take steps to restore the impaired aggregates or provide replacement insurance protection provided it is available at a reasonable cost. The District has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect District's protection, are allowed without District's prior written consent. Minimum Limits: \$1,000,000.00 per occurrence / \$2,000,000.00 aggregate.

h. The requirement as to types, limits, and the District's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

i. The Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the District. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage, provided it is available at a reasonable cost or to provide evidence of renewal may be treated by the District as a material breach of this Contract.

j. Worker's Compensation and Employer's Liability Insurance.

(1) Insurance to protect the Consultant, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form attached to this Contract as Exhibit B.

(2) The insurer shall agree to waive all rights of subrogation against the District for losses arising from work performed by the Consultant.

k. Commercial General and Automobile Liability Insurance.

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence.

The general liability insurance and the automobile liability insurance coverages shall also include, or be endorsed to include, the following:

(1) Provision or endorsement naming the District and each of its officers, employees, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Contract; liability arising out of activities performed by or on behalf of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials, employees or volunteers.

(2) Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers to the extent the District is an additional insured. Any insurance or self insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

(3) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the District, its officers, officials, employees, or volunteers.

(4) Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Consultant under the Contract, including, without limitation, that set forth in Section 15, Indemnity and Litigation Costs.

1. Professional Liability.

The Consultant and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract.

The limits of such professional liability insurance coverage shall not be less than \$1,000,000.00 per claim.

17. MISCELLANEOUS PROVISIONS

a. Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

b. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

c. Consultant shall maintain and make available for inspection by the District and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six months after the final payments under this Contract are made to the Consultant.

d. Time is of the essence of this Contract and each of its provisions.

e. This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

f. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Contract.

g. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

District: Red Bluff Joint Union High School District  
1525 Douglass Street  
Red Bluff, CA 96080  
Attn: Superintendent

Consultant: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

h. Waiver of a breach or default under this Contract shall not constitute continuing waiver of a subsequent breach of the same or any other provision of this Contract.

i. This Contract shall be interpreted and governed by the laws of the State of California.

j. Any action arising out of this Contract shall be brought in Tehama County, California, regardless of where else venue may lie.

k. In any action brought by either party to enforce the terms of this Contract, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

l. The individuals executing this Contract represent that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective parties to this Contract. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**Red Bluff Joint Union High School District,**  
a political subdivision of the State of California

By: \_\_\_\_\_  
Name: Todd Brose  
Title: Superintendent  
Date: \_\_\_\_\_

\_\_\_\_\_ **[Consultant],**  
a California corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A

CONSULTANT'S PROPOSAL FOR CONSULTANT SERVICES

Exhibit B

(Certificate of Compliance with Labor Code section 3700)

[Labor Code section 1861]

I am aware of the provisions of Section 3700 of the Labor Code which 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 the performance of the work of this contract.

CONTRACTOR:

\_\_\_\_\_,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_