

## Delta Regional Monitoring Program

### Agreement between County Of El Dorado and Delta Regional Monitoring Program for the Delta Regional Monitoring Program as part of The National Pollutant Discharge Elimination System Permit Compliance

#### AGREEMENT FOR SERVICES #5890

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2022, by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and Delta Regional Monitoring Program, a California Nonprofit Public Benefit Corporation, (hereinafter referred to as "DRMP"). COUNTY and DRMP are individually referred to as a "Party" and collectively as "Parties".

#### RECITALS

**WHEREAS**, COUNTY is covered under the State Water Resources Control Board Water Quality Order No. 2013-0001-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 (Permit); and

**WHEREAS**, water quality monitoring activities are required by the NPDES Permit; and

**WHEREAS**, the California Regional Water Quality Control Board authorized COUNTY to participate in a regional monitoring effort; and

**WHEREAS**, the DRMP is an approved local regional monitoring program and participation in the DRMP can replace individual water monitoring obligations through collaborative efforts with others participating in the DRMP; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

**WHEREAS**, COUNTY has determined that the provision of such services provided by DRMP are in the public's best interest and that these services require specialty skills and qualifications not expressly identified in County classifications are involved in the performance of the work in accordance with El Dorado County Ordinance Code, Section 3.13.030(b), by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

**WHEREAS**, COUNTY and DRMP desire to enter into this Agreement on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, COUNTY and DRMP agree as follows:

**NOW, THEREFORE**, County and DRMP mutually agree as follows:

#### **ARTICLE I**

**Scope of Work:** DRMP agrees to furnish personnel and services in the amount, type and manner as described in Exhibit A, marked "Scope of Services," incorporated herein and made by reference a part hereof.

DRMP shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. DRMP is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

#### **ARTICLE II**

**Term:** This Agreement shall be effective July 1, 2021 and shall remain in effect until terminated by any party hereto by giving written notice of termination specified in Article X, Default, Termination, or Cancellation.

#### **ARTICLE III**

##### **Compensation and Payment of Invoices:**

- A. The annual services amount of this Agreement shall be \$20,000, inclusive of all costs and expenses.
- B. Upon execution of this Agreement, DRMP shall submit an invoice for the total annual amount of the Agreement. COUNTY shall pay DRMP the total annual amount of the Agreement within forty-five (45) days after receipt of an appropriate and correct invoice.
- C. The annual services amount may be adjusted to a maximum of five percent (5%) increase per year which shall require written approval and acceptance by COUNTY's Contract Administrator prior to the new annual services rate becoming effective. Any rate increases authorized by COUNTY's Contract Administrator will increase the annual services amount of the Agreement.
- D. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one (1) month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless DRMP has obtained prior written COUNTY approval to the contrary.

E. Invoices shall be mailed to COUNTY at the following address:

County of El Dorado  
Planning and Building Department  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Christopher Smith  
Administrative Analyst

#### **ARTICLE IV**

**Taxes:** DRMP certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by DRMP to County. DRMP agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE V**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE VI**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and DRMP, and DRMP may perform similar work or services for others.

#### **ARTICLE VII**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. DRMP is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. DRMP exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by DRMP. Those persons will be entirely and exclusively under the direction, supervision, and control of DRMP.

County will not control or direct the manner, means, methods, or sequence in which DRMP performs the work or services for accomplishing the results. DRMP understands and agrees that DRMP lacks the authority to bind County or incur any obligations on behalf of County.

DRMP, including any subcontractor or employees of DRMP, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. DRMP shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes DRMP. DRMP shall not be subject to the work

schedules or vacation periods that apply to County employees.

DRMP shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that DRMP provides for its employees.

DRMP acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## **ARTICLE VIII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

## **ARTICLE IX**

**Audit by California State Auditor:** DRMP acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, DRMP shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE X**

### **Default, Termination, and Cancellation:**

A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has ten (10) days upon receiving the notice to cure the

default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
  2. A representation or warranty made by DRMP in this Agreement proves to have been false or misleading in any respect.
  3. DRMP fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
  4. A violation of ARTICLE XVII, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of DRMP.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event DRMP ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: Either party may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination to the other party. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to DRMP, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, DRMP shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

## **ARTICLE XI**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

To County:

County of El Dorado  
Planning and Building Department  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Brendan Ferry  
Deputy Director of Tahoe  
Planning and Stormwater

With a copy to:

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to DRMP shall be addressed as follows:

Delta Regional Monitoring Program  
c/o CVCWA  
808 R Street, Suite 209  
Sacramento, California 95811

Attn.: Debbie Webster, President

or to such other location as DRMP directs.

## **ARTICLE XII**

**Change of Address:** In the event of a change in address for DRMP's principal place of business, DRMP's Agent for Service of Process, or Notices to DRMP, DRMP shall notify County in writing as provided in ARTICLE XI, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

## **ARTICLE XIII**

**Indemnity:** To the fullest extent permitted by law, each of the Parties shall indemnify, defend, and hold harmless each of the other Parties, their respective governing boards, officers, directors, officials, employees, and authorized volunteers and agents from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property, or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the alleged or actual acts or omissions of their respective governing boards, officers, directors, officials, employees, volunteers, agents, or contractors.

The Parties intend that the provisions of this indemnity be interpreted to impose on each Party responsibility to the other for the acts and omissions of their governing boards, officers, directors, officials, employees, volunteers, agents, or contractors. It is also the

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intention of the Parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Claims attributable to the fault of that Party, its governing board, officers, directors, officials, employees, volunteers, agents, or contractors.

This indemnity shall not be limited by the types and amounts of insurance or self-insurance maintained by the Parties.

Nothing in this indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this indemnity shall survive the expiration or termination of the Agreement.

#### **ARTICLE XIV**

**Insurance:** Each Party, at its sole cost and expense, shall carry insurance - or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability and professional liability adequate to cover its potential liabilities hereunder. Each Party agrees to provide the other thirty (30) days advance written notice of any cancellation, termination, or lapse of any of the insurance or self-insurance coverage applicable to this Agreement. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

#### **ARTICLE XV**

**Force Majeure:** Neither DRMP nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

#### **ARTICLE XVI**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

#### **ARTICLE XVII**

**Conflict of Interest:** DRMP and DRMP's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

## **ARTICLE XVIII**

### **Nondiscrimination:**

- A. DRMP shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: DRMP and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; DRMP shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. DRMP and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, DRMP shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. DRMP's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

## **ARTICLE XIX**

**California Residency (Form 590):** If DRMP is a California resident, DRMP must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. DRMP will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to DRMP during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

## **ARTICLE XX**

**Ownership of Work Product:** All intellectual property rights to work product resulting from this Agreement shall vest solely in DRMP. All intellectual and personal property, including but not limited to software, hardware, evaluations, plans, specifications, data, reports, documents, website content, research, or writings, in whatever form, finished or unfinished, developed, prepared, related to, or purchased by DRMP or others pursuant to this Agreement, will be exclusively the property of DRMP.

However, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by DRMP hereunder as relates to COUNTY/CITY's Delta Regional Monitoring Program

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NPDES Permit compliance shall be available to COUNTY/CITY for inspection and/or copying upon written request to DRMP.

#### **ARTICLE XXI**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### **ARTICLE XXII**

**Licenses:** DRMP hereby represents and warrants that DRMP and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for DRMP and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. DRMP and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXIII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in Sacramento County, California, and shall be resolved in accordance with the laws of the State of California.

#### **ARTICLE XXIV**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Brendan Ferry, Deputy Director of Tahoe Planning and Stormwater, Planning and Building Department, or successor.

#### **ARTICLE XXV**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

#### **ARTICLE XXVI**

**Partial Invalidity:** If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXVII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

#### **ARTICLE XXVIII**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of

which shall be an original and all of which together shall constitute one and the same instrument.

**ARTICLE XXIV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

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

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

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

Dated: \_\_\_\_\_

Deputy Clerk

**-- DELTA REGIONAL MONITORING PROGRAM --**

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

Dated: \_\_\_\_\_

Debbie Webster  
President  
"DRMP"

# Delta Regional Monitoring Program

## Exhibit A

### Scope of Services

#### **SCOPE OF WORK**

DRMP shall submit deliverables electronically to the COUNTY's Contract Administrator, or as described in each item of work listed below.

#### **Task 1: Program Management**

##### ***Item of Work 1A: Program Planning***

**Objective:** This task includes DRMP or its staff/consultant preparing and planning annual workplans/budgets and quarterly reports, and updating foundational documents including Multi-Year Plan, Annual Workplan and Monitoring Design. DRMP shall convene and coordinate program activities among the Board and stakeholders via e-mail and telephone calls, and track deliverables. DRMP shall organize and participate in meetings to coordinate work and programs.

##### **Deliverables 1A:**

- Annual Workplan and Budget
- Proposal for external funding (e.g. Prop. 1)
- Updated Monitoring Design
- Quarterly Reports

##### ***Item of Work 1B: Contract and Financial Management***

**Objective:** This task includes DRMP or its staff/consultant tracking expenditures against the budget, coordinating audits, providing quarterly financial updates to the Board, developing contracts and managing subcontractors, invoicing program participants, providing technical oversight, coordinating peer review, and ensuring the quality of deliverables.

##### **Deliverables 1B:**

- Quarterly financial updates on budgets and expenditures

#### **Task 2: Governance**

##### ***Item of Work 2: Meetings***

**Objective:** This task includes DRMP or its staff/consultant preparing agendas, agenda packages, participating in meetings, composing meeting summaries, action item follow

up, meeting with co-chairs and stakeholders in preparation of meetings/follow-ups. Meetings included are Board meetings, Steering Committee, Technical Committee meetings, and Finance Committee meetings.

**Deliverables 2:**

- Meeting agendas and packages
- Meeting summaries including action item follow up

**Task 3: Quality Assurance and Data Management**

***Item of Work 3A: Quality Assurance System***

**Objective:** This task includes DRMP or its staff/consultant updating the Quality Assurance Project Plan (QAPP) to cover the annual workplans and incorporating any changes from the revised Monitoring Design, composing Quality Assurance (QA) Reports for datasets, coordinating interlaboratory comparison tests (as needed), research analytical methods, and maintaining laboratory Standard Operating Procedures (SOP) file system. DRMP shall provide, maintain, and enhance software tools and processes, such as Electronic Data Deliveries (EDD) templates, and compose and maintain internal SOPs to increase efficiency of data management tasks.

**Deliverables 3A:**

- Revised QAPP
- SOP file system
- Software tools and processes, such as EDD templates

***Item of Work 3B: Technical Oversight and Coordination***

**Objective:** This task includes DRMP reviewing reports, trouble-shooting technical issues associated with the Toxicity Investigation Evaluations, pesticide, and mercury monitoring, assuring good coordination among subcommittees and stakeholders, and facilitating technical workgroup meetings as needed.

**Deliverables 3B:**

- Meeting agenda as needed.

***Item of Work 3C: Data Management***

**Objective:** This task includes DRMP formatting, uploading, coordinating data collection, management, and laboratories, tracking deliverables, database maintenance and online access.

DRMP shall complete the following tasks:

- Process data and upload to the California Environmental Data Exchange Network (CEDEN).
- Upload Regional Monitoring Program (RMP) results to Regional Data Center

database and replicate to CEDEN.

- Incorporate updates and corrections to the data as needed, including re-analyzed results and updates implemented by CEDEN/Surface Water Ambient Monitoring Program (SWAMP).
- Provide, maintain, and upgrade web-based data access tools.

#### **Deliverables 3C:**

- RMP results
- Updates and corrections to data as needed, including re-analyzed results and updates implemented by CEDEN/Surface Water Ambient Monitoring Program (SWAMP).
- Web-based data access tools.

#### ***Item of Work 3D: Workshops on Technical Issues***

**Objective:** This task includes DRMP planning and implementing a workshop on a technical issue, identifying the topic, preparing relevant Delta assessment questions, and preparing a workshop summary memorandum of findings.

#### **Deliverables 3D:**

- Workshop topic and Delta assessment questions
- Workshop summary memorandum of findings

#### **Task 4: Sampling Coordination and Logistics**

**Objective:** This task includes DRMP performing and coordinating field sampling, preparing field sampling plans, mapping fieldsampling locations, conduct field sampling, and delivery of field sampling to laboratories within the required holding times to ensure quality assurance/quality control.

#### **Deliverables 4:**

- Sampling plan
- Maps of sampling locations

#### **Task 5: Analysis Assessment and Reporting**

**Objective:** This task includes DRMP summarizing field sampling data/information; developing technical content; and establishing, coordinating, and maintaining web presence of RMP products and results.

DRMP shall complete the following tasks:

- Prepare summarization of field sampling data collected.
- Develop technical content (e.g., text, analysis, graphics).
- Design and publish reporting products.
- Establish, coordinate, and maintain web presence of RMP products and results.

**Deliverables 5:**

- Summarization of field sampling data collected
- Technical content
- Reporting products
- RMP results