

**AGREEMENT BETWEEN COUNTY OF EL DORADO AND AQUATIC
SCIENCE CENTER FOR THE DELTA REGIONAL MONITORING
PROGRAM AS PART OF THE NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT COMPLIANCE**

AGREEMENT FOR SERVICES #202-S1711

THIS AGREEMENT is made and entered into as of this 3rd day of Jan. 2016⁷, by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and Aquatic Science Center, a Joint Powers Authority, formed pursuant to California Government Code sections 6500, et seq. (hereinafter referred to as "ASC"). COUNTY and ASC 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 Delta Regional Monitoring Program (Delta RMP) is an approved local regional monitoring program and participation in the Delta RMP can replace water monitoring obligations; and

WHEREAS, ASC is the implementing agency for the Delta RMP; and

WHEREAS, COUNTY and ASC 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 ASC agree as follows:

I. SCOPE OF SERVICES

ASC agrees to furnish personnel and services in the amount, type and manner as described in Exhibit A, marked "Scope of Services," which is incorporated herein and made by reference a part hereof. Services shall include, but not be limited to, those tasks as identified in Exhibit A.

II. TERM

This Agreement shall be effective when fully executed by both parties hereto and shall remain in effect until terminated by any party hereto for any reason whatsoever by providing thirty (30) days prior written notification to the other party.

III. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

To COUNTY:

County of El Dorado
Community Development Agency
Long Range Planning Division
2850 Fairlane Court
Placerville, CA 95667

Attn: Brendan Ferry
Storm Water Program
Manager

With a copy to:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, CA 95667

Attn: Michele Weimer
Administrative Services Officer
Contracts & Procurement Unit

Notices to ASC shall be addressed as follows:

San Francisco Estuary Institute
Aquatic Science Center
4911 Central Avenue
Richmond, CA 94804

Attn: Philip Trowbridge

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

IV. COMPLIANCE WITH LAWS

ASC shall observe and comply with all applicable Federal and State laws, regulations and ordinances.

V. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in El Dorado County, California.

VI. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by ASC hereunder for purposes of the Delta RMP as relates to COUNTY's NPDES Permit compliance shall be available upon request to COUNTY.

VII. STATUS OF CONTRACTOR

- A. It is understood and agreed that ASC (including employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. ASC's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to ASC under the provisions of this Agreement; and ASC hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. If, in the performance of this Agreement, any third persons are employed by ASC, such person shall be entirely and exclusively under the direction, supervision, and control of ASC. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by ASC, and COUNTY shall have no right or authority over such persons or the terms of such employment.

VIII. CONTRACTOR IDENTIFICATION

ASC shall provide COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8: ASC's name, address, telephone number, and tax identification number.

IX. INDEMNIFICATION

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 the their respective governing boards, officers, directors, officials, employees, volunteers, agents, or contractors.

It is the intention of the Parties 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 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.

X. 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, workers compensation, property, professional liability, and business automobile 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.

XI. CONFLICT OF INTEREST

ASC and ASC'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.

XII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. ASC agrees and assures COUNTY that ASC and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. ASC shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. ASC represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. ASC agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable Anti-discrimination laws and this provision.
- D. ASC shall include this nondiscrimination provision in all subcontracts related to this Agreement.

XIII. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. The annual services amount of this Agreement shall be \$20,000, inclusive of all costs and expenses.
- B. Upon execution of this Agreement, ASC shall submit an invoice for the total amount of the Agreement. COUNTY shall pay ASC the total amount of the Agreement within thirty (30) 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 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 ASC has obtained prior written COUNTY approval to the contrary.
- E. Invoices shall be mailed to COUNTY at the following address:

County of El Dorado
Community Development Agency
Long Range Planning Division
2850 Fairlane Court
Placerville, California 95667
Attn.: Cindy Johnson
Administrative Technician

XIV. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and COUNTY.

XV. SUCCESSORS

This Agreement shall bind the successors of COUNTY and ASC in the same manner as if they were expressly named.

XVI. TIME

Time is of the essence of this Agreement.

XVII. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XVIII. DIRECTOR

As used in this Agreement, "DIRECTOR" shall mean the Director of the Department of Water Resources or his/her designee.

XIX. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, ASC shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COUNTY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within fifteen (15) calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

XX. TERMINATION

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing.
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to ASC should ASC materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to ASC and it is later determined that ASC was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to ASC, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to COUNTY is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, ASC shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, ASC shall be paid an

amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of ASC covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay ASC an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.

- E. ASC shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that ASC can legally cancel.

XXI. AUDITS AND RECORDS

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at ASC premises, ASC's financial and program records as COUNTY deems necessary to determine ASC's compliance with legal and contractual requirements and the correctness of claims submitted by ASC. ASC shall maintain such records for a period of four (4) years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this Agreement until ASC has provided access to ASC's financial and program records related to this Agreement.

XXII. CONTRACT ADMINISTRATOR

The COUNTY Officer or employee with responsibility for administering this Agreement is Brendan Ferry, Storm Water Program Manager, Long Range Planning Division, Community Development Agency, or successor.

XXIII. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and ASC regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and ASC regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

XXIV. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

XXV. FORCE MAJEURE

Neither ASC 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, 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).

XXVI. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.


XXVII. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

XXVIII. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

Requesting Contract Administrator and Division Concurrence:

By: 
Brendan Ferry
Storm Water Program Manager
Long Range Planning Division
Community Development Agency

Dated: 11/15/2016

Requesting Department Concurrence:

By: 
ROGER NIELLO, INTERIM Director
Community Development Agency

Dated: 11/15/16

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

--COUNTY OF EL DORADO--

By: 
Shira Frentzen
Board of Supervisors
"County"

Dated: 1/3/17

Attest:
James S. Mitrisin
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 1/3/17

--AQUATIC SCIENCE CENTER--

By: 
Warner Chabot, Executive Director

Dated: 11-9-16

Aquatic Science Center

Exhibit A

SCOPE OF SERVICES

BACKGROUND

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 (General Permit). As a requirement of Section E.13 of the General Permit, COUNTY is required to conduct individual monitoring programs since the population exceeds 50,000 and is classified as a "Small MS4 Permittee." In accordance with Section E.13 of General Permit, participation in a regional monitoring effort approved by the Executive Officer of the Central Valley Water Board can replace some or all water monitoring obligations otherwise required. In lieu of conducting the individual monitoring required, COUNTY will participate in the Delta Regional Monitoring Program (Delta RMP). Participation in the Delta RMP will provide more useful data at a lower total cost than Small MS4 Permittees conducting numerous individual monitoring efforts.

The Sacramento/San Joaquin Delta is an important water supply for municipal, industrial and agricultural use for much of the state, and is a critical ecosystem for fish and wildlife including many rare and endangered species. The Delta RMP is a stakeholder effort controlled by a Steering Committee to provide improved Delta monitoring and data evaluation. The primary goal of the Delta RMP is to provide coordinated Delta-wide monitoring, reporting, and assessment of water quality.

ASC is a Joint Powers Agency, created on July 1, 2007, by a Joint Powers Agreement between the Bay Area Clean Water Agencies and the State Water Resources Control Board for the purpose of assisting with the efficient delivery of financial, scientific, monitoring, and information management support functions. ASC shall be responsible for implementing the program activities and serving as the treasurer for the program.

PURPOSE

The purpose of this Agreement is to allow COUNTY to participate in the Delta RMP in lieu of conducting the individual monitoring required under Section E.13 of the NPDES General Permit by providing an annual contribution, attending meetings, and providing collaboration with others in the Delta RMP.

SCOPE OF WORK

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

Task 1: Program Management

Item of Work 1.A: Program Planning

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

Deliverables 1.A

- Updated Multi-Year Plan
- FY 17/18 Annual Workplan and Budget
- Proposal for external funding (e.g. Prop. 1)
- Updated Monitoring Design
- Quarterly Reports

Item of Work 1.B: Contract and Financial Management

Objective: This task includes ASC tracking expenditures against the budget, coordinating audits, providing quarterly financial updates to the Steering Committee, developing contracts and managing subcontractors, invoicing program participants, providing technical oversight, coordinating peer review and ensuring quality of deliverables.

Deliverables 1.B

- Quarterly financial updates on FY 16/17 Budget

Task 2: Governance

Item of Work 2.A: Steering Committee Meetings

Objective: This task includes ASC preparing agendas, agenda packages, participating in meetings, composing meeting summaries, action item follow up, meeting with co-chairs and stakeholders in preparation of the Steering Committee meetings/follow-up. ASC shall attend four (4) Steering Committee meetings and shall participate in four (4) pre-calls with the Steering Committee co-chairs.

Deliverables 2.A

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

Item of Work 2.B: Technical Advisory Committee (TAC) Meetings

Objective: This task includes ASC preparing agendas, agenda packages, participating in meetings, composing meeting summaries, action item follow-up, meeting with co-chairs and stakeholders outside of meetings, facilitating TAC subcommittee meetings as needed. ASC shall attend four (4) TAC meetings and shall participate in four (4) pre-calls with the TAC Chairs.

Deliverables 2.B

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

Item of Work 2.C: Technical Advisory Subcommittee Meetings

Objective: This task includes ASC preparing agendas, agenda packages, participating in meetings, composing meeting summaries, action item follow-up, communicating with coordinating committee.

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

Task 3: Quality Assurance and Data Management

Item of Work 3.A: Quality Assurance System

Objective: This task includes ASC updating the Quality Assurance Project Plan (QAPP) to cover the FY 17/18 workplan and incorporating any changes from the revised Monitoring Design, composing Quality Assurance (QA) Reports for datasets, coordinating interlaboratory comparison tests (as needed), researching analytical methods, maintaining laboratory Standard Operating Procedures (SOP) file system. ASC shall provide, maintain, and enhance software tools and processes such as Electronic Data Deliveries (EDD) templates and compose and maintain internal SOP's to increase efficiency of data management tasks.

Deliverables 3.A

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

Item of Work 3.B: Technical Oversight and Coordination

Objective: This task includes ASC 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 3.B

- Meeting agenda, if needed

Item of Work 3.C: Data Management

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

ASC shall complete the following tasks:

- Prepare Data processing and upload to the California Environmental Data Exchange Network (CEDEN)
- Upload 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 3.C

- 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

Task 4: Communications

Item of Work 4.A: Factsheet and Implementation of Plan

Objective: This task includes ASC preparing a factsheet about the program to be used for outreach and fundraising, and implementing the communications plan.

ASC shall complete the following tasks:

- Preparation of a factsheet
- Produce and distribute RMP products
- Develop and maintain calendar of RMP communications products
- Identify appropriate communication channels and disseminate RMP information
- Implement planned events (e. g., annual meeting)
- Respond to or coordinate response to inquiries for RMP data and reports, including press calls

Deliverables 4.A

- Factsheet

- RMP products
- Calendar of RMP communications products
- Responses to inquiries for RMP data and reports

Item of Work 4.B: Workshops on Technical Issues

Objective: This task includes ASC 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 4.B

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

Task 5: Sampling Coordination and Logistics

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

Deliverables 5.A

- Sampling plan
- Maps of sampling locations

Task 6: Analysis Assessment and Reporting

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

ASC 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 6.A

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