

**AGREEMENT FOR SERVICES
WATER POLLUTION PREVENTION INSPECTION CONTRACT**

THIS Agreement, hereinafter referred to as "Agreement," is made and entered into this day of June, 2017, by and between the FAIRFIELD-SUISUN SEWER DISTRICT, hereinafter referred to as "DISTRICT" and the County of Solano, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, DISTRICT desires to contract for Water Pollution Prevention Inspection services which for the purposes of this Agreement shall be called "PROJECT," and,

WHEREAS, COUNTY is willing and qualified to do said inspection work;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

I. DUTIES OF COUNTY

- A. The COUNTY shall provide services required for the PROJECT as described in the Scope of Work, Exhibit "A", which is incorporated herein by reference.
- B. COUNTY hereby warrants that COUNTY and all of said COUNTY's employees and subcontractors hold, have obtained, and shall continue to maintain during the course of this Agreement, all licenses or other statutorily mandated certifications requisite to the performance of the work set forth in the Scope of Work, Exhibit "A," as may be required in the State of California, if any. Failure of COUNTY, its employees and subcontractors to obtain and/or maintain in good standing such licenses or certificates shall provide grounds for immediate termination thereof.
- C. COUNTY shall perform the PROJECT work in such a manner as to fully comply with all applicable professional standards of care.
- D. The DISTRICT's approval of reports and other services furnished hereunder shall not in any way relieve COUNTY of responsibility for the technical adequacy of its work. Neither the DISTRICT's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement.
- E. COUNTY shall not be relieved of any of the obligations or covenants contained in this Agreement until the tasks as set forth in Exhibit "A" have been completed. It is agreed between COUNTY and DISTRICT that those provisions of this Agreement which by their nature continue beyond termination of the Agreement shall continue beyond such termination.

II. DUTIES OF DISTRICT

The DISTRICT, without cost to COUNTY, will provide all pertinent information reasonably available to it, which is necessary for performance by COUNTY under this Agreement, including previous reports and data relative to the PROJECT. The DISTRICT does not guarantee or ensure the accuracy of any reports, information, and/or data so provided. COUNTY will use its professional judgment in the review and use of data so provided. However, COUNTY will not be liable for any error or omission in any data furnished by DISTRICT and reasonably used by COUNTY. To this extent COUNTY is entitled to rely on all data provided by DISTRICT.

III. MISCELLANEOUS PROVISIONS

- A. COUNTY shall not assign any rights or duties under this Agreement to a third party without the prior written consent of DISTRICT.
- B. It is understood by and between the parties hereto that COUNTY, in the performance of this Agreement, shall act as, and be, an independent contractor and not an agent or employee of DISTRICT.

- C. The District does not authorize the impermissible use of any patent or the impermissible reproduction of any copyrighted material by COUNTY in the performance of this Agreement.

IV. COMPENSATION OF COUNTY

- A. Basis of Compensation: For and in consideration of the professional services to be provided by COUNTY hereunder, DISTRICT agrees to pay COUNTY, and COUNTY agrees to accept from DISTRICT compensation for said services on a time and material basis with a maximum fee not to exceed one hundred and seventy-five thousand DOLLARS (\$175,000) in accordance with the "Fee Schedule" as attached as Exhibit B, which is incorporated herein by reference. Exhibit B may be revised once each contract fiscal year (July 1 through June 30) by COUNTY to reflect reasonable changes in COUNTY's "Fee Schedule." Should DISTRICT disagree with a change made by COUNTY to its "Fee Schedule" DISTRICT may terminate this Agreement upon ten (10) calendar days' written notice to COUNTY, in accordance with the TERMINATION provisions of Article VII of this Agreement, notwithstanding that a change in the "Fee Schedule" does not necessarily give rise to a termination "for cause".
- B. Change in Scope of Work: Adjustment in compensation for changes in scope of work authorized in writing by the General Manager of the DISTRICT shall be based on the Fee Schedule attached as Exhibit B. Changes in scope of work so authorized shall not exceed twenty percent of the total maximum fee. No payment shall be made for changes unless authorized in writing by the DISTRICT.
- C. Monthly Payment to COUNTY: Payment will be made by the DISTRICT within thirty (30) calendar days after receipt of an invoice from COUNTY, provided that all invoices are accompanied by cost documentation determined to be sufficient by the DISTRICT to allow the determination of the reasonableness and accuracy of said invoice. In the event that a payment dispute arises between the parties, COUNTY shall provide to the DISTRICT full and complete access to COUNTY's labor cost records and other direct cost data, and copies thereof if requested by the DISTRICT.
- D. Notification at 75% of maximum fee: COUNTY is to notify the DISTRICT when the costs incurred for the PROJECT work total approximately seventy-five percent (75%) of the maximum fee. With the notification, COUNTY shall indicate whether the sum of the current costs incurred plus the estimated total cost to complete the task or tasks set forth in the Scope of Work, Exhibit "A," shall be greater or less than the maximum fee. Receipt by the DISTRICT of said notification that the cost for completion of all tasks shall exceed the established maximum fee, will not constitute an approval or authorization to increase the established maximum fee or a waiver of any rights which the DISTRICT may have under this Agreement.

V. TIME OF COMPLETION

The term of this Agreement shall extend through June 30, 2022, unless otherwise terminated or extended pursuant to the provisions of the Agreement.

VI. COUNTY'S ASSIGNED PERSONNEL

COUNTY designates the Department of Resource Management's Environmental Health Services Division Manager or his or her designee to have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement.

No subcontract shall be awarded, or an outside consultant engaged, by the COUNTY, unless the COUNTY has made written request to use such subcontractor or outside consultant and the DISTRICT has approved its request in writing. The written approval of the DISTRICT resulting in the use of or engagement of a subcontractor or outside consultant does not relieve the COUNTY of the obligations or covenants set forth in this Agreement.

VII. TERMINATION

- A. Either party may terminate this Agreement for cause, in whole or in part, if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination for cause may be effected unless the other party is given: (1) not less than ten (10) calendar days' written notice (delivered by Certified Mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.
- B. Upon receipt of a termination notice, COUNTY shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the DISTRICT all data, information, and materials as COUNTY may have prepared or developed in performing this Agreement, whether completed or in process, including, but not limited to, drawings, specifications, reports, estimates, summaries, software, and electronic files of all deliverables.
- C. Upon termination under Article VII., the sole right and remedy of COUNTY shall be to receive payment for all amounts due and not previously paid to COUNTY for services performed in accordance with the Agreement prior to the date of receipt of notice of termination and for services thereafter completed at the request of the DISTRICT and any other reasonable cost incidental to such termination of services. Such payments available to COUNTY under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of the bargain.

VIII. INDEMNITY

- A. COUNTY agrees to indemnify and hold harmless DISTRICT, its employees, agents, and elective and appointive boards from and against any damages including costs and attorney fees arising out of negligent or intentional acts or omissions of COUNTY, its employees or agents.
- B. DISTRICT agrees to indemnify and hold harmless COUNTY, its employees, agents and elective or appointive boards from and against any damages including costs and attorney's fees arising out of negligent or intentional acts or omissions of DISTRICT, its employees or agents.
- C. The DISTRICT does not authorize the impermissible use of any patent or the reproduction of any copyrighted material by COUNTY which exceeds "fair use" in the performance of this Agreement. COUNTY is solely responsible for any such infringement.

COUNTY shall indemnify the DISTRICT against and save it harmless from any and all losses, damage, costs, expenses, and attorney's fees suffered or incurred as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent, copyright, or trade secret, and arising out of the use of the equipment or materials utilized to perform under this Agreement or specified by or procured by COUNTY, or out of the processes or actions employed by, or on behalf of, COUNTY in connection with the performance of this Agreement.

IX. INSURANCE

- A. COUNTY shall maintain status as a legally self-insured public entity for general liability and shall maintain a self-insured retention of three hundred thousand dollars (\$300,000) per occurrence. Excess liability coverage with limits to ten million dollars (\$10,000,000) may be provided through participation in excess insurance authority.
- B. COUNTY shall maintain status as a legally self-insured public entity for purposes of Workers Compensation and shall maintain a self-insured retention of two hundred thousand dollars (\$200,000) per occurrence. Excess Workers Compensation and employer liability coverage may be provided through participation in excess insurance authority.
- C. DISTRICT shall maintain its status with the California Sanitation Risk Management Authority, a joint powers authority, for general liability coverage and shall maintain a self-insured retention of three hundred thousand dollars (\$300,000) per occurrence. Excess

liability coverage with limits to four million dollars (\$4,000,000) may be provided through participation in excess insurance authority.

- D. DISTRICT shall maintain its status with the California Sanitation Risk Management Authority, a joint powers authority, for Workers Compensation coverage and shall maintain a self-insured retention of two hundred thousand dollars (\$200,000) per occurrence. Excess Workers Compensation and employer liability coverage may be provided through participation in excess insurance authority.

X. EXAMINATION OF RECORDS

Parties agree that all parties will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all transactions relating to this Agreement at any time after the inception of the Agreement upon reasonable notice.

XI. SCOPE OF AGREEMENT

This writing constitutes the entire Agreement between the parties relative to consulting services on the PROJECT and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement.

XII. NOTICES

All notices from one Party to the other shall be in writing and delivered or mailed to such party at its designated address as follows, or sent via facsimile transmission to such telephone number indicated as follows. Such notices shall be deemed to have been made: (1) when hand delivered; (2) as indicated by certified mail receipt; (3) five days after mailing by first class mail; or (4) as indicated on facsimile transmission receipt, if facsimile transmission is followed by prompt certified or first class mailing or hand delivery.

To DISTRICT: Fairfield-Suisun Sewer District
 1010 Chadbourne Road
 Fairfield, CA 94534-9700
 Telephone: (707) 429-8930
 Fax: (707) 429-1280

To COUNTY: Solano County
 Department of Resource Management
 675 Texas Street, Suite 5500
 Fairfield, CA 94533
 Telephone: (707) 421-6765
 Fax: (707) 421-4805

XIII. APPLICABLE LAWS

COUNTY shall perform this Agreement in accordance with all applicable federal, state, and local laws and regulations. This Agreement shall be construed in accordance with California law. Venue concerning any dispute shall be in Solano County.

XIV. CHANGES, EXTENSIONS AND AMENDMENTS

DISTRICT or COUNTY may request changes in scope of work, or an extension of contract beyond Time Of Completion in Section V if the Basis of Compensation in Section IV(A) has not been exceeded. Any mutually agreed upon changes, including any increase in the amount of COUNTY's compensation, or extension shall be effective when incorporated in written amendments to this Contract.

The party desiring the revision shall request amendments to the terms and conditions of this Contract in writing. Any adjustment to this Contract shall be effective only upon the parties' mutual execution of an amendment in writing.

IN WITNESS the parties hereto have executed this Agreement on the day first above-written.

FAIRFIELD-SUISUN SEWER DISTRICT

SOLANO COUNTY

Greg Baatrup
General Manager

Bill Emlen, Director
Department of Resource Management

ATTEST:

APPROVED AS TO FORM:

District Clerk



County Counsel

EXHIBIT A

WATER POLLUTION PREVENTION INSPECTION CONTRACT Scope of Work

Listed below is the scope of work for the Water Pollution Prevention Inspection Contract between the Fairfield-Suisun Sewer District (DISTRICT) and Solano County (COUNTY).

1.0 COUNTY RESPONSIBILITIES

1.1 Inspections

COUNTY agrees to perform Water Pollution Prevention Inspections as follows:

- 1.11 Only COUNTY inspections of facilities within the city boundaries of the City of Fairfield, including Travis Air Force Base, and the City of Suisun City shall be eligible for DISTRICT funding. Water Pollution Prevention Inspections of facilities located outside these boundaries will not be paid by the DISTRICT unless they discharge sewage to the DISTRICT, and the inspection is approved in advance by the DISTRICT. The COUNTY will incorporate priority list for facility inspections provided by the DISTRICT within the first quarter of the contract fiscal year into the COUNTY's inspection priorities for that fiscal year.
- 1.12 Inspections shall address areas of concern as identified and documented during DISTRICT provided training (see Section 1.5, below) The COUNTY is not responsible for visual inspection of the interior of sand oil water separators or collect samples from creeks and storm water outfalls.
- 1.13 Since violation of Water Pollution Prevention requirements is frequently closely associated with violations of hazardous materials laws, hazardous waste handling and disposal laws and health laws and regulations regulating food preparation and sales businesses, COUNTY will carefully weigh time allocations and charge DISTRICT for only that portion of the inspection that would not otherwise be addressed by the COUNTY's Hazardous Materials Inspection Program and Consumer Protection Inspection Program.
- 1.14 COUNTY shall properly complete and submit a DISTRICT provided inspection form for each eligible business inspected, a sample of which will be provided by the DISTRICT. Receipt of the completed form is a condition of payment for said inspection.

1.2 Inspection Frequency

- 1.21 Inspection of eligible facilities by COUNTY in excess of one (1) time per year, except as noted in Section 1.3, below, shall not be funded by DISTRICT.

1.3 Inspection Follow-up

- 1.31 Follow-up inspections shall be conducted by COUNTY within 15 calendar days of noting any "major" Water Pollution Prevention violation.
- 1.32 COUNTY may conduct follow-up inspections on "moderate" violations of Water Pollution Prevention requirements within a reasonable timeframe. Follow-up inspections by COUNTY on "moderate" violations of Water Pollution Prevention requirements shall be at COUNTY's option.
- 1.33 Working definitions of "minor," "moderate," and "major" violations of Water Pollution Prevention requirements shall be developed and documented in DISTRICT provided training (see Section 1.5, below).
- 1.34 COUNTY may schedule any follow-up inspection for Water Pollution Prevention violations to coincide with follow-up inspection required for violations of hazardous materials laws, hazardous waste laws and health laws and regulations regulating food preparation and sales businesses.
- 1.35 If any violation is not corrected by first follow-up inspection performed by COUNTY, the facility and remaining violation(s) shall be referred to DISTRICT for subsequent action or enforcement.
- 1.36 COUNTY shall notify DISTRICT of any "major", "moderate", or "minor" violation within 24 hours of becoming aware of the violation.

EXHIBIT A

1.37 All inspections related to Water Pollution Prevention shall be funded by the DISTRICT, including follow-up inspections.

1.4 Complaint Response

1.41 DISTRICT shall respond to water pollution prevention complaints or refer complaints to COUNTY at DISTRICT's option. If COUNTY responds to complaint, that portion that is attributable to water pollution prevention shall be billable to DISTRICT.

1.5 Availability of Inspection Staff for Training

1.51 At least once per Contract Year, COUNTY shall make COUNTY inspection staff available for Water Pollution Prevention Inspection training by DISTRICT staff. Each training time shall not exceed two (2) hours per trainee and shall be funded by DISTRICT at the COUNTY's standard hourly rate (as specified in Exhibit B).

1.6 Invoicing

1.61 COUNTY shall submit a monthly invoice, billed at the COUNTY's standard hourly rate (as specified in Exhibit B), rounded to the nearest one-tenth of an hour, for that time spent conducting the Water Pollution Prevention portion of the overall facility inspection, for time spent documenting the Water Pollution Prevention portion of the overall facility inspection, and for follow-up as defined in Section 1.3, above.

1.62 The COUNTY invoice shall be itemized by business name or business identification number, matchable to the inspection report. Invoice shall list total time required to complete Water Pollution Prevention Inspection and its associated documentation for each listed business.

2.0 DISTRICT RESPONSIBILITIES

2.1 Inspections and Forms

The DISTRICT may provide a list of priority facilities to COUNTY during the first quarter of each fiscal year of the contract period. DISTRICT shall provide to COUNTY, at no cost to COUNTY, forms, acceptable to both parties, on which to document Water Pollution Prevention inspections.

2.2 Inspection Follow-up

DISTRICT may conduct follow-up inspections of "moderate" or "major" violations of Water Pollution Prevention requirements. COUNTY's responsibility for follow-up inspections is governed by Section 1.3.

2.3 Inspector Training

DISTRICT shall conduct training of COUNTY inspection personnel as described in Section 1.5, above, that addresses, at a minimum, the following items:

2.31 Storm Water Pollution:

- Acceptable discharges to the storm drainage system.
- Illegal discharges to the storm drainage system.
- Illicit discharges to the storm drainage system.
- Appropriate materials and waste management practices.
- Housekeeping and spill/drip clean-up.
- Violation severity matrix -- introduction to and use.

2.32 Sanitary Sewer Discharges:

- Acceptable discharges to the sanitary sewer system.
- Illegal discharges to the sanitary sewer system.
- Undesirable discharges to the sanitary sewer system.
- Pollution Prevention.
- Management and maintenance of control devices.
- Violation severity matrix -- introduction to and use.

EXHIBIT A

2.4 Enforcement

DISTRICT shall initiate all enforcement actions for violations of DISTRICT resolutions or ordinances, or of state or Federal law within the scope of DISTRICT's authority.

EXHIBIT B

WATER POLLUTION PREVENTION INSPECTION CONTRACT
Fee Schedule

Listed below is the Fee Schedule for the Water Pollution Prevention Inspection Contract between the Fairfield-Suisun Sewer District (DISTRICT) and Solano County (COUNTY).

Contract Fiscal Year 2017-18 COUNTY Hourly Rate for Inspection Services

Inspection at Food Handling Facility -- \$ 138.00

Inspection at a Hazardous Materials Facility -- \$149.00