

**AGREEMENT FOR ENGINEERING SERVICES FOR  
MIDDLETOWN WASTEWATER TREATMENT FACILITY**

THIS AGREEMENT, is entered into this \_\_\_\_ day of \_\_\_\_\_ 2020 by and between the Lake County Sanitation District, hereinafter "DISTRICT" and Brejle & Race Consulting Engineering, hereinafter "CONSULTANT".

**RECITALS**

WHEREAS, the Middletown Wastewater Treatment Facility is nearing its hydraulic and treatment capacity; and

WHEREAS, the DISTRICT requires engineering services to fully modify and implement phased capacity improvements to address these capacity issues; and

WHEREAS, DISTRICT has need of professional services to aid in the evaluation, design and project management of the improvements for the Middletown Wastewater Treatment Facility managed by the DISTRICT; and

WHEREAS, CONSULTANT has the experience and qualifications to provide professional services to the DISTRICT for said public sewer system; and

WHEREAS, CONSULTANT has successfully completed the preliminary, 60%, and 90% design phases and is intimately familiar with the project specifications; and

WHEREAS, CONSULTANT is a licensed engineering firm in the State of California and is qualified and willing to provide said services; and

WHEREAS, the parties desire to complete those duties; and

WHEREAS, the parties agree to enter into a new agreement for the above-described purpose.

NOW, THEREFORE, based on the foregoing recitals, the parties hereto agree as follows:

**I.**  
**CONSULTANT'S RESPONSIBILITIES**

- A. CONSULTANT agrees to furnish DISTRICT with the following services:
1. CONSULTANT shall perform the services described in the August 17, 2020 proposal attached as Exhibit A and hereinafter called Scope of Services.
  2. Scope of Services have been identified as having three components including 100% Design Phase, Final Design and Contract Document Preparation Phase, and Engineering Assistance with Bidding.

- B. **Time of Beginning and Completion of Services:** Work on the PROJECT will begin no later than five (5) calendar days after receipt of a letter of notification to proceed. CONSULTANT will complete 100% Design Phase by February 2021. CONSULTANT will complete 100% Design submittal by March 2021. CONSULTANT will complete Final Design and Contract Document Preparation by April 2021. Engineering Assistance with Bidding will occur concurrently with PDR. The Time Line, Task, Work Hour and Cost Tabulation is attached as Exhibit B.
- C. **Opinions of Cost, Financial Considerations, and Schedules:** In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the CONSULTANT makes no warranty that actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the CONSULTANT's opinions, analyses, projections, or estimates.
- D. **Access to CONSULTANT's Accounting Records:** The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices. The records will be available to DISTRICT during CONSULTANT's normal business hours for a period of three (3) years after CONSULTANT's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. DISTRICT may only audit accounting records applicable to cost-reimbursable type compensation.
- E. **Subsurface Investigations:** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of CONSULTANT.

## II. DISTRICT'S RESPONSIBILITIES

The DISTRICT's responsibilities will include the payment for the CONSULTANT's services and the time period within which payment must be made. Additionally, the DISTRICT may agree to provide certain information, documents, work space, and/or materials.

- A. **DISTRICT Furnished Data:** DISTRICT will provide to CONSULTANT all data in DISTRICT's possession relating to CONSULTANT's services on the PROJECT.
- B. **Access to Facilities and Property:** DISTRICT will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services. DISTRICT will be responsible for all acts of DISTRICT's personnel.
- C. **Advertisements, Permits, and Access:** Unless otherwise agreed to in the Scope of Services, DISTRICT will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT's services.
- D. **Timely Review:** DISTRICT will examine CONSULTANT 's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as DISTRICT deems appropriate; and render in writing decisions required by DISTRICT in a timely manner.
- E. **Prompt Notice:** DISTRICT will give prompt written notice to CONSULTANT whenever DISTRICT observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or of any defect in the work of CONSULTANT.
- F. **Environmental Clearances:** With CONSULTANTS assistance, DISTRICT will be responsible for all environmental documentation, studies and clearances.
- G. **Asbestos or Hazardous Substances and Indemnification:** If asbestos or hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, CONSULTANT will if requested, manage the asbestos remediation activities using a qualified sub-consultant at an additional fee and contract terms to be negotiated.

If hazardous substances other than asbestos are suspected, CONSULTANT will conduct tests to determine the extent of the problem and will perform the necessary

studies and recommend the necessary measures at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, DISTRICT will indemnify CONSULTANT and CONSULTANT's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

### **III. CONSULTANT'S REPORT AND/OR MEETINGS**

- A. The CONSULTANT shall submit progress reports on each project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the DISTRICT's Project Manager to determine if the CONSULTANT is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the DISTRICT's Project Manager as needed to discuss progress on the project(s).

### **IV. PREVAILING WAGE**

Prevailing wage laws of the State of California apply to certain work performed on this public works construction project. Construction includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection (soils and materials testing) and land surveying work.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the Department of Public Works, County of Lake and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor and published on April 8, 2005, are included herein by reference and copies may be examined at the offices of the DISTRICT. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the CONSULTANT and sub-consultants shall pay not less than the higher wage rate. The

Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONSULTANT and sub-consultants, the CONSULTANT and sub-consultants shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

**V.**  
**COMPENSATION AND TERMS OF PAYMENT**

Payment to CONSULTANT will be made as follows:

- A. **Invoices and Time of Payment:** Invoices will be issued by CONSULTANT for all services performed under this AGREEMENT. Invoices are due and payable upon receipt.

Upon completion of services enumerated in ARTICLE I herein, the final payment of any balance will be due upon receipt of the final invoice.

- B. **Interest:** Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting thirty (30) days after receipt of invoice and required documentation. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. DISTRICT will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If DISTRICT fails to make payment in full to CONSULTANT for services within thirty (30) days of the date due for any uncontested billing, CONSULTANT may, after giving seven (7) days written notice to DISTRICT, suspend services under this AGREEMENT until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to DISTRICT for delays or damages caused by DISTRICT because of such suspension of services.

- C. **Compensation:** Compensation by DISTRICT to CONSULTANT for services will be on a Lump Sum basis. The amount invoiced each month will be based on an estimate of the percentage of completion for each task multiplied times the lump sum amount. The lump sum amount shall not exceed \$178,000.00 without prior written authorization by DISTRICT. The breakdown of task cost is provided in Exhibit B of this AGREEMENT. The lump sum is based on authorization to proceed and timely completion of the project. If the project timing deviates from the assumed schedule for

causes beyond CONSULTANT's control, CONSULTANT reserves the right to request renegotiation of those portions of the lump sum affected by the time change.

## **VI.** **TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate December 31, 2021, unless extended, or terminated earlier as hereinafter provided.

## **VII.** **DUE PERFORMANCE - DEFAULT**

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

## **VIII.** **TERMINATION**

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By DISTRICT upon thirty (30) days written notice to CONSULTANT.
- C. By CONSULTANT upon thirty (30) days written notice thereof to DISTRICT in the event that DISTRICT fails to perform its obligations under this AGREEMENT.

Upon termination prior to the full and satisfactory completion of CONSULTANT's performance under this Agreement, DISTRICT shall not be liable to pay CONSULTANT the total compensation set forth in Provision V of this Agreement, but CONSULTANT shall be paid an amount which bears the same ratio to the total compensation as the

services actually performed bear to the total services of the CONSULTANT covered by this Agreement.

## **IX. INSURANCE**

CONSULTANT shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to DISTRICT, and said insurance has been approved by DISTRICT. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to DISTRICT, ten (10) days' notice if cancellation is due to nonpayment of premium.

CONSULTANT shall not allow any sub consultant to commence work on his subcontract until the insurance required of the sub consultant has been obtained.

Any failure of CONSULTANT to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with DISTRICT within ten (10) days after the date of execution of this Agreement by CONSULTANT and prior to commencement of work hereunder.

- A. **Compensation Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, CONSULTANT shall require sub consultant similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONSULTANT's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
  
- B. **Commercial General Liability.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent CONSULTANT's liability. If such policy includes an aggregate limit, such aggregate limit shall be at least double the per occurrence limit required herein.

- C. **Automobile Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONSULTANT's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.
- D. **Professional Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which CONSULTANT, its employees, sub-consultants, and agents, are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00) per claim and in the aggregate. If said insurance is written on a "claims made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.
- E. **Sub-consultants.** CONSULTANT shall include all sub-consultants as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the DISTRICT for each sub consultant which shall be subject to review and approval by DISTRICT. All insurance coverages for sub-consultants shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONSULTANT described with particularity herein below.
- F. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The DISTRICT and County of Lake, its officers, officials, employees, designated agents, and appointed volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to CONSULTANT's insurance on Form CG 20 10 11 85 or blanket endorsement equivalent. CONSULTANT shall not commence work under this Agreement until he has had delivered to DISTRICT the Additional Insured Endorsements required herein. This provision is not intended to extend to construction contractors contracted by the DISTRICT to perform the work of improvement.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

- G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement by Consultant, the CONSULTANT's insurance coverage shall be



primary insurance as to the DISTRICT, County of Lake, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-insurance maintained by DISTRICT, its officers, officials, employees, designated agents or appointed volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by DISTRICT. At the option of DISTRICT, either CONSULTANT shall reduce or eliminate such deductibles or self-insurance retentions as they apply to DISTRICT or CONSULTANT shall provide a financial guarantee satisfactory to DISTRICT guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONSULTANT under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A:VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONSULTANT for liability in excess of such coverage, nor shall it preclude DISTRICT from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of DISTRICT to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONSULTANT may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This sub-provision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

CONSULTANT agrees to waive all rights of subrogation against DISTRICT, County of Lake, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONSULTANT under this Agreement.

DISTRICT shall include a provision in its contract with the general contractor hired to perform the work of improvement a provisions requiring that the general contractor and all of its subcontractors maintain general liability insurance of not less than \$1,000,000 and that such insurance include the DISTRICT, County of Lake, its officers, officials, employees, designated agents, appointed volunteers and CONSULTANT as additional insureds.

**X.**  
**INDEMNIFICATION - HOLD HARMLESS**

Each party shall indemnify and hold the other harmless against all actions, claims, demands and liabilities and against all losses, damage, cost expenses, and attorney's fees arising directly or indirectly out of an actual or alleged injury to a person or a property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party. CONSULTANT's obligations under this Section shall survive the termination of the AGREEMENT.

DISTRICT shall include in its contract with the general contractor hired to construct improvements designed under this AGREEMENT and any contracts with subcontractors that they shall respectively indemnify, defend and hold harmless DISTRICT, County of Lake and its officers, employees, designated agents, appointed volunteers and CONSULTANT from any and all claims, losses, damages and liability for damages, including attorney's fees and other costs of defense incurred resulting from the general contractor's or its subcontractors' negligent acts, errors or omissions or other wrongful conduct, except to the extent caused by the negligence or willful wrongful conduct of the indemnified parties.

CONSULTANT's obligations under this Section shall survive the termination of the Agreement.

**XI.**  
**CONSULTANT'S WARRANTIES**

CONSULTANT hereby makes the following representations and warranties:

- A. **Standard of Care.** CONSULTANT represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONSULTANT or designated sub-consultants, in a manner according to generally accepted practices of the engineering profession.
  
- B. **Non-Discrimination in Employment.** In the performance of the work authorized under this Agreement, CONSULTANT shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.  
CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed religion, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

- C. **Adherence to Applicable Disability Law.** CONSULTANT shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.), California Government Code Sections 12920 et seq., and all related state and local laws.
- D. **HIPAA Compliance.** CONSULTANT will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. **Safety Responsibilities.** CONSULTANT will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONSULTANT agrees that in the performance of work under this Agreement, CONSULTANT will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- F. **Interest of CONSULTANT.** CONSULTANT hereby covenants that he/she has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.
- G. **Covenant Against Contingent Fees.** The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **XII.** **ASSIGNMENT**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of DISTRICT, except that claims for money due or to become due the CONSULTANT from DISTRICT under this Agreement may be assigned by the CONSULTANT to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the DISTRICT. Any attempt at assignment of rights under this

Agreement except for those specifically consented to by both parties or as stated above shall be void.

**XIII.**  
**INDEPENDENT CONTRACTOR**

It is specifically understood and agreed that, in the making and performance of this Agreement, CONSULTANT is an independent contractor and is not an employee, agent or servant of DISTRICT. CONSULTANT is not entitled to any employee benefits. DISTRICT agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONSULTANT is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONSULTANT and CONSULTANT's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

**XIV.**  
**MODIFICATION**

- A. This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONSULTANT and DISTRICT executed by Special District's Administrator.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the DISTRICT's Project Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or key members of the project team, as listed below without prior consultation with and approval by the DISTRICT's Project Manager.

**Key Staff**

Dave Coleman, PE	Project Manager
Richard Ingram, PE	Senior Project Advisor
Ben Bryant, PE	Senior Engineer
Anna McKenna, EIT	Engineering Tech./Design Eng.
Bryce Bauer, PE GE	Geotechnical Engineer
Sharon Kimizuka, PE	Electrical Engineer
Richard Burriss, PE SE	Structural Engineer

**XV.**  
**ATTORNEYS FEES AND COSTS**

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

**XVI.**  
**OWNERSHIP OF DOCUMENTS**

All non-proprietary reports, drawings, renderings, information, and/or other documents or materials prepared by and/or submitted to CONSULTANT hereunder shall become the property of DISTRICT. In the event of the termination of this Agreement for any reason whatsoever, CONSULTANT shall promptly turn over all said reports, drawings, renderings, information, and/or other documents or materials to DISTRICT without exception or reservation.

All designs, drawings, specifications, documents, and other work products of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by DISTRICT or by others acting through or on behalf of DISTRICT of any such instruments of service without the written permission of the CONSULTANT will be at DISTRICT's sole risk. DISTRICT agrees to indemnify CONSULTANT and its officers, employees, subcontractors and affiliated corporations from all claims, damages, losses, and costs, including but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change, or alteration.

**XVII.**  
**RETENTION OF RECORDS / AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. Seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code 10532, the CONSULTANT, sub-consultants and the DISTRICT shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The DISTRICT, the County Auditor, the State Auditor, or any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

**XVIII.**  
**JURISDICTION AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONSULTANT waives any right of removal it might have under California Code of Civil Procedure Section 394.

**XIX.**  
**RESIDENCY**

All independent CONSULTANTS providing services to DISTRICT for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

**XX.**  
**NO THIRD-PARTY BENEFICIARIES**

Nothing contained in this AGREEMENT shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

**XXI.**  
**SEVERABILITY**

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

**XXII.**  
**NON-APPROPRIATION**

In the event DISTRICT is unable to obtain funding at the end of each fiscal year for professional engineering services required during the next fiscal year, DISTRICT shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to DISTRICT, CONSULTANT hereby expressly and irrevocably waives its right to such remedy.

**XXIII.**  
**CLAIMS FILED BY DISTRICT'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by the DISTRICT's construction contractor relating to work performed by CONSULTANT's personnel and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for

consultation with the DISTRICT's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONSULTANT personnel that the DISTRICT considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the DISTRICT. Consultation or testimony will be reimbursed at the same rates, including travel costs, which are being paid for the CONSULTANT's personnel services under this Agreement.
- C. Services of the CONSULTANT's personnel in connection with the DISTRICT's construction contractor claims will be performed pursuant to a written supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions of this Article.

#### **XXIV.** **CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the DISTRICT's operations, which is designated confidential by the DISTRICT and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the DISTRICT relating to the contract, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the DISTRICT's actions on the same, except to the DISTRICT's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings, or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review of the contents thereof by the DISTRICT and receipt of the DISTRICT's written permission.
- E. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity, other than the DISTRICT.

**XXV.**  
**NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code, Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the CONSULTANT within the immediately preceding two-year period because of the CONSULTANT's failure to comply with an order of a Federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

**XXVI.**  
**INSPECTION OF WORK**

The CONSULTANT and any sub-consultants shall permit the DISTRICT and State to review and inspect the project activities at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

**XXVII.**  
**NON-DISCRIMINATION**

- A. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, mental condition (cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONSULTANTS and sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a party hereof as if set forth in full. CONSULTANT and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
- C. CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.



**XXVIII.**  
**NOTICES**

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

County of Lake, Special Districts Administration, Attn: Jan Coppinger, Administrator  
230 N. Main Street  
Lakeport, California 95453

Brelje & Race Consulting Engineers, Attn: David Coleman, P.E.  
475 Aviation Blvd. Ste. 120  
Santa Rosa, CA 95403

**XXIX.**  
**FORCE MAJURE**

The CONSULTANT is not responsible for damages or delays in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

**XXX.**  
**ADDITIONAL PROVISIONS**

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

DISTRICT and CONSULTANT have executed this Agreement on the day and year first written above.

COUNTY OF LAKE:

CONSULTANT:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
John Locey, Senior Principal

ATTEST: Carol J. Huchingson  
Clerk of the Board  
of Supervisors

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

Signature:   
Anita Grant (Aug 25, 2020 14:13 PDT)

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

By: **Email:** [anita.grant@lakecountyca.gov](mailto:anita.grant@lakecountyca.gov)

**Exhibit A**

**Middletown WWTP Improvements - Final Design**

**Scope of Services**

Dated August 17, 2020

# SCOPE OF SERVICES – MIDDLETOWN WWTP IMPROVEMENTS - FINAL DESIGN      AUGUST 17, 2020

A detailed outline of the services to be provided is presented below. Work will be conducted within the framework of the Assumptions listed:

## PHASE 1 – 100% DESIGN PHASE

### **Task 1.01. Project Kickoff Meeting**

- A. Meet with Special Districts and/or LACOSAN to establish project goals, objectives and schedule.
- B. Prepare Kickoff Meeting Notes

### **Task 1.02. Identify Field Information Needs**

- A. Review existing (90%) plans and determine additional information needed to finalize pipeline alignments, structure locations and subsurface conditions.
- B. Identify pothole needs.
- C. Determine locations for geotechnical investigation.

### **Task 1.03. Field Investigations.**

- A. Conduct General Field Visit at Middletown WWTP to review site conditions and constraints and review placement of new project components.
- B. Conduct subsurface geological exploration through up to three borings.
- C. Witness potholing of identified facilities.
- D. Conduct surveying as necessary to establish special (horizontal and vertical) locations of potholed facilities.

### **Task 1.04. 100% Design**

- A. Incorporate 90% design review comments from LACOSAN where applicable.
- B. Prepare improvement plans to the 100% progress level. This will include all drawings including Electrical and Structural.
- C. Prepare 100% technical specifications.
- D. Coordinate LACOSAN front end documents with technical specifications
- E. Update opinion of probable construction cost.

## PHASE 2 – FINAL DESIGN AND CONTRACT DOCUMENT PREPARATION PHASE

### **Task 2.01. 100 % Design Submittal**

- A. Submit 100% Plans, Specs and Cost Estimate to District.
- B. Meet with District to discuss comments
- C. Revise contract documents per District comments.

### **Deliverables:**

- Four Copies of 100% Design Drawings (Two full size, two 11x17)
- Four Copies of 100% Specifications
- Four Copies of 100% Cost Estimate
- Four Copies Geotechnical Report
- Electronic Submittal of 100% design review meeting notes

### **Task 2.02. Final (Bid Ready) Contract Document Submittal**

- A. Incorporate 100% design review comments from LACOSAN where applicable.
- B. Prepare final improvement plans.
- C. Prepare final technical specifications.
- D. Prepare final opinion of probable construction cost. Format to reflect final bid schedule in terms of order, unit prices and quantities.
- E. Plot, stamp, sign, and submit final mylar improvement plans.
- F. Stamp, sign and submit one hard copy of technical specifications.
- G. Transmit electronic copy of improvement plans and technical specifications.

#### **Deliverables:**

- Four Copies of Bid Ready Design Drawings (11x17)
- One Copy of Bid Ready Design Drawings (22x34)
- Four Copies of Bid Ready Specifications
- Four Copies of Final Cost Estimate
- CAD files of Drawings on DVD media
- MS Word files of Specifications on DVD media

## **PHASE 3 – ENGINEERING ASSISTANCE WITH BIDDING**

### **Task 3.01. Assist with Bidding**

Provide technical information and assistance to Special Districts as necessary to answer questions from Bidders, prepare bid addenda, attend bid opening with District.

#### **ASSUMPTIONS AND LIMITATIONS:**

- Design work will be completed in 2020 calendar year.
- Basic design elements maintained from 90% Design Submittal
- Location of major treatment units maintained from 90% Design Submittal
- Three geotechnical borings maximum on site.
- Potholing contracted by, or performed by District.
- Two addenda prepared during bidding phase
- Project will be funded by State DFA

**Exhibit B**

**Middletown WWTP Improvements - Final Design**

**Task Budget - Final**

Dated July 13, 2020

**Middletown WWTP Improvements - Final Design**  
 Lake County Speical Districts - LACOSAN  
**TASK BUDGET Final**  
 July 13, 2020

PHASE	TASK	DESCRIPTION	Scheduled Completion Month (2021)	WORKHOURS											Subcontractant (\$)			
				Senior Advisor	Associate Principal	Senior Engineer	Design Engineer	Engineering Technician	CAD Technician	Senior Surveyor	Survey Technician	Survey Crew	Technical Writer					
100 % Design	11	Project Kickoff Meeting	Jan-21		6	4	4	4	4									
	12	Identify Field Information Needs	Jan-21		8	16	4	4	12									
	13	Field Investigations.	Jan-21		8	16			16					8				\$12,000 a
	14	Revise Plans & Tech Specs	Feb-21		40	60	12	12	68	175						24		\$48,000 b
	15	Front-End Documents	Feb-21		8	20			16							16		
		<b>Subtotal</b>		<b>5</b>	<b>70</b>	<b>116</b>	<b>20</b>	<b>116</b>	<b>175</b>	<b>2</b>	<b>12</b>	<b>8</b>	<b>40</b>				<b>\$60,000</b>	
Final Design and Contract Document Preparation	21	100% Design Submittal	Mar-21		8	16			16									
	22	Final Contract Document Submittal	Apr-21		4	2	2	2	4									
		<b>Subtotal</b>		<b>0</b>	<b>12</b>	<b>18</b>	<b>2</b>	<b>2</b>	<b>18</b>	<b>20</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>				<b>\$0</b>
Engineering Assistance with Bidding	31	Bidding Assistance	Apr-21		8	12			16									
		<b>Subtotal</b>		<b>0</b>	<b>8</b>	<b>12</b>	<b>0</b>	<b>16</b>	<b>12</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>					<b>\$0</b>
		<b>Subtotal</b>		<b>5</b>	<b>90</b>	<b>146</b>	<b>22</b>	<b>150</b>	<b>207</b>	<b>2</b>	<b>12</b>	<b>8</b>	<b>42</b>					<b>N/A</b>
		<b>Total Hours</b>		<b>\$200</b>	<b>\$195</b>	<b>\$170</b>	<b>\$170</b>	<b>\$145</b>	<b>\$140</b>	<b>\$175</b>	<b>\$252</b>	<b>\$110</b>	<b>\$4,620</b>					<b>N/A</b>
		<b>Subtotal Cost</b>		<b>\$1,000</b>	<b>\$18,900</b>	<b>\$28,470</b>	<b>\$3,740</b>	<b>\$21,750</b>	<b>\$28,980</b>	<b>\$350</b>	<b>\$1,680</b>	<b>\$2,016</b>	<b>\$4,620</b>					<b>\$60,000</b>
		<b>SUBTOTAL</b>																
		10% SUB-CONSULTANT MARK-UP																
		REPRO & PLOT																
		<b>TOTAL</b>																

Note: a. Geotechnical Services  
 b. Structural Design and Electrical Design

