



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

D-28

For the meeting of: September 20, 2016

Date: September 1, 2016

To: Board of Supervisors

From:  Thomas K. Mattson, Public Works Director

Subject: Agreement for Consultant Services with Fisch Drilling for the Eel River Valley Groundwater Basin Assessment

RECOMMENDATION(S):

That the Board of Supervisors authorizes the Chair to sign the attached Agreement for Consultant Services with Fisch Drilling to perform drilling services for the Eel River Valley Groundwater Basin Assessment.

SOURCE OF FUNDING: California Department of Water Resources – Proposition 1 Sustainable Groundwater Planning Grant Program

DISCUSSION:

On May 31, 2016, the Board authorized Public Works to issue a Request for Proposals (RFP) for drilling services related to the Eel River Valley Groundwater Basin Assessment (the "Project"). The RFP was prepared in accordance with the County's Purchasing Policy. The Board directed Public Works to return to the Board with a contract with the selected consulting firm for review and approval.

The RFP was circulated from June 1, 2016, through June 15, 2016. The RFP was sent to the distribution list for the Eel River Groundwater Basin Working Group and posted on the County's

Prepared by Hank Seemann

CAO Approval 

REVIEW:

Auditor 

County Counsel Sm

Human Resources 

Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Fennell Seconded by Supervisor Bass

Ayes Sundberg, Fennell, Lovelace, Bohn, Bass

- Nays _____
- Abstain _____
- Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-15

Meeting of: May 31, 2016

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Sept. 20, 2016

By: 
Kathy Hayes, Clerk of the Board

web site. One submittal, from Fisch Drilling, was received. This contractor is qualified to perform the requested services, and Public Works recommends that the Board authorizes the Chair to sign the attached Agreement for Consultant Services.

FINANCIAL IMPACT:

Funds for the Project have been incorporated into the Fiscal Year 2016-17 budget in revenue line 1100251-525001 and expenditure line 1100251-3452. The total estimated cost for the Project is \$270,418. Public Works has a grant agreement with the Department of Water Resources to provide up to \$250,000 for the Project. The cost-share amount of \$20,418 will be funded from the General Fund portion of the Water Management budget. The maximum amount payable under the attached Agreement is \$104,000.

The requested action will advance two of the Board of Supervisors' core roles: providing for and maintaining infrastructure, and creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

California Department of Water Resources, Humboldt County Division of Environmental Health, Planning and Building Department, Agricultural Commissioner, UC-Cooperative Extension, City of Fortuna, City of Rio Dell, Bear River Band of Rohnerville Rancheria, Hydesville Community Services District, Loleta Community Services District, Palmer Creek Community Services District, Riverside Community Services District, Scotia Community Services District.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

Agreement for Consultant Services

**AGREEMENT FOR CONSULTANT SERVICES
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
FISCH DRILLING
PROJECT NAME: Eel River Valley Groundwater Basin Assessment
PROJECT NUMBER: 251032**

This Agreement, entered into this 20th day of September, 2016, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Fisch Drilling, a sole proprietorship, hereinafter referred to as "CONSULTANT," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Public Works – Environmental Services, desires to retain the drilling services of CONSULTANT to assist with a geologic and hydrogeologic investigation of the Eel River Valley groundwater basin to support the region's compliance with the Sustainable Groundwater Management Act (Project); and

WHEREAS, such work involves the performance of professional and technical services of a temporary and occasional character, and COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, Pursuant to California Government Code Section 31000, COUNTY may retain independent contractors to perform special services for COUNTY or any department thereof; and

WHEREAS, COUNTY has retained SHN Consulting Engineers & Geologists, Inc. under separate contract to assist with professional geologic services for the Project; and

WHEREAS, CONSULTANT has represented that it is qualified to perform said drilling services.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. OBLIGATIONS OF CONSULTANT:

- A. Professional Services. CONSULTANT agrees to furnish professional consulting services in accordance with the criteria, schedule and fiscal requirements set forth in Exhibit A – Scope of Services, Exhibit B – Project Schedule, Exhibit C – Project Budget and Exhibit D – Billing Rate Schedule, which are attached hereto and incorporated herein by reference. In providing such services CONSULTANT agrees to fully cooperate with the Humboldt County Department of Public Works Director or designee thereof, hereinafter referred to as "Director."
- B. Additional Services. No additional services shall be performed by CONSULTANT prior to the execution of a written amendment to this Agreement and the issuance of a separate "Notice to Proceed" authorizing the performance of such additional services. Any amendments authorizing the performance of additional services shall include a detailed description of such services, the dollar value thereof and the method by which such services shall be compensated.
- C. Due Care. All work to be completed in a workmanlike manner according to standard practices. CONSULTANT shall take due care to prevent damage to road surfaces, fences, and

other structures and infrastructure located near work areas. CONSULTANT shall repair any substantial damage caused by CONSULTANT's equipment.

2. OBLIGATIONS OF COUNTY:

- A. Provision of Necessary Data and Materials. COUNTY shall provide CONSULTANT with all background data necessary for CONSULTANT to complete the services required hereunder.
- B. COUNTY Representative. COUNTY shall designate a representative with complete authority to transmit instructions and information, receive correspondence, interpret policy and define decisions pertaining to this Agreement. COUNTY's representative shall have overall charge and responsibility of COUNTY's activities and obligations hereunder. All correspondence pertaining to the performance of CONSULTANT's duties and obligations contained herein shall be submitted to COUNTY's representative.
- C. Review of Submitted Materials. COUNTY shall thoroughly review all draft reports, sketches, proposals and other documents submitted by CONSULTANT. COUNTY shall provide CONSULTANT with a written response pertaining to the review of documents submitted by CONSULTANT within five (5) calendar days from the receipt thereof.
- D. Site Access. COUNTY shall identify drilling locations and provide ingress/egress for the purpose of implementing the Scope of Services under this Agreement.
- E. Fluids and Cuttings. It is assumed that drilling fluids and excess soil cuttings will be placed on site. COUNTY shall direct CONSULTANT regarding the appropriate location for placement of fluids and cuttings.

3. TERM:

This Agreement shall begin upon execution by both parties and remain in full force and effect for a period of one hundred and fifty (150) calendar days, unless sooner terminated as provided herein.

4. TERMINATION:

- A. Breach of Contract. If, in the opinion of COUNTY, CONSULTANT fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or other law applicable to its performance herein, COUNTY shall have the right to cancel or terminate this Agreement immediately, upon notice.
- B. Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is terminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONSULTANT seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation. In the event of any termination of this Agreement, CONSULTANT shall be

entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to COUNTY resulting from a breach of this Agreement.

5. COMPENSATION:

The maximum amount payable by COUNTY for services rendered, and expenses incurred, by CONSULTANT pursuant to the terms and conditions of this Agreement is One Hundred and Four Thousand and Zero Dollars (\$104,000). The specific rates and costs applicable to this Agreement shall be as set forth in Exhibit D – Billing Rate Schedule.

6. PAYMENT:

CONSULTANT shall submit to COUNTY monthly progress reports and invoices which itemize all work completed as of the invoice date. All invoices submitted by CONSULTANT shall be in a format approved by, and shall include backup documentation as specified by, Director and the Humboldt County Auditor-Controller. CONSULTANT shall submit a final undisputed invoice for payment not more than thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered and expenses incurred hereunder shall be made within thirty (30) days after the receipt of approved invoices.

7. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and served personally, or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: County of Humboldt
Department of Public Works – Environmental Services
Attn: Hank Seemann
1106 Second Street
Eureka, California, 95501

CONSULTANT: Fisch Drilling
Attn: David Fisch
3150 Johnson Road
Hydesville, CA 95547

8. REPORTS:

CONSULTANT agrees to provide COUNTY with any and all reports which may be required by local, state or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. CONSULTANT agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided

hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.

- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONSULTANT, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONSULTANT hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state or federal agencies. CONSULTANT further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state or federal agencies. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement.
- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the requirements of the project shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONSULTANT's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

CONSULTANT agrees that COUNTY has the right to monitor all activities related to this Agreement, including the right to review and monitor CONSULTANT's records, programs or procedures, at any time, as well as the overall operation of CONSULTANT's programs in order to ensure compliance with the terms and conditions of this Agreement. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONSULTANT pursuant to the terms of this Agreement.

11. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In performance of this Agreement, CONSULTANT may receive information that is confidential under local, state or federal law. CONSULTANT hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws and regulations, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328 and 10850; California Health & Safety Code Sections 1280.15 and 130203; the California Confidentiality of Medical Information Act ("CMIA"); the federal Health Information Technology for Economic and Clinical Health Act, ("HITECH Act"); the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and

state confidentiality laws are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws or regulations.

12. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONSULTANT certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONSULTANT is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. CONSULTANT agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONSULTANT becomes a Nuclear Weapons Contractor.

13. NONDISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONSULTANT shall not discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, or any other classification protected by local, state or federal laws and regulations. Nothing herein shall be construed to require employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONSULTANT further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, California Welfare and Institutions Code Section 10000, CDSS MPP Division 21, United States Executive Order 11246, as amended, and any other applicable local, state and federal laws and regulations. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

14. DRUG-FREE WORKPLACE:

By signing this Agreement, CONSULTANT hereby certifies that CONSULTANT will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350 et seq.), and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
1. The dangers of drug abuse in the workplace;
 2. CONSULTANT's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services hereunder will:
1. Receive a copy of CONSULTANT's Drug-Free Policy Statement; and
 2. Agree to abide by the terms of CONSULTANT's Drug-Free Policy as a condition of employment.
- D. Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONSULTANT may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONSULTANT violates the certification by failing to carry out the above-referenced requirements.

15. INDEMNIFICATION:

To the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney fees and other costs of litigation, arising out of, or in connection with, CONSULTANT's performance of, or failure to comply with, any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONSULTANT is not entitled to any rights hereunder, unless certificates of insurance, or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting CONSULTANT's indemnification obligations provided for herein, CONSULTANT shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A; VII or its equivalent, against personal injury, death and property damage which may arise from, or in connection with, the activities of CONSULTANT, its agents, officers, directors, employees, licensees, invitees, assignees and subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG0001), in an amount of Two Million Dollars (\$2,000,000) per occurrence for any one incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000) combined single limit coverage. Such insurance shall include coverage of all owned, non-owned and hired vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits and Employers' Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers. In the event CONSULTANT is self-insured, a Certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations Administration of Self-Insurance shall be filed with the Clerk of the Humboldt County Board of Supervisors.
4. Professional Liability Insurance – Error and Omission Coverage, including coverage in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) general aggregate. Said insurance shall be maintained for the statutory period during which CONSULTANT may be exposed to liability. CONSULTANT shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, its agents, officers, officials, employees and volunteers, are covered as additional insureds for liability arising out of the operations performed by or on behalf of CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONSULTANT shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this Agreement, CONSULTANT's insurance is the primary coverage to COUNTY, and any insurance or self-insured programs maintained thereby are excess to CONSULTANT's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
 6. CONSULTANT shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to, and approved by, COUNTY. If CONSULTANT does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONSULTANT agrees to pay the cost thereof. COUNTY is also hereby authorized to deduct the cost of said insurance from the monies owed to CONSULTANT under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONSULTANT shall be required to purchase additional coverage to meet above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Risk Management
825 Fifth Street, Room 131
Eureka, CA 95501

County of Humboldt
Department of Public Works – Environmental Services
Attn: Hank Seemann
1106 Second Street
Eureka, California, 95501

CONSULTANT: Fisch Drilling
Attn: David Fisch
3150 Johnson Road
Hydesville, CA 95547

17. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONSULTANT shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. CONSULTANT shall be solely responsible for the acts or omissions of its agents, officers, directors, employees, licensees, invitees, assignees and subcontractors.

18. THIRD PARTY BENEFICIARIES:

CONSULTANT shall require that all subcontractors hereunder agree to be bound by the terms and conditions of this Agreement as applicable. However, nothing in this provision shall operate to confer any rights, remedies, obligations or liabilities upon any third parties.

19. PREVAILING WAGE RATES:

CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code Section 1770, and all federal, state, and local laws and ordinances applicable to the work required hereunder.

Any subcontract entered into as a result of this contract, if for more than Twenty Five Thousand Dollars (\$25,000.00), for public works construction or more than Fifteen Thousand Dollars (\$15,000.00) for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this section.

When prevailing wages apply to the services described herein and Exhibit A – Scope of Services, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. (See <http://www.dir.ca.gov>.)

20. COMPLIANCE WITH APPLICABLE LAWS:

CONSULTANT agrees to comply with all local, state and federal laws and regulations applicable to the services covered by this Agreement. CONSULTANT further agrees to comply with all applicable local, state and federal licensure and certification requirements.

21. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

22. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

23. ASSIGNMENT:

CONSULTANT shall not delegate its duties or assign its rights hereunder, either in whole or in part, without COUNTY's prior written consent. Any assignment by CONSULTANT in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by CONSULTANT to obtain supplies, technical support or professional services.

24. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

25. NO WAIVER OF DEFAULT:

- A. General Waivers. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.
- B. Payment. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONSULTANT. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

26. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

27. AMENDMENT:

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

28. STANDARD OF PRACTICE:

CONSULTANT warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances. It is hereby understood that COUNTY's acceptance of the services performed by CONSULTANT hereunder shall not operate as a waiver or release of any breach of this Agreement.

29. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement prepared and/or submitted by CONSULTANT shall become the property of COUNTY. However, CONSULTANT may retain copies of such documents and information for its records. In the event of termination of this Agreement, for any reason whatsoever, CONSULTANT shall promptly turn over all information, writings and documents pertaining to the services provided hereunder to COUNTY without exception or reservation.

30. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media (television, radio, newspapers and internet). CONSULTANT shall inform COUNTY of all requests for interviews by media related to this Agreement before such interviews take place; and COUNTY is entitled to have a representative present at such interviews. All notices required by this provision shall be given to Director.

31. SUBCONTRACTS:

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services to be delivered hereunder. Any and all subcontracts will be subject to all applicable provisions of this Agreement. CONSULTANT shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

32. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

33. ATTORNEY FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement from being performed, the prevailing party in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

34. SURVIVAL:

The duties and obligations of the parties set forth in Sections 4(D), 9, 11 and 15 shall survive the expiration or termination of this Agreement.

35. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in paragraphs 1 through 39 of this Agreement, paragraphs 1 through 39 of this Agreement shall have priority.

36. INTERPRETATION:

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

37. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

38. FORCE MAJEURE:

Neither party hereto 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.

39. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations, whether oral or written, concerning the same subject matter.

40. 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. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date written above.

TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND*
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.*

FISCH DRILLING:

By: 

Date: 9/16/16

Name: David Fisch

Title: owner

COUNTY OF HUMBOLDT:

By: 
Chair, Board of Supervisors

Date: 9/20/2016

(SEAL)

ATTEST:
Clerk of the Board

By: 

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Manager

- Exhibit "A" – Scope of Services
- Exhibit "B" – Project Schedule
- Exhibit "C" – Project Budget
- Exhibit "D" – Billing Rate Schedule

**EXHIBIT A
SCOPE OF SERVICES**

The anticipated scope of work includes the following four tasks. The specific activities to be performed for each task may be adjusted by COUNTY based on further evaluation of project objectives, review of existing data and previous studies, and initial field results.

Task 1 Paired 40-foot and 80-foot Temporary Wells

A pair of one-inch PVC wells installed with a Geoprobe at a single location (two to three feet apart). One well is screened shallow (30 to 40 foot BGS) and one well is screened deep (70 to 80 feet BGS).

Estimated number of sites: 5
Estimated cost per site: \$5,436
Estimated Task cost: \$27,180

Task 2 Dual Screened 100-foot Drilled Wells

Two two-inch PVC wells screened at separate intervals, installed within the same drill hole advanced to a total depth of 100 feet BGS. Task includes electronic-logging (performed by CONSULTANT) and collection of cuttings (logged by others). Task includes assistance with aquifer testing (coordinated by others).

Estimated number of sites: 2
Estimated cost per site: \$12,260
Estimated Task cost: \$24,520

Task 3 Dual Screened 300-foot Drilled Wells

Two two-inch PVC wells screened at separate intervals, installed within the same drill hole advanced to a total depth of 300 feet BGS. Task includes electronic-logging (performed by CONSULTANT) and collection of cuttings (logged by others). Task includes assistance with aquifer testing (coordinated by others).

Estimated number of sites: 2
Estimated cost per site: \$22,860
Estimated Task cost: \$45,720

Task 4 Assistance with Aquifer Testing

Assistance with additional aquifer testing (slug tests and/or pump tests). Locations and specific work activities to be determined.

Estimated Task cost: \$6,580

BGS = Below ground surface
PVC = Polyvinyl chloride

**EXHIBIT B
PROJECT SCHEDULE**

Target Completion Date

September 30, 2016	Complete Task 1
October 31, 2016	Complete Tasks 2 and 3
November 18, 2016	Complete Task 4

**EXHIBIT C
PROJECT BUDGET**

Task 1	\$27,180
Task 2	\$24,520
Task 3	\$45,720
Task 4	<u>\$6,580</u>
Total:	\$104,000

EXHIBIT D
BILLING RATE SCHEDULE



PHONE: (707)768-9800

FAX (707)768-9801

LICENSE # 683865

3150 JOHNSON ROAD, HYDESVILLE, CA 95547

DATE: July 28, 2016

PROPOSAL/CONTRACT

NUMBER:

SUBMITTED TO:

Humboldt County Public Works Dept.
1106 Second St.
Eureka, CA 95501

CONTACT: Hank Seemann

PHONE: (707) 268-2680

JOB DESCRIPTION: Water Well & Samples

LOCATION: Eel River Valley

EMAIL: HSeemann@co.humboldt.ca.us

FAX:

We here by submit the specifications and estimates for the following:

Exploratory Borings and Wells

- Set-Up Cost \$ 1500.00 Each
- Drill to 300' Cost \$ 30.00 Per Ft
- Complete Well 5" PVC SDR21 Cost \$ 15.00 Per Ft
- Complete Well 4" PVC SDR21 Cost \$ 15.00 Per Ft
- Bags of #3 Well Sand Cost \$ 20.00 Each
- Bags Bentonite Seal Cost \$ 20.00 Each
- Prevailing Wage Assessment
Per Hour for 3 Man Crew Cost \$ 100.00 Per Hour
- Overtime Prevailing Wage Assessment
Per Hour for 3 Man Crew Cost \$ 150.00 Per Hour

Temporary Monitoring Wells

- Geoprobe Track Rig (8 Hour Day) Cost \$ 2500.00
- Expendable Drive Shoes Cost \$ 40.00
- 1" Casing/Screen Cost \$ 5.00 Ft.
- Bags of #3 Well Sand Cost \$ 20.00 Each
- Bags Bentonite Seal Cost \$ 20.00 Each
- Monument Well Boxes Cost \$ 300.00 Each
- Prevailing Wage Assessment (2 Man Crew) Cost \$ 67.00 Per Hr.



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3150 JOHNSON ROAD, HYDESVILLE, CA 95547

DATE: July 28, 2016

PROPOSAL/CONTRACT

NUMBER:

Test Pumping

- Set Up Cost \$ 1500.00 Per Well
- 1 Man Crew Under 8 Hrs. Cost \$ 110.00 Per Hr.
- 1 Man Crew Over 8 Hrs. Cost \$ 150.00 Per Hr.

E-Logging

- E-Logging Per Boring (Dave Only) Cost \$ 1800.00 Per Well

Assumptions:

- Prevailing Wages are adjusted in August 2016, Prevailing Wages assessments may be higher.
- Not responsible for water quality or quantity
- All drilling fluids will be pumped out and left on site
- Drill cuttings to be left on site and graded in with project