

*Mendocino County Russian River Flood Control
& Water Conservation Improvement District*

STAFF REPORT

**Agenda Item 6d: Ratification of Service Contract with Mendocino County Resource
Conservation District for Metering and Data Management Program
Monday, September 11, 2023**

The Strategic Plan relevant priorities are (1) **Use** by ensuring effective and beneficial use of water as a public resource; and (2) **Administration** by engaging consultant services to support operations & improve transparency, accountability, and consistency across the District.

Background

Compliance with the District's Alternative Compliance Plan to the Water Measurement and Reporting Regulation Adopted Pursuant to 2015 Senate Bill 88 requires data collection and management. The District has historically used consultant services to assist in this work with the General Manager contributing significant hours to metering issues, data collection, and data management.

The Mendocino County Resource Conservation District is a trusted local organization that regularly conducts water resources related monitoring and data collection as well as various programs supporting the agricultural community. Previous collaborations and discussions between the two Districts led to the outsourcing of the Metering and Data Management Program to the RCD.

Discussion

RCD will conduct regular meter reading, annual data collection and management, meter maintenance & troubleshooting, customer service regarding metering, policy and procedure development, and related tasks in coordination and close communication with the RRFC General Manager.

Recommended Action(s):

- Move to approve Ratification of Service Contract with Mendocino County Resource Conservation District for metering and data management program.

Attachments:

- Professional Services Agreement between Mendocino County Russian River Flood Control & Water Conservation Improvement District and Mendocino County Resource Conservation District signed by both District Executives on September 1, 2023.

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Prepared and submitted to the Board of Trustees by: *Elizabeth Salomone, General Manager*

Mendocino County

Russian River Flood Control & Water Conservation Improvement District

P.O. Box 2104 Ukiah, CA 95482 707.462.5278 Website: RRFC.net DistrictManager@rrfc.net

PROFESSIONAL SERVICES AGREEMENT

Mendocino County Resource Conservation District

This Professional Services Agreement (Agreement) is entered into between the Mendocino County Russian River Flood Control and Water Conservation Improvement District (“RRFC”), and Mendocino County Resource Conservation District (“MCRCD”).

Recitals

- A. RRFC sought MCRCD to fill the role described in Scope of Services for the RRFC. After negotiations between the RRFC and MCRCD, the parties have reached an agreement for the performance of professional services in accordance with the terms set forth in this agreement.

Now therefore, the parties mutually agree as follows:

1. **Scope of Services.** MCRCD shall perform the services described in Exhibit “A” attached and incorporated by reference. MCRCD shall not use any contractors or subcontractors without RRFC’s prior written consent.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Any services for which times for performance are not specified in this Agreement shall be started and completed by MCRCD in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the MCRCD. MCRCD shall submit all requests for extensions of time to the RRFC in writing no later than ten days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. RRFC shall grant or deny such requests at its sole discretion.
3. **Compensation.**
 - 3.1 **General.** For services performed by MCRCD under this Agreement, RRFC shall pay MCRCD on a time and expense basis, at the billing rates set forth in Exhibit “B,” attached and incorporated by reference. MCRCD’s fee for this Agreement is Not to Exceed \$22,316.14. MCRCD’s billing rates shall cover all costs and expenses for MCRCD’s performance of this Agreement. No work shall be performed by MCRCD in excess of the Not to Exceed amount without the RRFC’s prior written approval.
 - 3.2 **Invoices.** MCRCD shall submit monthly invoices to the RRFC describing the services performed, including times, dates, and names of persons performing the service.
 - 3.3 **Payment.** Within 30 days after the RRFC’s receipt of invoice, RRFC shall make payment to the MCRCD based upon the services described on the invoice and approved by the RRFC.

4. **Indemnification.** MCRCD shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the RRFC), and hold harmless the RRFC from and against any claims arising out of MCRCD's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the RRFC.

In this section, "RRFC" means the RRFC, its officials, officers, agents, employees and volunteers; "MCRCD" means the MCRCD, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

(The duty of a "design professional" to indemnify and defend the RRFC is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8.)

The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 5 relating to insurance.

5. **Insurance.**

5.1 **General.** MCRCD shall, throughout the duration of this Agreement, maintain insurance to cover MCRCD, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.

5.2 **Commercial General Liability** (with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$1,000,000 general aggregate and \$500,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

5.3 **Automobile Liability** (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$500,000 per accident for bodily injury and property damage.

5.4 **Workers' Compensation** coverage shall be maintained as required by the State of California.

5.5 **Professional Liability** "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of MCRCD in an amount not less than \$1,000,000 per claim.

5.6 **Endorsements.** MCRCD shall obtain endorsements to the automobile and commercial general liability with the following provisions:

5.6.1 The RRFC (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

5.6.2 For any claims related to this Agreement, MCRCD's coverage shall be primary insurance with respect to the RRFC. Any insurance maintained by the RRFC shall be in excess of the MCRCD's insurance and shall not contribute with it.

5.7 **Notice of Cancellation.** MCRCD shall notify the RRFC if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. MCRCD shall immediately obtain a replacement policy.

- 5.8 **Authorized Insurers.** All insurance companies providing coverage to MCRCD shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
- 5.9 **Insurance Certificate.** MCRCD shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the RRFC, before the RRFC signs this Agreement.
- 5.10 **Substitute Certificates.** No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, MCRCD shall provide a substitute certificate of insurance.
- 5.11 **MCRCD's Obligation.** Maintenance of insurance by the MCRCD as specified in this Agreement shall in no way be interpreted as relieving the MCRCD of any responsibility whatsoever (including indemnity obligations under this Agreement), and the MCRCD may carry, at its own expense, such additional insurance as it deems necessary.

- 6. **Independent Contractor Status; Conflicts of Interest.** MCRCD is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. MCRCD is not RRFC's employee and MCRCD shall have no authority, express or implied, to act on behalf of the RRFC as an agent, or to bind the RRFC to any obligation, unless the RRFC provides prior written authorization. MCRCD is free to work for other entities while under contract with the RRFC. MCRCD, and its agents or employees, are not entitled to RRFC benefits.

MCRCD (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If MCRCD maintains or acquires such a conflicting interest, the RRFC may terminate any contract (including this Agreement) involving MCRCD's conflicting interest.

- 7. **Termination.** Either party may terminate this Agreement by giving ten days written notice to the other party. Upon termination, MCRCD shall give the RRFC all original documents, including preliminary drafts and supporting documents, prepared by MCRCD for this Agreement. The RRFC shall pay MCRCD for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.
- 8. **Ownership of Work.** All original documents prepared by MCRCD for this Agreement, whether complete or in progress, are the property of the RRFC, and shall be given to the RRFC at the completion of MCRCD's services, or upon demand from the RRFC. No such documents shall be revealed or made available by MCRCD to any third party without the RRFC's prior written consent.

9. Miscellaneous.

9.1 Notices. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the other party as follows:

To: MCRCD:
Stephanie Garrabrant-Sierra, Executive Director
410 Jones Street
Ukiah, CA 95482

To RRFC:
Elizabeth Salomone, General Manager
PO Box 2104
Ukiah, CA 95482

With a copy to:
Joe Scriven, Assistant Executive Director
410 Jones St., C-3, Ukiah, CA 95482

Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days after the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

- 9.2 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to MCRCD's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.
- 9.3 Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 9.4 Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 9.5 Assignment and Delegation.** MCRCD may not assign, transfer, or delegate this Agreement or any portion of it without the RRFC's written consent. Any attempt to do so will be void. RRFC's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 9.6 Jurisdiction and Venue.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.
- 9.7 Compliance with the Law.** MCRCD shall comply with all local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.
- 9.8 Business Entity Status.** MCRCD is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to MCRCD. RRFC may void this Agreement if MCRCD is a suspended corporation, limited liability company or limited partnership at the time it enters into this Contract, RRFC may take steps to have this Agreement declared voidable.

9.10 Entire Agreement; Severability. This Agreement comprises the entire integrated understanding between the parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations, or agreements.

If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

10. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the MCRCD and the RRFC. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.


The parties agree to the full performance of the terms set forth here.

“MCRCD”

By: 
Signature
Stephanie Garrabrant-Sierra, Executive Director
410 Jones Street
Ukiah, CA 95482
707-462-3664
Stephanie.Sierra@mcr cd.org

Date: 9/1/23

“RRFC”

By: 
Signature
Elizabeth Salomone, General Manager
PO Box 2104
Ukiah, CA 95482
707-462-5278
DistrictManager@rrfc.net

Date: 9/1/23

Exhibits:

- A Scope of Services
- B Schedule of Fees and Costs

A. SCOPE OF SERVICES

Overview

MCRCD's Associate Project Manager will provide the below services to RRFC as scheduling and obligations from other projects allow. While seasonal variability is expected, MCRCD and RRFC will coordinate to ensure that this project will generally take up no more than 20% of Associate Project Manager's hours.

1. Initial start-up

Train with Russian River Flood Control (RRFC) General Manager on how to read, download, inspect, and perform some maintenance to meters. This includes field ride-along(s) with RRFC to learn the route and meeting with Performance Pump to learn inspection, troubleshooting, and proper installation of meters.

2. Meter Readings

Meter readings will be the primary activity of the contract. Record readings from meters, keeping an eye out for malfunctions, obstructions, etc. that could or are impairing accurate diversion recording of meter.

- Monthly readings
 - During irrigation season: Approximately 45 agricultural locations (may vary per month) and 10 water supply agency meters. Usually, can do the monthly rounds in summer in 2 days with one driver, one hopping out to open gates, etc.
 - Year-round: Approximately 5 domestic meters plus several water supply agency meters. Off-season monitoring should only take a few hours per month.
- Annually in October: download data from meters. Downloads usually take an average of 25 minutes each, not including travel time to the meter.

3. Repairs

Assess malfunction in field and through communication with Customers. Communicate with manufacturer and run diagnostic program if needed. Obtain return authorization, uninstall meter, and prepare for return by packaging properly and arranging for shipping. Track progress, deliver to customer, and inspect reinstallation. A care and maintenance plan could be developed to offset some of the malfunctions.

4. Ordering

Work with Customers to obtain accurate measurements for new meter purchase. Contact sales representative, contact RRFC for purchase order, place order, receive meter, and deliver to customer. Inspect installation. Most required meters have been obtained but on average, a couple of meters a year are needed.

6. Data Management

Keep accurate records including RRFC tracking spreadsheet with inventory, repairs, etc. Collaborate on database improvement and data presentation, including GIS

7. Program Support

Attend relevant meetings on water use programs and policy, as needed. Collaborate on development of the metering program. Assist RRFC in compliance with implementing its Senate Bill 88 Alternative Compliance Plan.

8. Communication

Minimum of 1 meeting per month with RRFC to provide update (phone or email is fine.) Additional emails, texts, calls as needed.

B. SCHEDULE OF FEES and COSTS

Position	Rate	# of Hours	Total (\$)
Executive Director	118.97	6	713.82
Business Manager	96.86	12	1,162.32
Associate Project Manager (avg. 20/mo)	85.00	240	20,400
Mileage			50
			\$22,326.14