

AGREEMENT

This "Agreement" is made and entered into _____, 2024 ("Effective Date"), by and between the Ventura County Waterworks District No. 1 ("District"), and Trojan Technologies Group ULC ("Equipment Supplier") for the procurement certain water filtration and treatment equipment related to District's update of the Moorpark Water Reclamation Facility's ("MWRF") filtration and treatment facilities and systems. Hereinafter, District and Equipment Supplier may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. District operates and maintains potable water and sewer distribution and treatment facilities that serve a population of approximately 37,000 customers in the City of Moorpark, California, and the surrounding areas.

B. Among these facilities, District operates the MWRF, which treats wastewater and produces recycled water for subsequent sale and use.

C. Employees of the Ventura County Public Works Agency's Water and Sanitation Division ("PWA-WS") staff District and operate and maintain its water and sewer distribution and treatment facilities, including the MWRF.

D. District is implementing the MWRF UV Disinfection Modernization Project ("Project"), which includes, among other things, upgrading and replacing the MWRF's current tertiary treatment and disinfection processes to install new UV Disinfection System Equipment ("Equipment") to meet new requirements for nutrients applicable to the MWRF's treated discharge.

E. On May 30, 2024, District issued a Request for Proposals ("RFP") for the Project and procurement of the Equipment, and therein determined that the Project should proceed in three stages (the "Work"):

- Stage 1: Provision of UV disinfection process equipment design information, product data, and shop drawing submittals.
- Stage 2: Fabrication and delivery of the Equipment in accordance with approved Stage 1 submittals; and assisting District's General Contractor with installation, testing, and startup of the Equipment as well as training on the Equipment.
- Stage 3: Provision of post-construction services, warranties, and post commissioning.

D. Equipment Supplier submitted a proposal in response to the RFP and, based on District's review, evaluation, and ranking of proposals, District recommended Equipment Supplier be awarded this Agreement.

E. District desires to engage Equipment Supplier to furnish and provide the equipment, work, and services under this Agreement, and Equipment Supplier desires to be so engaged, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Contract Documents

1.1 Incorporation. The following documents are incorporated into and made part of this Agreement by this reference:

- Exhibit A – General Terms and Conditions
- Exhibit B – Non-Collusion Affidavit
- Exhibit C – Prevailing Rates of Wages
- Exhibit D – Performance Bond Form
- Exhibit E – Service and Maintenance Agreement
- Project Specifications
- RFP Addenda
- Request for Proposal (RFP)
- Bid Sheet

These documents shall be referred to collectively as the “Contract Documents.” The Contract Documents are intended to be complementary, and a requirement in one document is as effective as if it appeared in all of the Contract Documents. In the event of a conflict between any of the Contract Documents, the documents shall be given effect in the following order: Federal and State funding requirements; any amendments (most recent first); this Agreement, including Exhibits; Specifications; any RFP addenda (most recent first); and Bid Forms.

1.2 Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as if fully set forth herein.

1.3 District Representative. District's representative will be David Fleisch, Assistant Director of the Ventura County Public Works Agency, herein referred to as the “Engineer”, who will assume the duties and responsibilities and will have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. The Work was designed by, and the Contract Documents were prepared by, Kennedy/Jenks Consultants, herein referred to as the “Design Engineer”.

1.4 Applicable Law Requirements. The Project is funded by Proposition 84 Round 2015 Integrated Regional Water Management (IRWM) Implementation Grant. All services solicited by District must conform to all applicable State of California guidelines for procurement and labor practices, which are incorporated herein by this reference.

Section 2. Stage 1: Equipment Design and Submittal Process

2.1 Stage 1 Commencement. Equipment Supplier shall provide all initial shop drawing submittals within 20 business days following District's issuance of a Notice To Proceed

("NTP") with Stage 1. The Equipment Supplier shall provide any required resubmittal documents within 20 business days of receiving comments from District.

- 2.2 Corrections to Stage 1 Work. Equipment Supplier shall make corrections and resubmit documents and drawings until all Work required under Stage 1 has been approved and accepted by the District, in accordance with the Project Specifications.

Section 3. Stage 2: Supply of Equipment and Related Services

- 3.1 Equipment. Upon issuance of an NTP for Stage 2 ("Stage 2 NTP"), Equipment Supplier shall fabricate and deliver the Equipment within 150 business days in accordance with the Project Specifications and approved shop drawings developed during Stage 1. The Equipment, and all components thereof, shall be new and unused and of the current production year.
- 3.2 Delivery. Equipment Supplier shall deliver the Equipment to the project site, 9550 West Los Angeles Avenue, Moorpark, CA 93021, at such time or times as set forth on the schedule attached hereto as Contract Documents Section 1025 and 1311 and incorporated herein by reference, and in accordance with any additional schedules agreed upon in writing by the Parties. The Equipment shall be packed and transported in accordance with good commercial practice to insure against damage from weather and/or transportation. No charge shall be made for packing, crating, drayage or other similar costs. Equipment Supplier shall be fully responsible for the Equipment and bear all risk of loss or damage until the Equipment is delivered and accepted by District. The Equipment shall be received subject to District's inspection and right of rejection.
- 3.3 Equipment Installation Assistance, Startup, Testing and Training. Following delivery and subject to the District's approval of the Equipment, Equipment Supplier shall coordinate with District's General Contractor to assist with the General Contractor's installation of the Equipment. In addition, Equipment Supplier shall provide all startup, testing, and training required by District for the Project as further specified in the Project Specifications. The cost of all coordination efforts is included in the lump sum prices for Stage 2 as set forth in the Bid Schedule and this Agreement.
- 3.4 Acceptance. The Equipment shall not be considered accepted until inspection, testing, and/or use of the Equipment is found to be in accordance with the Approved Designs and the Project Specifications. Final inspection of the Equipment shall be at the location specified herein, unless otherwise agreed in writing. If the Equipment is found at any time to be defective in material or workmanship, or otherwise not in conformance with the Project Specifications, District shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject the Equipment in whole or in part.
- 3.5 Assignment of Warranties. Prior to District issuing an NTP for Stage 3, Equipment Supplier shall assign and/or transfer any manufacturers warranties related to the Equipment, or its component parts, obtained by Equipment Supplier from its materials suppliers and vendors per the Contract Documents.

Section 4. Stage 3: Equipment Warranty and Service Contract

- 4.1 Stage 3 Commencement. Upon issuance of an NTP for Stage 3 ("Stage 3 NTP") signed by an authorized representative of the District, Equipment Supplier shall commence

performance and provision of post-construction services, warranties, and post commissioning work set out in Exhibit E (Service and Maintenance Agreement).

Section 5. Contract Time and Liquidated Damages

5.1 Time of Performance: In accordance with the Project Specifications, the Equipment Supplier shall plan the Work and prosecute it with diligence and shall commence the Work within five (5) business days after the date established in District's NTP for Stage 3 Work, and shall meet the completion dates in Section 1311, Anticipated Work Schedule.

5.2 Time of Essence. The Parties recognize that time is of the essence of this Agreement and that District will suffer financial loss if the Stage 1 and Stage 2 are not completed within the times specified in Section 1311, plus any extensions thereof allowed for a force majeure event, or agreed upon by the Parties. The Parties also recognize that it will be impracticable to determine actual damages which District will sustain in the event of or by reason of the delay. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty) Equipment Supplier shall pay District \$500 for each calendar day that expires after the specified times in Section 1311 for the Stage 1 initial shop drawing submittals. Equipment Supplier shall pay District \$1,000 for each calendar day that expires after the specified times in Section 1311 for the Stage 2 Equipment delivery. It is further agreed that the amount stipulated for liquidated damages per calendar day of delay is a reasonable estimate of the damages that would be sustained by District, and Equipment Supplier agrees to pay such liquidated damages as herein provided. In case the liquidated damages are not paid, Equipment Supplier agrees that District may deduct the amount thereof from any money due or that may become due to Equipment Supplier by milestone payments or otherwise under the Agreement, or if said amount is not sufficient, recover the total amount.

5.3 Liquidated damages under this Section 5 shall constitute District's sole right to monetary damages for delay to completion of the Work or other Milestones. Equipment Supplier's liability for liquidated damages pursuant to this Article shall be limited to ten percent (10%) of the Contract Price.

5.4 As used herein, "force majeure event" shall mean an event that prevents Equipment Supplier from completing the Work within the times specified in this Agreement and that is beyond the reasonable control of Equipment Supplier. Such delays include, but are not limited to, acts or neglect by District, acts or neglect of other contractors performing other work as contemplated in this Agreement, fires, floods, epidemics, abnormal weather conditions, or acts of God. Delays attributable to and within the control of a subcontractor or material supplier to the Equipment Supplier shall be deemed to be delays within the control of Equipment Supplier. An extension of time for a force majeure event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the event, if notice by Equipment Supplier is sent to District within five (5) business days of the commencement of the force majeure event. In the event that a Force Majeure event persists for more than 60 consecutive calendar days, the Parties shall mutually agree in good faith upon any necessary adjustments to this Agreement. In the event that a Force Majeure event persists for more than 120 consecutive calendar days, either Party may terminate this Agreement and neither Party shall have any further liability to the other Party with respect to any obligations hereunder except for Equipment Supplier's warranty obligations pursuant to Article 7 with respect to Equipment that has been delivered prior to the occurrence of the force majeure event and any obligations that expressly survive termination of this Agreement, including but not limited to indemnification obligations provided herein.

Section 6. Compensation

6.1 In consideration of the agreements herein made by District and the sums of money to be paid to Equipment Supplier by District in the manner and form as provided in the Contract Documents, Equipment Supplier agrees to furnish all labor, tools, appliances, equipment, plant and transportation, and any and all other expenses necessary or incidental to the performance of the Work as specified or shown in the Contract Documents including such alternates and additional bid items, as listed.

6.2 Payment Schedule. Except as provided in this Agreement, District shall pay Equipment Supplier the total lump sum amounts for satisfactory completion of each Stage of the Work in accordance with the Contract Documents, as specified below ("Contract Price"). Notwithstanding anything in this Agreement to the contrary, no payment shall be made for a Stage of Work, or any portion thereof, unless and until an NTP for that Phase of Work has been issued by District.

- A. For all Stage 1 Work, a Lump Sum of \$98,000; upon the District's approval and acceptance of all Stage 1 Work (ie. Drawings and documents, any required corrections and resubmittals).
- B. Subject to Section 6.4, for all Stage 2 Work, \$755,600 which amount shall include the costs of Equipment Supplier obtaining the requisite performance bond, as per the following milestones:
 - 80% less retention upon Delivery and subject to the District's approval
 - 10% less retention Installation assistance and subject to the District's approval.
 - 5% less retention upon the Equipment Supplier's provision of Operation and Maintenance (O&M) manuals and completion of equipment training and subject to the District's approval.
 - 5% less retention Upon successful startup/performance testing and subject to the District's approval.
- C. For all Stage 3 Work, a lump sum of \$134,400 minus 10% retention; 90% upon issuance and acceptance of warranty; and 10% upon completion of the Service and Maintenance Agreement work.

6.3 General Payment Terms. Terms of payment are net 30 calendar days, less any applicable retention as set forth in Section 6.5, Final payment shall be made by District after Equipment Supplier has satisfied all contractual requirements. Payment of invoices shall not constitute any acceptance required by this Contract.

6.4 Progress Milestone Payments. If Progress Milestones have been specified in Contract Documents Section 1025, then payments for the Equipment and Work shall be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment and Work shall be made by District upon proper application by Equipment Supplier during the progress of the Work and according to the terms of payment as specified in Contract Documents Section 1025 Equipment. Supplier's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Contract Documents Section 1025 and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Contract Documents Section 1025 or a change order, must have subcontractor

and/or supplier invoices attached to Equipment Supplier's invoice. Other format and support documents for invoices will be determined by District in advance of the first invoice cycle.

6.5 Retentions. District may withhold retention in the amounts specified in the project specifications and herein of each milestone payment.

6.6 Right to Withhold. District may withhold payments on to the extent that such amounts are undisputed between District and Equipment Supplier; such undisputed amounts may include payments on account of defective Work not remedied, liens or third party claims filed, reasonable evidence indicating probable filing of liens or third party claims, failure of Equipment Supplier to make payments properly to its subcontractors or for material or labor, the failure of Equipment Supplier to perform any of its other obligations under the Agreement, or to protect District against any liability arising out of Equipment Supplier's failure to pay or discharge taxes or other obligations under the Agreement. District shall notify Equipment Supplier in writing of the reasons for the withholding and bears the burden of proving default by Equipment Supplier and that District's election to withhold is justified. If the causes for which payment is withheld are removed, the withheld payments will be made promptly..

6.7 Terms for Final Payment. Payment of the final payment or any retention will be made by District upon:

- A. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Contract Documents Section 1025 and in the amount associated with the Progress Milestone;
- B. Written acceptance of the Equipment and all Work by District;
- C. Delivery of all drawings and specifications, if required by District;
- D. Delivery of executed full releases of any and all liens arising out of this Agreement;
and
- E. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

6.8 Acceptance by Equipment Supplier of payment of the final Progress Milestone payment pursuant to this Section 6 will constitute a waiver, release, and discharge of any and all claims and demands for payment owing under this Agreement. However, payment of the final Progress Milestone by District will not constitute a waiver, release, or discharge of any claims or demands which District then has, or can subsequently acquire, against Equipment Supplier, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

6.9 Federal, State and Local Taxes. Unless otherwise specified herein, all prices stated in this Agreement include all Federal, State or local taxes that may be levied or assessed as a result of this Agreement or are otherwise applicable to this Agreement.

6.10 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, quantities to be ordered, changes to applicable specifications or drawings, changes to time of delivery, or any other matter materially affecting the performance

or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in writing by a valid change order executed by District. Should Equipment Supplier request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, District may direct Equipment Supplier to proceed with the performance of the change on a time and materials basis, provided that District may not issue any unilateral changes requiring modifications to Equipment Supplier's proprietary equipment. Supplier shall promptly comply with any ordered change notwithstanding any dispute over price or other adjustments, pending resolution of the dispute in accordance with this Agreement.

6.11 The price indicated in Section 6.2 for all Stage 2 Work shall be the guaranteed price for the Stage 2 Work provided that NTP Stage 2 is issued at any point prior to 260 business days after effective date of the Agreement. If the Stage 2 NTP is issued following that date, the Stage 2 Work lump sum cost may increase at the same rate as the escalation factor for inflation based on the latest published data from the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for "Los Angeles Area – All Items," from 261 business days after effective date of the Agreement to the actual date of the Phase 2 NTP.

Section 7. Equipment Supplier Warranties

7.1 Equipment Supplier warrants that the Equipment delivered hereunder shall, (a) be free from defect of material or workmanship and conform to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by the District; and (c) be fit for the purposes described in the Contract Documents. The general warranty shall be for a period of twelve months after equipment Acceptance by the District per Section 3.4, except the extended warranties for the lamps and ballasts as described in the Contract Documents. This warranty shall survive any inspection, delivery, acceptance, or payment by the District of the Equipment. Equipment Supplier, at its own expense, shall repair or replace, at the option of the District, any defective Equipment within one (1) week after receipt of notice from District. Equipment Supplier also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Equipment Supplier is conveying good and marketable title to same, and that Equipment Supplier owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Equipment Supplier hereby assigns to District any applicable vendor or manufacturer warranties or remedies, and will assign to District any future warranties or remedies provided by any applicable vendors or manufacturers. THE WARRANTIES HEREIN CONTAIN THE EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. EXCEPT AS DESCRIBED IN THIS ARTICLE 7, EQUIPMENT SUPPLIER EXPRESSLY DISCLAIMS ANY REMEDIES OF "COVER" WITH RESPECT TO WARRANTIED ITEMS AND ANY WARRANTIES IMPLIED BY LAW, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT DESCRIBED IN THE CONTRACT DOCUMENTS.

7.2 Any warranty or performance guarantees provided by Equipment Supplier shall only be enforceable if (a) all Equipment is properly installed, inspected regularly, and is in good working order; (b) all operations are consistent with Equipment Supplier's recommendations; and (c) operating conditions at the installation Site have not materially changed and remain within anticipated specifications.

7.3 Nothing in this Section 7 shall alter Equipment Supplier's obligation to assign and/or transfer to District any manufacturers' warranties related to the Equipment, or its component parts, obtained from its material suppliers and vendors, as provided in Section 3.5.

7.4 Intellectual Property Warranty and Indemnification. Notwithstanding any other provision to the contrary herein, Equipment Supplier represents and warrants that it either owns all rights, or has the right to use and license to the District, any intellectual property required by, incorporated into or combined with the Equipment, Work or other deliverables pursuant to the Contract Documents. Subject to all limitations of liability provided herein, Equipment Supplier will defend, indemnify and hold harmless the District from any and all damages, losses and costs based on any alleged infringement of any proprietary right, including intellectual property rights, in the US or internationally (as applicable to District's right, title or license in the US) related to or arising from the Equipment, Work or other deliverables pursuant to the Contract Documents. Equipment Supplier shall exercise (i) full and exclusive control of the defense of such suit when Equipment of Equipment Supplier only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Equipment Supplier are also involved. If, in District's reasonable discretion, District will be enjoined from the use or exercise of any Equipment, Work, or other deliverable pursuant to the Contract Documents, in addition to all other rights and remedies available to District, Equipment Supplier will, at its own expense and at its option, either procure for District the right to continue using such enjoined material, item or service or replace them with non-infringing materials, items or services, or modify them so they become non-infringing, and, in District's reasonable discretion, remove the Equipment and refund the purchase price (prorated for depreciation) and the transportation costs thereof.

Section 8. Accounting, Inspection and Audit

8.1 Records. Equipment Supplier shall keep and shall preserve for four (4) years after acceptance of the Equipment, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the scope of this Agreement and disbursements charged to District under this Agreement (collectively, "Books and Records"). Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Equipment Supplier under this Agreement. During such four (4) year period, Equipment Supplier shall give District and its agents, during normal business hours, access to such Books and Records. District and its agents shall have the right to make copies of any of the said Books and Records.

8.2 Custody. Where District has reason to believe that any of the Books and Records required to be maintained by this Section 8 may be lost or discarded due to dissolution or termination of Equipment Supplier's business, District may, by written request, require that custody of such Books and Records be given to a person or entity mutually agreed upon and such Books and Records thereafter shall be maintained by such person or entity at Equipment Supplier's expense. Access to the Books and Records shall be granted to District and its representatives.

Section 9. Termination

9.1 District may terminate this Agreement, in whole or in part, with or without cause. In addition, District may determine not to issue an NTP for Stage 2 or Stage 3, and no guarantee is made to Equipment Supplier that NTP 2 or NTP 3 will be issued.

9.2 Unless directed to the contrary by District, upon written notice to Equipment Supplier of District's determination to terminate this Agreement, Equipment Supplier shall (a) promptly, and in no case later than five (5) business days of receipt of such notice, stop all self-performed work, and (b) promptly, and in no case later than two (2) consecutive weeks after receipt of such notice, deliver notice to material suppliers and subcontractors requiring them to stop work within five (5) business days after receipt of the notice.

9.3 In the event District delivers a written notice of termination to Equipment Supplier, Equipment Supplier shall be entitled to compensation for all services properly rendered prior to the effective date of the notice, any further services set forth in the notice, and services properly rendered by Equipment Supplier, material suppliers and subcontractors, respectively, through the end of the relevant five-day shutdown periods described above, recovery of costs plus reasonable profit. Equipment Supplier and District shall not be entitled to recover any Consequential Damages. District, upon meeting its burden of proving default by Equipment Supplier and that District's election to withhold is justified, shall be entitled to reimbursement for any compensation paid in excess of services rendered and shall be entitled to withhold compensation for defective Work or other damages caused by Equipment Supplier.

9.4 Equipment Supplier acknowledges District's right to terminate this Agreement and District's right not to issue an NTP for Stage 2 or Stage 3, as provided in this Section 9, and hereby waives any and all claims for damages that might arise from either of the foregoing.

9.5 Equipment Supplier shall deliver to District and transfer title (if necessary) to all completed Work and non-proprietary Work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports, including a license to use to the extent necessary to operate the Equipment. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Equipment Supplier shall not be entitled to payment for unperformed Work, and shall not be entitled to damages or compensation for termination of Work.

Section 10. California Labor Code Provisions

10.1 Registration. If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to California Labor Code sections 1725.5 and 1771.1, Equipment Supplier and all subcontractors performing prevailing wage work must be registered with the California Department of Industrial Relations ("DIR"). Equipment Supplier shall maintain registration for the duration of the Project and require the same of any subcontractors. The Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Equipment Supplier's sole responsibility to comply with all applicable California Labor Code registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

10.2 Labor Certification. By its signature hereunder, Equipment Supplier certifies that it is aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions thereof, and agrees to comply with such provisions before commencing the performance of the Work.

10.3 Additional Requirements. Additional State requirements are set forth in Exhibit "C" of this Agreement.

Section 11. Project Management

11.1 Representative of Supplier. Jeremy Neill at Coombs Hopkins Company ("Equipment Supplier's Representative") is hereby designated as the principal and representative of Equipment Supplier authorized to act on its behalf with respect to the Equipment, the Work, and the services specified herein and to make all decisions in connection herewith. Equipment Supplier shall not substitute Equipment Supplier's Representative without first notifying District in writing of Equipment Supplier's intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Equipment Supplier's Representative is unacceptable, Equipment Supplier shall submit alternate candidates until District determines that substitute Equipment Supplier's Representative is acceptable.

11.2 Representative of District. The Director of PWA-WS is hereby designated as the representative of District and except as otherwise provided herein authorized to act on its behalf with respect to the Equipment, the Work, and the services specified herein and make all decisions in connection therewith.

11.3 Standard of Care. Equipment Supplier shall perform the Work under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Equipment Supplier maintains that it is skilled in the professional calling necessary to perform the Work. Equipment Supplier -states that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Equipment Supplier states that it, its employees, and its subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work and that such licenses and approvals shall be maintained throughout the term of this Agreement as Equipment Supplier's sole cost and expense. Equipment Supplier shall perform, at its own cost and expense and without reimbursement from District, any work necessary to correct errors or omissions which are caused by Equipment Supplier's failure to comply with the standard of care provided for herein, and shall be fully responsible to District for all damages and other liabilities provided for in the indemnification provisions of this Agreement to the proportional extent caused by Equipment Supplier's errors and omissions.

11.4 Laws and Regulations. Equipment Supplier shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Equipment Supplier shall be liable for Equipment Supplier's violations of such laws and regulations in connection with the Work. If Equipment Supplier performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to District, Equipment Supplier shall be solely responsible for all costs arising therefrom. Equipment Supplier shall defend , indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability to the proportional extent caused by Equipment Supplier's failure to comply with such laws, rules or regulations.

Section 12. Insurance

12.1 Equipment Supplier, at its sole cost and expense, will obtain and maintain in full force during the term of this Agreement the following insurance:

- A. General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury and property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.

Commercial Automobile Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury and property damage, including owned, non-owned, and hired automobiles. Also, to include

- B. Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of Equipment Supplier and Employer's Liability in the minimum amount of \$1,000,000.

12.2 All insurance required will be primary coverage as respects District and the County of Ventura, and any insurance or self-insurance maintained by District and/or the County of Ventura will be excess of Equipment Supplier's insurance coverage and will not contribute to it.

12.3 District and County of Ventura are to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.

12.4 District and County of Ventura are both to be named as Additional Insured as respects to work done by Equipment Supplier under the terms of this Agreement for General Liability Insurance.

12.5 Equipment Supplier agrees to waive all rights of subrogation against the County of Ventura and District, their boards, agencies, departments, officers, agents, and volunteers for losses arising from work performed by Equipment Supplier under the terms of this Agreement.

12.6 Policies will not be canceled, non-renewed, or reduced in scope of coverage until after 60 calendar days written notice has been given to the County of Ventura, Risk Management Division.

12.7 Equipment Supplier agrees to provide District and County of Ventura with the following insurance documents on or before the effective date of this Agreement:

- A. Certificates of Insurance for all required coverage.
- B. Additional Insured endorsement for General Liability Insurance.
- C. Waiver of Subrogation endorsement (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others) for Workers' Compensation.

Section 13. Indemnification; Limitation of Liability

District and County of Ventura, their elected officials, officers, directors, agents, employees, subcontractors and volunteers shall not be liable for any claims or liability resulting from the death or injury to persons or damage to property due to or arising from or related to the Work or the Equipment by Equipment Supplier and its contractors. To the fullest extent permitted by law, Equipment Supplier shall indemnify, defend and hold harmless District and the County of Ventura and their elected officials, officers, directors, agents, employees, subcontractors and volunteers from and against all third-party claims, , damages, including all costs, expenses, fees (including

attorney's fees), to the extent caused by, arising out of, connected with, or resulting from the performance of the Work by Equipment Supplier or its subcontractors, for failure to perform the Work or by negligent or otherwise wrongful acts or omissions of Equipment Supplier or its subcontractors. The Equipment Supplier stipulates that this provision has been negotiated in accordance with applicable law to be fully enforceable Equipment Supplier's obligations under this Section 13 shall survive the completion, expiration, and any termination of this Agreement.

13.2 The obligation of the Equipment Supplier under this indemnity and hold harmless agreement shall not apply to liability for damages arising from the sole negligence or willful misconduct of the District, the Engineer, or the Design Engineer, or their agents, consultants, employees, officers, shareholders or independent contractors (other than the Equipment Supplier).

13.3 The Equipment Supplier 's liability to the District, Engineer and Design Engineer under this indemnification clause shall not be limited by any legal limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

13.4 Except as otherwise specified in this Agreement, to the extent permitted by applicable laws, neither Party shall be liable to the other for special, indirect, punitive or incidental damages that do not flow directly and immediately from an injurious act but that result indirectly from an action or failure to act, such as revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, loss of bonding capacity, lost opportunity, claims of taxpayers and other indirect damage ("Consequential Damages"), whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and each Party releases the other Party from any such liability. Equipment Supplier's aggregate liability to District, Engineer, and Design Engineer, their respective agents, consultants, employees, officers, shareholder and independent contracts with respect to this Agreement shall not exceed an amount equal to 150% of the Contract Price.

Section 14. General Provisions

14.1 Notices. All notices permitted or required under this Agreement shall be given at the following address, or at such other address as the Parties may provide in writing for this purpose:

If to District:

Ventura County Waterworks
District No. 1
Attn: Christina Awad
6767 Spring Rd.
Ventura, CA 93020
PHONE: (805) 767-0099
EMAIL:
christina.awad@ventura.org

If to Equipment Supplier:

Trojan Technologies Group ULC
Attn: Mickael Machado
3020 Gore Road
London Ontario Canada
N5V 4T7
PHONE: (519) 457-3400
EMAIL: mickael.machado@trojantechnologies.com

The Parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received (i) upon personal delivery to the addresses above; (ii) if sent by overnight delivery, upon delivery as shown by delivery service records; (iii) if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; (iv) if by United States Postal Service, five (5) consecutive calendar days after deposit in the mail; and (v) if sent by e-mail

followed by a hard copy and with receipt confirmed by telephone, upon confirmation of receipt by telephone or when the hard copy is delivered as shown by delivery service records.

14.2 Notification. In the event of a problem or potential problem that could impact the quality or quantity of Work, services, or the level of performance under this Agreement, Equipment Supplier shall, within one (1) business day of actual knowledge of the problem or potential problem, notify District in writing and by telephone.

14.3 Separate Contracts. Notwithstanding anything in this Agreement to the contrary, Equipment Supplier understands that this is not an exclusive agreement and that District shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Equipment Supplier as District desires.

14.4 Disputes. If any dispute should arise between the Parties concerning the performance of this Agreement, the payments to be made, or the manner of accomplishment of the Work, then Equipment Supplier shall nevertheless proceed to perform the Work as directed by District pending settlement of the dispute.

14.5 No Waiver. The fact that District has made payment under this Agreement shall not be interpreted so as to imply District has inspected, approved, or accepted the Work which has been performed by Equipment Supplier. No delay or omission in the exercise of any right or remedy by the non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

14.6 Assignment and Subcontractors. Equipment Supplier shall not assign or subcontract any portion of the Work to be performed under this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of District, which consent may be withheld in the District's sole and absolute discretion. Any attempted assignment in violation of the provisions of this Section 14.6 shall be void. Subject to the foregoing, this Agreement shall be binding upon the heirs, administrators, successors and assigns of District and Equipment Supplier. The foregoing restriction on subcontracting does not apply to subcontracts with material suppliers or pre-approved vendors of Equipment Supplier.

14.7 Independent Contractor. Equipment Supplier shall act as an independent contractor in the performance of this Agreement and in no respect shall Equipment Supplier be considered an agent or employee of District or County of Ventura. No provisions of this Agreement shall be intended to create a partnership or joint venture between Equipment Supplier and District or County of Ventura, and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

14.8 Non-Liability of District Officials and Employees. No official or employee of District or County of Ventura shall be personally liable to Equipment Supplier in the event of any default or breach by District or for any amount which may become due to Equipment Supplier or for any breach of the terms of this Agreement.

14.9 Conflict of Interest. Equipment Supplier -states that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

14.10 Confidential Information. All information gained or work products produced by Equipment Supplier in the performance of this Agreement will be considered confidential. Confidential Information does not apply to any information which: (a) at the time of disclosure to the Receiving Party, was known to such party free of restriction and such previous knowledge is evidenced by documentation in the possession of the Receiving Party; or (b) is publicly known or later made publicly known through no wrongful act of the Receiving Party; or (c) is independently developed by the Receiving Party and such independent development is evidenced by documentation in the possession of the Receiving Party; or (d) is evidenced by documentation in the possession of the Receiving Party as having been received from a third party to this Agreement who: (i) has the legal right to so furnish such information to the Receiving Party, and (ii) is not obligated to the Disclosing Party to keep such information confidential; or (e) is made in response to a valid order of a court or an authorized and applicable government agency, provided that, if permitted by applicable law, notice shall first be given to the Disclosing Party so a protective or similar order, if appropriate, may be sought by such party prior to such disclosure being made; or (f) is approved for release in writing by an authorized representative of the Disclosing Party.

Equipment Supplier shall not release or disclose any such information or Work Product to persons or entities other than District without the prior written consent of District, except as otherwise required by law. Equipment Supplier shall promptly notify District should Equipment Supplier, or its representatives be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding this Agreement and the services performed under this Agreement.

14.11 Amendment. This Agreement may not be amended or modified except by a subsequent writing which is signed by the Parties.

14.12 Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in Ventura County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

14.13 Attorneys' Fees and Costs. Reserved.

14.14 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, then the Parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of this Agreement.

14.15 Counterparts. This Agreement may be signed and delivered in any number of counterparts, each of which, when signed and delivered, shall be an original, but all of which shall together constitute one and the same Agreement.

14.16 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and any agreement or representation with respect to the same or the obligations of either Party with respect to the same which is not expressly provided in this Agreement or in a written document which is signed by the Party to be charged, shall be null and void. No change to or modification of this Agreement shall be binding

upon the Parties unless in a written instrument specifically referencing that it is amending this Agreement and signed by an authorized representative of District and Equipment Supplier.

14.17 Authority to Execute. Each Party represents and warrants to the other Party that all necessary action has been taken by such Party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.

14.18 Binding on Successors. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

14.19 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

14.20 Third Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than District and Equipment Supplier.

14.21 Intellectual Property, and Proprietary Information.

- A. Software and Intellectual Property. All licenses to Equipment Supplier's separately provided software products are subject to the separate software license agreement(s) accompanying the software media. In the absence of such express licenses and for all other software, Equipment Supplier grants District only a personal, non-exclusive license to access and use the software provided by Equipment Supplier with Equipment purchased hereunder solely as necessary for District to enjoy the benefit of the Equipment. A portion of the software may contain or consist of open source software, which District may use under the terms and conditions of the specific license under which the open source software is distributed. District agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). All Equipment Supplier contributions to the Equipment, the results of the services, and any other work designed or provided by Equipment Supplier hereunder may contain or result in statutory and non-statutory Intellectual Property, including but not limited to patentable subject matter or trade secrets; and all such Intellectual Property remains the sole property of Equipment Supplier; and District shall not disclose (except to the extent inherently necessary during any resale of Product sold hereunder), disassemble, decompile, or any results of the services, or any Equipment, or otherwise attempt to learn the underlying processes, source code, structure, algorithms, or ideas.
- B. Proprietary Information and Privacy. "Proprietary Information" means any information, technical data, or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Equipment Supplier considers proprietary, including but not limited to service and maintenance manuals. District and its customers, employees, and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Equipment Supplier and will not transfer or disclose it without Equipment Supplier's prior written consent, or use it for the manufacture, procurement, servicing, or calibration of Equipment or any similar products, or cause such products to be manufactured, serviced, or calibrated by

or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Equipment Supplier's property. No right or license is granted to District or its Districts, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Equipment Supplier, except for the limited use licenses implied by law. In respect of personal data supplied by District to Equipment Supplier, District warrants that is duly authorized to submit and disclose these data, including but not limited to obtaining data subjects' informed consent. Equipment Supplier will manage District's information and personal data in accordance with its Privacy Policy, a copy of which is available to the District upon request. In respect of other data and information that Equipment Supplier may receive in connection with District's use of the Equipment including without limitation data that are captured by the Equipment and transmitted to the Equipment Supplier, District hereby grants Equipment Supplier a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data as needed for Equipment operation and maintenance, and to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and research & development activities of Equipment Supplier and its affiliates.

- C. Equipment and Materials. All physical, electronic and/or mechanical embodiments of, and documents disclosing, Intellectual Property required by, integrated into or combined with the Equipment, the Work, or the Project shall be delivered to the District consistent with this Agreement and in no event later than 30 consecutive calendar days prior to the effective date of termination pursuant to Article 9.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**VENTURA COUNTY WATERWORKS
DISTRICT NO. 1**

By: _____

Name: _____

Title: _____

Date: _____

TROJAN TECHNOLOGIES GROUP ULC

By: _____

Name: _____

Title: _____

Date: _____