

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE IRONHOUSE SANITARY DISTRICT AND
SYSTEM INTEGRATOR**

This Professional Services Agreement (the "**Agreement**") is dated _____, 2021 and is by and between the Ironhouse Sanitary District, a political subdivision of the State of California ("**District**") and _____, a California Corporation, licensed to do business in California, ("**System Integrator**" or "**Consultant**") relating to SCADA Maintenance and Support Services ("**Services**").

Recitals

WHEREAS, District wishes to retain Consultant to provide SCADA Support and related services;

WHEREAS, Consultant was selected by means of District's consultant selection process, and represents that they possess all necessary training, licenses and permits to perform the services required by District as set forth in this Agreement, and that their performance of such services will conform to the standard of practice consistent with a professional System Integration firm having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

WHEREAS, Government Code section 53060 permit the District Board to enter into agreements for professional temporary services with individuals specially trained and experienced and competent to perform those services; and

WHEREAS, the services proposed in this Agreement are professional and temporary in nature.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

AGREEMENT

1. Definitions

1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

"Agreement"	This Agreement consists of this Agreement, together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, <u>Appendix A</u> (Services to be Provided by System Integrator), <u>Appendix B</u> (Payments to System Integrator), <u>Appendix C</u> (Projects and Schedule), <u>Appendix D</u> (Deliverables), <u>Appendix E</u> (Insurance), and <u>Appendix F</u> (Key Personnel), attached hereto.
"System Integrator" or "Consultant"	[_____]
"District"	Ironhouse Sanitary District
"Project"	Ironhouse Sanitary District's SCADA Maintenance and Support Services Project ISD-21-01

"Services"	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation SCADA engineering, design, consulting, programming, installation, training, and maintenance services. Services that may be required, dependent on Project needs, are further described in Appendix A, Services, Appendix C, Projects and Schedule, and Appendix D, Deliverables.
"Subconsultants"	System Integrator's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

2.1 This Agreement is for a period of approximately 1 year(s), beginning with the execution of the Agreement and concluding _____ unless it is extended in accordance with paragraph 2.2 below.

2.2 This Agreement may be extended by mutual agreement of the parties hereto. Any extension shall be in written form, signed by both parties, and shall specify the length of the extension and compensation.

3. Systems Integrator Agrees to Perform

3.1 _____, on behalf of Consultant, shall perform all Services described in Appendix A, Services to be Provided by System Integrator, and provide all Deliverables described in Appendix D, Deliverables attached hereto and incorporated by reference as though fully set forth herein,

3.2 SI may recover compensation for extended services as set forth in Appendix B.

3.3 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than Excusable Delays, Consultant shall apply such additional manpower and resources as necessary without Additional Services Compensation to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

4.1 District shall pay System Integrator compensation according to the process established in Appendix B "Payments to System Integrator".

4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to System Integrator for any payment period on the Project, until District receives all deliverables required under Appendix D, Deliverables, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where System Integrator has partially completed one or more deliverables due during a payment period, and if System Integrator demonstrates diligent progress thereon, then District may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District. District shall not be liable for, and Consultant shall not be entitled to, any payment for Services performed before this Agreement's execution.

4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amounts(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise System Integrator, in writing, within 15 calendar days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have

been completed to the reasonable satisfaction of District including, without limitation, Consultant's transmittal of all deliverables to District required by Appendix A, Services to be Provided by System Integrator, and Appendix D, Deliverables.

- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to District. All amounts paid by District to Consultant shall be subject to audit by District. Payment shall be made by District to Consultant at the address stated in Paragraph 6.1 below.
- 4.5 District may set off against payments due Consultant under this Agreement any sums that District determines that Consultant owes to District because of their errors, omissions, breaches of this Agreement, delays or other acts that caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Paragraph 21.3 below of this Agreement, to be attended by District, System Integrator, and any applicable insurance carriers; such mediation to occur within 30 calendar days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Solano District Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this paragraph 4.5, then District shall have satisfied its obligations under this Paragraph.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by District's Board and approved by District for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its Supervisors, employees, officers and agents to request System Integrator to perform Services or to provide materials, equipment and supplies that would result in System Integrator performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 District shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, and office equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Paragraph 17 below, District and Consultant shall direct all communications to each other as follows:

District:

Louie Solana
Collections Superintendent
Ironhouse Sanitary District
450 Walnut Meadows Drive
Oakley, CA 94561
Phone (925) 809-3005
Email solana@isd.us.com

System Integrator:

[NAME]

[TITLE]

[ADDRESS]

[PHONE]

[EMAIL]

- 6.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of System Integrator. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 System Integrator agrees that professional personnel assigned to the Project will be those listed in Appendix F, and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel may in the future cease to be employed by System Integrator and because of the termination of such employment no longer able to provide Services. However, System Integrator agrees that replacement of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District, which shall not be unreasonably withheld. Any costs associated with replacement of personnel shall be borne exclusively by System Integrator. Resumes for listed professional personnel are attached via Exhibit 1 to Appendix F, and by this reference incorporated herein.
- 6.4 System Integrator agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then System Integrator shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at System Integrator's cost.

7. Representations

- 7.1 System Integrator represents that it has reviewed Appendix A, Services to be Provided by Consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix B, Payments to Consultant, and within the times specified for each individual Project.
- 7.2 System Integrator represents that it is qualified to perform the Services and it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has knowledge of, and will comply with, all applicable building codes, laws, regulations and ordinances.
- 7.3 System Integrator represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.
- 7.4 The granting of any progress payment by District, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of Consultant for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), Consultant shall defend, indemnify, and hold harmless District, its officers, directors, officials, agents employees, and volunteers (collectively “**Indemnitees**”) from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants) expense and liability of every kind, nature, and description, at law or equity, that arises out of, pertain to, or relate to (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively “**Liabilities**”). Such obligations to defend, hold harmless and indemnify and Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities and in no event shall the cost to defend charges to the Consultant exceed the Consultant’s proportionate percentage of fault.
- 8.2 SI shall defend (including providing legal counsel reasonably acceptable to District at no cost to District), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, suit, liability or claims, in law or in equity, including attorneys’ fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

9. Liability of District

- 9.1 Except as provided in Appendix A, Services to be Provided by Consultant and Appendix E, Insurance, District’s obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3, 4, and 5 of this Agreement,
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.
- 9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and shall exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys’ fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District or System Integrator may have under this Agreement or any applicable law. All rights and remedies of District or System Integrator, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Consultant shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which Consultant perform the Services required by the terms of this

Agreement. Consultant shall be fully liable for the acts and omissions of it their Subconsultants, employees and agents.

- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and System Integrator. Consultant acknowledge that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, city business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall make its designated representative available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of System Integrator's Services only and not as to the means by which such a result is obtained.

11. Insurance

- 11.1 Prior to execution of this Agreement, Consultant shall furnish to District Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix E, Insurance, which are attached and made a part of this Agreement. Consultant shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix E. In the event Consultant fails to maintain any required insurance, and notwithstanding Paragraph 4.6 above, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Agreement (or Consultant shall promptly reimburse District for such expense).

12. Suspension of Services

- 12.1 District may, without cause, order System Integrator to suspend, delay or interrupt Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to System Integrator written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and System Integrator shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Paragraph 12, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which System Integrator is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time District believes System Integrator may not be adequately performing their obligations under this Agreement, that System Integrator may fail to complete the Services as required by this Agreement, or that District has provided written notice of observed deficiencies in System Integrator's performance, District may request from System Integrator prompt written assurances of performance and a written plan, acceptable to District, to correct the observed deficiencies in System Integrator's performance ("**Cure Plan**"). The Cure Plan must include, as applicable, evidence of necessary resources, correction plans, Subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, must meet all applicable requirements and show a realistic and achievable plan to cure the breach. Consultant shall provide such written assurances and Cure Plan within ten (10) calendar days of the date of notice of written request.

Consultant acknowledges and agrees that any failure to provide written assurances and Cure Plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate System Integrator's right to proceed under the Agreement, in whole or in part, for cause:

- a. Should System Integrator make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against System Integrator in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of System Integrator or of all or any substantial part of the properties of System Integrator, or if System Integrator, its directors or shareholders, take action to dissolve or liquidate System Integrator; or
- b. Should System Integrator commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from District to System Integrator demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for System Integrator to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide District within the ten (10) calendar day period a written Cure Plan acceptable to District to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan); or
- c. Should System Integrator violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) calendar days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for System Integrator to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide District within the ten (10) calendar day period a written Cure Plan acceptable to District to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan.)

13.3 In the event of termination by District as provided herein for cause:

- a. District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and backcharges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties.
- b. Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- c. Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the

Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement, including without limitation District's costs incurred in connection with finding a replacement.

- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 14 below, and Consultant shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by System Integrator.

14. Termination of Agreement for Convenience

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Paragraph 14 in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("Notice of Termination") specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, System Integrator shall:
- a. Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - d. Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
 - f. Transfer title and possession of System Integrator's and their Subconsultants' work product to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; District acknowledges that said documents were prepared for the purpose of the Project.
 - g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and

- h. Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in System Integrator's possession and in which District has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by District upon System Integrator's written request made within such three month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three month period or extension. If Consultant fail to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. District shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Paragraph 14.3 above, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If System Integrator and District fail, under Paragraph 14.4 above, to agree on the whole amount to be paid to System Integrator because of termination of Services under this Paragraph 14.5, then System Integrator's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:
- a. Reasonable value of System Integrator's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix B, Payments to Consultant. Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by System Integrator, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of System Integrator's total costs of performing the Services.
 - b. When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of System Integrator's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
 - c. Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by System Integrator (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 14.5 above.

- 14.7 This Paragraph shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 14.2 above or costs authorized by District to settle claims from Subconsultants.
- 14.8 in arriving at amounts due Consultant under this Paragraph 14, there shall be deducted:
- a. All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
 - b. Any substantiated claim that District may have against Consultant in connection with this Agreement, and
 - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Paragraph 14, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies pursuant to this Agreement or at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of those sections.
- 15.2 Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which System Integrator believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant shall comply with the District's conflict of interest codes and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the District that Consultant has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the District the Services hereunder and any interest System Integrator may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District.

16. Proprietary or Confidential Information of District; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agree that all private, confidential, or proprietary information disclosed by District to or discovered by

System Integrator in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Consultant shall notify the District immediately in writing if it is requested to disclose any information made known to or discovered by System Integrator during the performance of or in connection with the Services pursuant to this Agreement.

- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the District's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among System Integrator's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Paragraph 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notices to the Parties

- 17.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.
- 17.2 Notice shall be sufficiently given for all purposes as follows:
- a. When personally delivered to the recipient, notice is effective on delivery.
 - b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
 - c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 17.
- 17.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service,
- 17.4 Addresses for the purpose of giving notice are set forth in Paragraph 6.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 17.

18. Record Keeping and Audit Requirements

- 18.1 Consultant shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. Consultant shall maintain a complete and current set of all books and records relating to the construction of the Project. District shall be entitled, upon forty-eight (48) hour

written notice, to inspect all books, records, and accounts kept by Consultant relating to the work contemplated by this Contract. Within 90 calendar days after Final Completion, Consultant shall deliver to District those records necessary for District to perform a financial audit of the Project ("Final Audit").

- 18.2 Invoice and progress/final reports and all required audit reports shall be submitted to District in a timely manner.
- 18.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project, and shall be subject to examination and/or audit by District or designees, state government auditors or designees.
- 18.4 Make such books, records, supporting documentations, and other evidence available to District or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant agrees to include a similar right of District to audit records and interview staff in any subcontract related to the performance of this Contract.

19. Subcontracting/Assignment/District Employees

- 19.1 Consultant and District agree that System Integrator's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by Consultant under this Agreement are personal in character. Therefore, System Integrator shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 19.1 shall confer no rights on any party and shall be null and void.
- 19.2 System Integrator shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

20. Other Obligations

- 20.1 Discrimination, Equal Employment Opportunity and Business Practices. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, District ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 20.2 Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Consultant agrees that any violation of this prohibition by System Integrator, its employees, agents or assigns shall be deemed a material breach of this Agreement.

- 20.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of System Integrator, its employees, agents or assigns shall constitute a material breach of this Agreement. Consultant shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- 20.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Consultant to penalties, including but not limited to: (a) termination of this Agreement; (b) disqualification of the Consultant from bidding on or being awarded a District contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions. To effectuate the provisions of this section, the District shall have the authority to examine System Integrator's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to System Integrator under this Agreement or any other agreement between System Integrator and District. Consultant shall report to the District the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified System Integrator that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Consultant shall provide District with a copy of their response to the complaint when filed.

21. Disputes

- 21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party, and a meeting between the Project Manager and principal of the Consultant shall then take place within five (5) calendar days of the date of the request.
- 21.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow System Integrator to discontinue Services during the course of any dispute. System Integrator's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. Consultant also agrees that should System Integrator discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.
- 21.3 In the event of claims exceeding \$50,000, as a precondition to commencing litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of JAMS, in Oakley, California, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Solano District Superior Court from an approved list of JAMS qualified construction mediators. The parties may initially agree to engage in

discovery prior to mediation. Should parties proceed with discovery, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 201 9, et seq., and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

22. Agreement Made in California; Venue

22.1 This Agreement shall be deemed to have been executed in the City of Oakley, County of Solano. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Solano unless the parties agree otherwise in a written amendment to this Agreement.

22.2 The parties shall execute four (4) copies of this Agreement, each of which shall be deemed originals.

23. Compliance with Laws

23.1 Consultant shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

23.2 Consultant represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.

24. Miscellaneous

24.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.

24.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 24.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.

24.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

24.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to in force in force any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a

waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

- 24.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.
- 24.6 Consultant acknowledges that Consultant, and all Subconsultants hired by Consultant to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Subconsultants hired by Consultant to perform services under this Agreement are in compliance with the IRCA. In addition, Consultant agrees to indemnify, defend and hold harmless the District, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Consultant's employees, or the employees of any Subconsultant hired by Consultant, are not authorized to work in the United States for Consultant or its Subconsultant and/or any other claims based upon alleged RCA violations committed by Consultant or Consultant's Subconsultant(s).

25. Entire Agreement; Modifications

- 25.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 25.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 25.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of District, Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 25.4 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require their Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany System Integrator's price proposals.
- 25.5 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 25.6 Changes in the Services made pursuant to this Paragraph 25 and extensions of the Agreement time necessary by reason thereof shall not in any way release System Integrator's representations and agreements pursuant to this Agreement.

25.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

[SIGNATURE LINES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“District”

IRONHOUSE SANITARY DISTRICT

By: _____

Its: _____

“Consultant”

_____, a California Corporation

By: _____

Its: _____

APPENDIX A

SERVICES TO BE PROVIDED BY Consultant

This is an Appendix attached to, and made a part of and incorporated by reference to the Agreement dated _____, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Support services.

1. **Description of the Project:**

The District operates 31 lift stations to support a wastewater collection system. Each lift station is controlled by local PLCs that report to a central SCADA system. The District is seeking a System Integrator to provide "As-Needed" SCADA Maintenance and Support services. These services shall include troubleshooting, repair and diagnosing new and existing SCADA systems for emergency and non-emergency calls.

In addition to "As-Needed" services, the System Integrator will support capital improvement projects.

2. **Basic Services:**

The selected Consultant shall thoroughly review existing bid documents to become familiar with the Project. The selected consultant shall perform the following services:

The Respondent shall be capable of implementing new SCADA installations and troubleshooting, diagnosing, and repairing existing and new installations, including all equipment, SCADA system hardware, software, radio telemetry, or other communication issues and be able to program or re-program the District's computerized control systems, Programmable Logic Controllers (PLC) to compensate for system equipment issues or process changes as requested by District staff in a timely manner. Only respondents willing and able to satisfy the requirements of this RFP shall be considered for this project.

The successful Respondent must be available to respond to any emergency maintenance or troubleshooting needs on a 24/7 basis. This includes weekends and holidays. The proposal must describe the Respondent's typical response time for emergency and non-emergency calls. If response times vary based on after hours or weekends, please specify.

The successful Respondent's response times will be a critical part of the resulting contract. Therefore, Respondents must have a full-service facility located within a 50-mile radius of the District with a maximum 1-hour response time for emergencies.

To provide "As-Needed" SCADA support services at District headquarters located at 450 Walnut Meadows Drive, Oakley, CA 94561 and other District owned facilities including but not limited to:

- a. SCADA support and integration services.
- b. Preventative/corrective maintenance and support on an on-call, as-needed basis.
- c. PLC troubleshooting, diagnosing, repair, and programming.
- d. SCADA troubleshooting, diagnosing, programming and configuration.
- e. Installation of necessary support software and patches for, PLC, and SCADA servers.

- f. SCADA alarm troubleshooting, diagnosing, repair, and programming.
- g. Control system and control panel design and build, installation, and start-up as needed
- h. Preparation and review of design, programming drawings, and schematic plans.
- i. Field equipment calibration (transducers, Differential Pressure Cells)
- j. Control and electrical system troubleshooting directly related to PLCs, I/O, variable frequency drives and their associated and repair including electrical, starters, relays, overloads, motors breakers, heaters, transformers, capacitors, wiring, PLC input and output cards, and control panels.
- k. Radio communications programming, troubleshooting and repair directly associated to our SCADA system for example when there is a loss of communication between the repeater and the pump stations or there is a decrease in SCADA polling.
- l. Historian reporting, trending and data retention configuration.
- m. Documentation of all PLC programming changes, including comments, symbols, and descriptions saved with the logic file. If a program is uploaded, the full documented logic is available to District staff.
- n. After PLC programming changes, District staff will provide a file share location where the new or modified PLC program file(s) reside. A Microsoft Word document indicating the new or modified program, and all changes made to the program file are uploaded. Uploads shall occur within two (2) hours of the completion of changes. District staff shall provide input, guidance, and evaluation of the Respondent's work and final review and approval of all work products.
- o. The Respondent is responsible for all work performed under this contract, including any subcontracted work.
- p. Respondent shall provide all labor, parts, and materials necessary to repair existing problems, upon approval of the District. All parts furnished shall be new and unused. All parts removed for replacement become the property of the District. District maintained parts inventory may be used depending on circumstance.
- q. Ownership of supplies, parts, and repair components shall be transferred to the District upon acceptance of the installation by the District.
- r. The selected Respondent shall be required to possess the following specialized skill sets:
 - SCADA specific skills shall include, but not limited to:
 - Detailed knowledge of Modbus, Profibus and Ethernet protocols
 - OPC Interfacing
 - PLC Interface Support

- Implementation of best practices of Industrial Security NIS TSP 800-82
- Develop and Maintain Systems Documentation
- Wonderware System Platform (InTouch, Historian, Access Anywhere, etc.)
- Report Development in Microsoft (MS) Excel
- Alarm and Notification Software Applications (Win-911, analog auto dialer for backup)
- The District shall be responsible for the following:
 - Microsoft (MS) Active Directory
 - Windows Platform and security standards
 - Implementation of Network Principles (Protocols, Firewalls, Ports, VPN Access, VLAN, etc.)
 - Radio frequency coordination including (FCC licensed) and unlicensed frequency

1. Maintenance and Troubleshooting

- a. Remote access to PLC network will not be permitted.
- b. Remote access to SCADA systems will be permitted.
- c. The selected Respondent will be assigned individual accounts for contracted work on the SCADA domain as projects require. The following restrictions apply:
 - i. Domain passwords will be assigned by District staff.
 - ii. Accounts and credentials cannot be shared or re-used by other stakeholders.
 - iii. The District will provide Virtual Private Network (VPN) accounts for remote access and Respondent will be required to use VPN client software provided by the District.
 - iv. Domain user administration will be performed by District IT staff and the selected Respondent will only have local administrator permissions to select systems as required.
 - v. Only District approved software will be supported.

2. Security Constraints

The following examples outline possible maintenance and/or troubleshooting tasks. Respondent may be asked to perform and is not to be considered complete or comprehensive.

- a. Technical Support and Troubleshooting for:
 - i. Variable speed drives, Programmable logic controllers and I/O

- ii. Licensed radio networks.
 - iii. PLC software and hardware updates.
 - b. Replacement, Configuration, and Upgrade Installation for:
 - i. Programmable logic controllers
 - ii. Licensed radio networks directly associated with our SCADA system.
 - iii. PLC software and firmware updates.
 - c. Consulting Services:
 - i. Advise on SCADA system design and upgrades.
 - ii. Advise on system/network security and device hardening.
 - d. Capital Project Support:
 - i. The District developed a Capital Improvement Plan. As a result, there may be capital improvement projects that will require the addition or modification of existing SCADA systems and controls for specific facilities. When such projects occur, the District requires that the selected Respondent work with stakeholders to implement the SCADA and controls design associated with the projects. This includes attending one or more meetings to discuss capital improvement projects and develop scopes of work.
 - e. SCADA Documentation Services:
 - i. Provide AutoCAD drawings to update existing or generate new interconnection and layout drawings from either field investigations or based on sketches and information provided by District staff.
 - ii. Over the course of the first year of the contract, add comments to the existing PLC programs.
 - iii. Electronic AutoCAD files are to be provided to District staff along with documentation stating the version of AutoCAD the design was created in.
 - iv. Panel drawings developed shall be transmitted to the District in both electronic PDF and AutoCAD.DWG format for future editing capability by the District.
- 3. Capital Projects

In addition to the on-call services scope of work described above, the following highlights an upcoming project the District may elect to award under this RFP.

 - a. Server Upgrade Project
 - i. Furnish, install and configure a new server in the existing IT server rack located in the Administration/Collections building of the District.

- ii. Furnish, install and configure new Wonderware software.
- iii. Furnish, install and configure new Historian software.
- iv. Furnish, install and configure new Win-911 software
- v. Furnish, install and configure new Win-911 auto-dialer card
- vi. Furnish, install and configure new radio antenna and mast.
- vii. Furnish, install and configure new firewall.
- viii. Disconnect existing PLC control panel back panel to be reused in new panel located in the main building.
 - 1. Existing enclosure to remain.
 - 2. All existing wires to remain.
 - 3. Remove door from existing enclosure for use on new enclosure.
- ix. Furnish and Install new control panel enclosure matching existing at the main building.
 - 1. Install existing PLC control back panel in new enclosure.
 - 2. Furnish and Install new 20A/1P breaker to match existing in existing panel to power new PLC control panel.
 - 3. Install door from new enclosure onto existing PLC control cabinet.
 - 4. Furnish and install wall mounted $\frac{3}{4}$ "C rigid conduit, 2#12 & 1#12G from existing panel to new PLC control panel adjacent to existing fire alarm panel.
 - a. Fire alarm equipment to be relocated by Owner prior to installation.
- x. Radio survey to determine communications with remote facilities.
- xi. Configure and Test Existing radios after installation.
- xii. Import tags and screens from existing SCADA system onto new system.
- xiii. Import legacy Historian data onto new system.

END OF APPENDIX A

APPENDIX B

PAYMENTS TO Consultant

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Maintenance and Support services.

1. The maximum payment to System Integrator under this Agreement for the Project shall be:

2. METHODS AND TIMES OF PAYMENT FOR SYSTEM INTEGRATOR'S SERVICES AND EXPENSES

2.1 On a monthly basis, the Consultant may submit an invoice for services rendered prior to the date of the invoice. Such invoice shall describe in detail the services provided, including time, and specify each staff member who has provided services and the number of hours assigned to each such staff member. Such invoice shall contain a certification by a principal member of Consultant specifying that the payment requested is for work performed in accordance with the terms of this Agreement. The District will pay Consultant for all undisputed expenses stated thereon which are approved by District pursuant to this Agreement no later than forty-five (45) days after invoices are received by the District Finance Department.

EXHIBIT 1 TO APPENDIX B

BILLING RATES FOR SCADA MAINTENANCE AND SUPPORT SERVICES

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2021, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Maintenance and Support services.

1. **BILLING RATES** - The Billing Rates for Additional Services beyond the scope of Consultant's Pricing Proposal are the following hourly rates:

2. **REIMBURSABLE EXPENSES** :

END OF APPENDIX B

APPENDIX C

PROJECTS AND SCHEDULE

This preliminary project schedule is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2021, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Maintenance and Support services. Consultant understands that the projects and dates within this list may change.

END OF APPENDIX C

APPENDIX D

DELIVERABLES

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2021, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Maintenance and Support services.

System Integrator's deliverables under the Agreement are enunciated throughout the Professional Services Agreement and include but are not limited to the following:

1. **PROJECT DELIVERABLES**

- 1.1 Consultant "Draft" Project Management Plan for management and oversight of the Project.
- 1.2 Consultant Recommended Staffing Plan for ongoing management of the Project.

2. **SCADA SUPPORT SERVICES.** The deliverables considered part of construction specific management services are defined in this Appendix D and include, but are not limited to, the following deliverables:

- 2.1 Maintain accurate records and reports on evaluation of Project systems and procedures for management and evaluation of the Project.
- 2.2 Attend Project related meetings.
- 2.3 Analysis of the Project schedule and evaluation of compliance with Project schedule and budget.
- 2.4 Analysis and recommendations concerning the oversight and management of the Project.

END OF APPENDIX D

APPENDIX E

INSURANCE REQUIREMENTS

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2021, by and between _____, hereinafter referred to as "**System Integrator**" or "**Consultant**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Maintenance and Support services.

1. **Consultant's Duty to Show Proof of Insurance.** Consultant, in order to protect District and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's acts, errors, or omissions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the District's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or District as an additional insured.

1.1 Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the District), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.

1.2 Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

1.3 Workers' Compensation Insurance

SI shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by

Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

1.4 Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

1.5 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to District and must be approved by the District Risk Manager.

1.6 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, SI, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **Insurance terms and conditions:**

2.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

2.2 District as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the Ironhouse Sanitary District, its officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

2.3 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the District Risk Manager.

2.4 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The District will not accept such coverage unless the District determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

2.5 For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

2.6 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the District from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

2.7 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Consultant, District shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by District for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse District for the premiums and any associated costs, Consultant agrees to reimburse District for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by District to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

2.8 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

2.9 District may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case System Integrator and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. System Integrator's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by System Integrator and its subconsultants by virtue of the District's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of System Integrator's and subconsultants policies. Construction Manager and its subconsultants shall afford District access to their books and records and cooperate with District in verifying the amount of savings realized.

END OF APPENDIX E

APPENDIX F

KEY PERSONNEL

This is an Appendix to, and made a part of and incorporated by reference to the Agreement dated _____, 2021, by and between _____, hereinafter referred to as "**System Integrator**" or "**SI**" and the Ironhouse Sanitary District, hereinafter referred to as "**District**" providing for professional SCADA Support services.

ARTICLE 1 - SYSTEM INTEGRATOR'S KEY PERSONNEL

1.1 Consultant's Key Personnel are identified below and their resumes appended to this Appendix F as Exhibit 1, including but not limited to the following:

Name	Responsibility
_____	System Integrator

ARTICLE 2 - CHANGES TO KEY PERSONNEL AND ADDITIONS

2.1 For Key Personnel, Consultant shall not remove, reassign or make changes to any of the Key Personnel or their assignment durations without District's prior written approval.

2.2 Added personnel ("Added Personnel") shall be added to Consultant's staff as necessary, but subject to approval by District. Prior to adding personnel, Consultant will develop a Staffing Plan, subject to District approval. The Staffing Plan will identify staff by position, name, responsibility, rate, and planned level of effort, projected hours, and his or her planned periods of involvement with the Project.

2.3 Unless directed to reduce staff by District, in the event that any Key Personnel or Added Personnel, for any reason thereafter ceases to fill that position, within ten (10) days thereof, Consultant shall propose a replacement person for District's approval pursuant to the following process:

2.3.1 Consultant shall prepare and submit to District for its review, comment and approval, a proposal listing all personnel that Consultant proposes to assign to the Project as replacement, and the proposed duration of each such assignment.

2.3.2 Within fifteen (15) days following Consultant's submittal of the proposal and resumes, District shall either give its written approval of such submission or provide comments. In the event District approval is withheld, Consultant, in response to such comments, shall promptly, but no later than five (5) business days after receipt of District's comment, make all necessary and appropriate changes to the proposal (including changes in proposed staff) and resubmit it to District for its approval, and such process shall continue until District approves Consultant's proposed staffing. Such approvals shall not be unreasonably withheld.

2.4 For replacement of Key Personnel, Consultant shall be subject to liquidated damages as described below, and also may not receive reimbursement for substitute personnel in amounts greater than would have been paid for the initial Key Personnel.

2.5 District may, in its sole discretion, direct Consultant to add to or reduce Consultant's staff to meet changing Project requirements. Consultant's Fee shall be equitably adjusted based upon addition or reduction of Consultant staff

ARTICLE 3 - UNSATISFACTORY PERSONNEL

3.1 Consultant shall remove any person employed by Consultant or any subconsultant whom District may deem incompetent, improper or a hindrance to the progress of any Work or Services on the Project, and in the event of any such removal, Consultant shall immediately replace (or cause to be replaced) such person with a properly qualified and experienced replacement and, in the case of removal of any person holding any position described in the Staffing Plan, Consultant shall propose properly experienced and qualified replacement personnel for District approval, pursuant to the same process as is described in Article 2 above.

ARTICLE 4 - LIQUIDATED DAMAGES FOR KEY PERSONNEL

4.1 Consultant and District agree that the personal services of the Key Personnel is a material term of the Agreement, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the District, the measure of which would be impractical or extremely difficult to fix, and in lieu of which District and Consultant have agreed to liquidated damages as described below.

4.2 District may assess and Consultant shall accept liquidated damages in the amount of three (3) times the gross monthly salary for unauthorized substitutions of any Key Personnel.

4.3 No liquidated damages shall be due under this paragraph if the substitution is required due to death, incapacity, or resignation of Key Personnel.

4.4 District in its sole discretion, may elect to waive, reduce or delay implementation of liquidated damages.

**EXHIBIT 1 TO APPENDIX F
KEY PERSONNEL RESUMES**

END OF APPENDIX F