

DRAFT Agreement for Biotoxicity Monitoring and Related Services

This agreement ("Agreement") is by and between **Russian River County Sanitation District and Sonoma Valley County Sanitation District** ("Districts") and **AQUA-Science LLC**, a limited liability company ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

RECITALS

- A. Consultant represents that it is a duly qualified laboratory, certified through the Environmental Laboratory Accreditation Program (ELAP) with expertise in conducting biotoxicity testing and Toxicity Identification Evaluations (TIE) for National Pollutant Discharge Elimination System (NPDES) compliance and related services.
- B. Sonoma County Water Agency operates and manages Russian River County Sanitation District and Sonoma Valley County Sanitation District ("Districts") under contract with Districts. References to District employees are understood to be Sonoma County Water Agency employees acting on behalf of Districts.
- C. Pursuant to section 402 of the Federal Clean Water Act and implementing regulations adopted by the U.S. Environmental Protection Agency (EPA), the California Regional Water Quality Control Board (Regional Board) requires Districts to have wastewater tested for a variety of toxins and biotoxicity. This work requires highly-trained and skilled laboratory expertise that Districts do not possess.
- D. Under this Agreement, Consultant will provide wastewater testing.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct and are incorporated herein.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
 - a. Exhibit A: Scope of Work.
 - b. Exhibit B: Schedule of Costs.
 - c. Exhibit C: Insurance Requirements.

3. **SCOPE OF SERVICES**

3.1. *Consultant's Specified Services:* Consultant shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

3.2. *Cooperation with Districts:* Consultant shall cooperate with Districts in the performance of all work hereunder. Consultant shall coordinate the work with Districts' Project Manager. Contact information and mailing addresses:

Districts	Consultant
Project Manager: Ellen Simm 404 Aviation Boulevard Santa Rosa, California 95403-9019 Phone: 707-521-1809 Email: Ellen.Simm@scwa.ca.gov	Contact: Kimberley Miller, B.S. 630 Cantrill Drive Davis, CA 95618 Phone: 530-753-5456 Email: kimberley@aqua-science.com
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap.agreements@scwa.ca.gov	Accounts Receivable Same address as above

3.3. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Districts shall not operate as a waiver or release. Districts has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If Districts determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Districts, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Districts to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.

3.4. *Assigned Personnel:*

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Districts, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Districts.

- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Districts to be key personnel whose services were a material inducement to Districts to enter into this Agreement, and without whose services Districts would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Districts.
- c. With respect to performance under this Agreement, Consultant shall employ the following key personnel:

<i>Title</i>	<i>Name</i>
President	Jeffrey L. Miller, Ph.D., DABT
- d. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

4. **PAYMENT**

- 4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$345,000.
- 4.2. *Method of Payment:* Consultant shall be paid in accordance with the following terms:
 - a. Consultant shall be paid in accordance with Exhibit B (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges.
 - b. Consultant shall not be entitled to reimbursement for expenses incurred in completion of the services.
- 4.3. *Invoices:* Consultant shall submit its bills in arrears as tests are performed per site, based on work completed, in a form approved by Districts. The bills shall show or include:
 - a. Consultant name.
 - b. Agreement title and TW 24/25-029.
 - c. Name of treatment plant or location.
 - d. Districts' Project-Activity Codes:
 - i. Russian River County Sanitation District: R0099W002.
 - ii. Sonoma Valley County Sanitation District: V0112W002.
 - e. Task performed with an itemized description of services rendered by date.
 - f. Summary of work performed by subconsultants, as described in Paragraph 14.4.
- 4.4. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Districts' business after presentation of an invoice in a form approved by Districts for services performed. Payments shall

be made only upon the satisfactory completion of the services as determined by Districts.

4.5. *Taxes Withheld by Districts:*

- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, Districts shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
- b. If Consultant does not qualify, as described in Paragraph 4.5.a, Districts require that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, as described in Paragraph 4.5.a, then Districts require a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify Districts of any changes in the facts. Forms should be sent to Districts pursuant to Article 15 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, Consultant has the option to provide Districts with either a full or partial waiver from the State of California.

4.6. *Funding:*

- a. Funding for this Agreement is as follows:

<i>Fiscal Years</i>	<i>Appropriation</i>
2024/2025	\$57,500
2025/2026	\$115,000
2026/2027	\$115,000
2027/2028	\$57,500

- b. Availability of Funding:
 - i. Funding is available for Fiscal Year 2024/2025.
 - ii. Districts' performance under this Agreement in subsequent years is contingent upon appropriation of funds by Districts' Board of Directors. Districts shall have no liability under this Agreement if sufficient funds are not appropriated in subsequent fiscal years by Districts' Board of Directors for the purpose of this Agreement.
 - iii. If funding for this Agreement for any fiscal year is reduced or eliminated by Districts' Board of Directors, Districts shall have the option to either terminate this Agreement in accordance with Article 6 (Termination) or offer an amendment to Consultant to reflect the reduced amount.

5. **TERM OF AGREEMENT**

5.1. *Term of Agreement:*

- a. The term of this Agreement shall be from December 31, 2024 ("Effective Date") to December 31, 2027, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- b. Sonoma County Water Agency's General Manager shall have the ability to extend the term of this Agreement for up to two additional years by providing written notice to Consultant thirty days in advance of the expiration date noted in this Article. The extension shall be formalized in an amended agreement or amendment signed by Districts and Consultant.

6. **TERMINATION**

- 6.1. *Authority to Terminate:* Districts' right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Districts shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.
- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Districts may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Districts all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.10 and shall submit to Districts an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Districts, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by

the applicable hourly or daily rate; and further provided, however, that if Districts terminate the Agreement for cause pursuant to Paragraph 6.3, Districts shall deduct from such amounts the amount of damage, if any, sustained by Districts by virtue of the breach of the Agreement by Consultant.

7. INDEMNIFICATION

7.1. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, and to indemnify, hold harmless, and release Sonoma County Water Agency, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency, Russian River County Sanitation District, or Sonoma Valley County Sanitation District based upon a claim relating to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Article 7 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, Russian River County Sanitation District, or Sonoma Valley County Sanitation District, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency, Russian River County Sanitation District, or Sonoma Valley County Sanitation District. Sonoma County Water Agency, Russian River County Sanitation District, and Sonoma Valley County Sanitation District shall have the right to select their legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. INSURANCE

8.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C (Insurance Requirements).

9. PROSECUTION OF WORK

9.1. Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement. Performance of the services hereunder shall be completed within the time required herein,

provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

10. EXTRA OR CHANGED WORK

10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Districts personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Districts.

11. CONTENT ONLINE ACCESSIBILITY

- 11.1. *Accessibility:* Districts' policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Districts-managed or Districts-funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), Districts' Web Standards & Guidelines located at <https://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/> and Districts' Web Site Accessibility Policy located at <https://sonomacounty.ca.gov/CAO/Administrative-Policies/9-3-Website-Accessibility-Policy/>.
- 11.3. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with Districts in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.

- 11.4. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Districts' Web Site Accessibility Policy shall be the responsibility of Consultant. If Districts, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Districts-managed or Districts-funded Web site does not comply with Districts Accessibility Standards, Districts will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Districts, repair or replace the non-compliant materials within such period of time as specified by Districts in writing. If the required repair or replacement is not completed within the time specified, Districts shall have the right to do any or all of the following, without prejudice to Districts' right to pursue any and all other remedies at law or in equity:
- a. Cancel any delivery or task order;
 - b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
 - c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for Districts, Districts may have any necessary changes or repairs performed by itself or by another contractor. In such event, Consultant shall be liable for all expenses incurred by Districts in connection with such changes or repairs.
- 11.5. *Districts' Rights Reserved:* Notwithstanding the foregoing, Districts may accept deliverables that are not strictly compliant with Districts Accessibility Standards if Districts, in its sole and absolute discretion, determines that acceptance of such products or services is in Districts' best interest.

12. REPRESENTATIONS OF CONSULTANT

- 12.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Districts and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Districts provide its employees. In the event Districts exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *No Suspension or Debarment:* Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Consultant becomes debarred, Consultant has the obligation to inform Districts.

- 12.3. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Districts harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Districts are audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Districts with proof of payment of taxes on these earnings.
- 12.4. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Districts for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
- 12.5. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Districts, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Districts within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.6. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.7. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or

other prohibited basis, including without limitation, the County of Sonoma's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

- 12.8. *AIDS Discrimination:* Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.
- 12.9. *Assignment of Rights:* Consultant assigns to Districts all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the work, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Districts in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Districts may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Districts. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Districts.
- 12.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Districts. Districts shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Districts all such documents, which have not already been provided to Districts in such form or format as Districts deems appropriate. Such documents shall be and will remain the property of Districts without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Districts.
- 12.11. *Authority:* The undersigned hereby represents and warrants that the undersigned has authority to execute and deliver this Agreement on behalf of Consultant.
- 12.12. *Nondisclosure of Confidential Information:* While doing the work required by this Agreement, Consultant may have access to technical information and materials pertaining to Districts' sensitive information or data determined by Districts to be confidential ("Confidential Information"). The Confidential Information may include confidential or proprietary information or trade secrets exempt from

disclosure under provisions of the California Public Records Act. In consideration of disclosure by Districts of Confidential Information to Consultant, Consultant and its agents shall hold any material or information designated by Districts as Confidential in strict confidence and shall not disclose it or otherwise make it available, in any form or matter whatsoever, to any person or entity without the prior written consent of Districts, except as may be ordered by a court of law. Immediately upon receipt of any request or demand for disclosure of any Confidential Information within the scope of this Agreement, Consultant shall give Districts written notice and a copy of the request and the time period, if any, within which Consultant is required to respond to the request. Upon termination of this Agreement, Consultant shall return Confidential Information in its possession, including copies, to Districts. Consultant's obligation to maintain material and information designated as Confidential in strict confidence shall survive completion of work under this Agreement and termination of this Agreement and, as provided for in Paragraph 12.10, Consultant agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Districts.

- 12.13. *District Liability:* Districts are separate legal entities from Sonoma County Water Agency, operated under contract by Sonoma County Water Agency. To the extent any work under this Agreement relates to Districts activities, Consultant shall be paid exclusively from Districts funds. Consultant agrees that it shall make no claim for compensation for Consultant's services against Sonoma County Water Agency funds and expressly waives any right to be compensated from other funds available to Sonoma County Water Agency.

13. DEMAND FOR ASSURANCE

- 13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits Districts' right to terminate this Agreement pursuant to Article 6 (Termination).

14. ASSIGNMENT AND DELEGATION

- 14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 14.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement.
- 14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.3. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 14.2:
- a. Prior to entering into any contract with subconsultant, Consultant shall obtain Districts approval of subconsultant.
 - b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Districts in substantially the same form as that contained in Article 7 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- 14.4. *Summary of Subconsultants' Work:* Consultant shall provide Districts with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.3. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

- 15.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.
- 15.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic

transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 15.

16. MISCELLANEOUS PROVISIONS

- 16.1. *No Bottled Water:* In accordance with Districts Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Districts funding shall be used to purchase single-serving, disposable water bottles for use in Districts facilities or at Districts-sponsored events. This restriction shall not apply when potable water is not available.
- 16.2. *No Waiver of Breach:* The waiver by Districts of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 16.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Districts acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Districts acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 16.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 16.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 16.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.

- 16.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 16.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 16.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 16.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.
- 16.11. *Counterpart; Electronic Signatures:* The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via electronic means, or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal E-SIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 24/25-029

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Districts

Date/TW Initials: _____

**Russian River County Sanitation District and
Sonoma Valley County Sanitation District**

**AQUA-Science LLC, a limited liability
company**

By: _____
Grant Davis
General Manager
Authorized per Russian River County
Sanitation District's and Sonoma Valley
County Sanitation District's Boards of
Directors Action on December 3, 2024

By: _____
Name: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Scope of Work

1. GENERAL

- 1.1. Availability: Provide services 7 days a week.
- 1.2. Perform work in compliance with Sonoma Valley County Sanitation District Treatment Plant's and Russian River County Sanitation District Treatment Plant's NPDES permits as applicable.
- 1.3. Coordinate test timing with Districts.

2. TASKS

- 2.1. Task 1: Testing
 - a. Perform the following aquatic testing services on freshwater, estuarine, and marine samples:
 - i. Acute toxicity (static and static-renewal).
 - ii. Chronic toxicity (static and static-renewal).
 - iii. Toxicity identification evaluation (TIE).
 - iv. Toxicity reduction evaluation (TRE).
 - v. Biotoxicity screening studies.
 - b. Pick up samples for testing. Pick up sites include, but are not limited to, the follow locations:
 - i. Sonoma Valley County Sanitation District Treatment Plant: 22675 8th Street East, Sonoma, California.
 - ii. Russian River County Sanitation District Treatment Plant: 18400 Neeley Road, Guerneville, California.
 - c. Provide labor, services, sample containers, apparatus, equipment, and test organisms necessary to perform the testing.
 - d. Conduct toxicity tests with strict adherence to EPA methods and protocols.
 - e. Repeat at no additional cost tests that fail as a result of a protocol deviation.
 - f. Properly dispose of test organisms and test samples in accordance with EPA 40 CFR Part 136 methods and protocols.
 - g. Incorporate test results into the summary reports under Task 2.
 - h. NPDES Permits: Assist Districts, as needed, in NPDES permit negotiations. Work includes developing and implementing TIE and TRE Study Plans, reviewing reports and related documents, attending meetings, and providing expert opinions and testimony as required.
- 2.2. Task 2: Test Result Notification and Summary Reports
 - a. Provide verbal or electronic notification of test results within 72 hours of test completion.

- b. Prepare a written summary report of test results that includes, but is not limited to, the items below.
 - i. Summary of study results.
 - ii. A detailed description of the work performed, including methodology and literature reviewed.
 - iii. Other information as requested by Districts.
 - c. In addition to submittal requirements under Paragraph 3.1 (Review and Acceptance of Deliverables), address comments submitted by the Regional Board, if any, and resubmit the final report to the Districts.
 - d. Provide a technical summary of TIE results within 72 hours of completion.
- 2.3. Deliverables: Submit the below deliverables in accordance with Paragraph 3.1 (Review and Acceptance of Deliverables).

Deliverable	Due Date
Notification of Test Results (verbal or email)	Within 72 hours of test completion
Technical summary of TIE results	Within 72 hours of test completion
Draft Report	Within 7 calendar days of test completion
Revised Draft Report	Within 7 calendar days of Districts' approval of draft
Final Report	Within 7 calendar days of receipt of Regional Board's comments

3. **DELIVERABLES**

- 3.1. Review and Acceptance of Deliverables
 - a. First Draft: Prepare each deliverable in draft form and submit to Districts for review and approval in accordance with the date listed for the deliverable in the applicable task. Districts will return the draft deliverable to Consultant with comments or approval in writing.
 - b. Subsequent Draft(s): If Districts requests revisions, revise the draft deliverable and resubmit for Districts approval.
 - c. Final. Following Districts approval and prior to Districts' acceptance of work under this Agreement, submit the final approved deliverable to Districts in accordance with the date listed for this deliverable.
- 3.2. In addition to the requirements above, if any, submit one electronic copy in PDF format (emailed, on USB flash drive, or via internet) of each final deliverable to Districts.
- 3.3. Comply with requirements of Article 11 (Content Online Accessibility).
- 3.4. Include Agreement title and TW 24/25-029 on first page or cover of each deliverable.

Exhibit B

Schedule of Costs

Description	Rate per Test
<u>Acute Toxicity Testing</u>	
• Acute 96-hour Rainbow Trout Survival Test	
○ Effluent (Control and 100%; daily change-out)	\$935
○ Reference toxicant (control and 5 concentrations; daily change-out)	\$1,260
• Acute 96-hour Fathead Minnow Survival Test	
○ Effluent (Control and 100%; daily change-out)	\$820
○ Reference toxicant (control and 5 concentrations; daily change-out)	\$1,100
• Acute 96-hour <i>Ceriodaphnia dubia</i> Survival Test	
○ Effluent (Control and 100%; daily change-out)	\$820
○ Reference toxicant (control and 5 concentrations; daily change-out)	\$1,100
<u>Chronic Toxicity Testing</u>	
• Chronic 7-Day <i>Ceriodaphnia dubia</i> Survival and Reproduction Test	
○ Effluent (control and 5 concentrations)	\$1,800
○ Reference toxicant (control and 7 concentrations)	\$1,355
• Chronic 7-Day Fathead Minnow Survival and Growth Test	
○ Effluent (control and 5 concentrations)	\$1,800
○ Reference toxicant (control and 6 concentrations)	\$1,355
<u>Laboratory Services</u>	
• Zeolite treatment for ammonia removal (per sample)	\$300
• Ammonia analysis (per sample)	\$40
<u>DMRQA Testing</u>	
• Chronic 7-Day Mysid Survival, Growth and Fecundity Test	\$600
• Chronic 7-Day Fathead Minnow Survival and Growth Test	\$450
• Acute 96-Hour <i>Ceriodaphnia dubia</i> Survival Test	\$300
• Acute 96-Hour Fathead Minnow Survival Test	\$300
<u>Other</u>	
• Sample pickup by Courier (Sonoma Valley CSD)	\$230 per pickup
• Sample pickup by Courier (Russian River CSD)	\$495 per pickup
• Professional Services	
Senior Toxicologist	\$200 per hour
Clerical	\$85 per hour

Note: If other clients of Consultant conduct testing concurrently with Districts using the same test species, the reference toxicant test cost will be divided equally among the clients. Similarly, courier pickup costs will be adjusted if the clients are in the same geographical area.

Exhibit C

Insurance Requirements

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Districts reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. INSURANCE

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.
- e. If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

1.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, Districts requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it

must be approved in advance by Districts. Consultant is responsible for any deductible or self-insured retention and shall fund it upon Districts' written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving Districts.

- d. Sonoma County Water Agency, Russian River County Sanitation District, and Sonoma Valley County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance: Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$2,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by Districts.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing

policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

1.5. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.6. Documentation

- a. The Certificate of Insurance must include the following reference: TW 24/25-029.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with Districts for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, 1.3, or 1.4 above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Russian River County Sanitation District and Sonoma Valley County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, California 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.7. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.8. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Districts, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, Districts may purchase the required insurance, and without further notice to Consultant, Districts may deduct from sums due to Consultant any premium costs advanced by Districts for such insurance. These remedies shall be in addition to any other remedies available to Districts.