



CONSTRUCTION SERVICES AGREEMENT Providing Payment of Prevailing Wages

(Town of Yountville / Fisher Electrical Integration, Inc.)
[Company or Individual]

1. IDENTIFICATION

This CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is entered into by and between the Town of Yountville, a California municipal corporation (“Town”), and Fisher Electrical Integration, Inc _____, a California Corporation (“Contractor”).

2. RECITALS

- 2.1. Town has determined that it requires the following construction services from a contractor: Upgrade Scada System Emergency Well to Operational Well (WA-0018)

- 2.2. Contractor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Town and Contractor agree as follows:

3. DEFINITIONS

- 3.1. “Scope of Services”: Such professional services as are set forth in Contractor’s 06/23/2022 proposal to Town attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Town Standards and Specifications”: The Town’s set of technical specifications, which are incorporated herein by reference. These specifications shall provide the technical standards for work as applicable, in the opinion of the Director of Public Works. Copies are available at Town Hall.
- 3.3. “Agreement Administrator”: The Agreement Administrator for this project is Erica Teagarden, Management Analyst. The Agreement Administrator shall be the principal point of contact at the Town for this project. All services under this Agreement shall be performed at the request of the Agreement



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Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. Town reserves the right to change this designation upon written notice to Contractor

3.4. “Maximum Amount”: The highest total compensation and costs payable to Contractor by Town under this Agreement. The Maximum Amount under this Agreement is One Hundred Eleven Thousand Five Hundred Ninety and 27 cents Dollars (\$ 111,590.27).

3.5. “Commencement Date”: 10/01/2022

3.6. “Termination Date”: 06/30/2023

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Termination Date unless extended by written agreement of the parties or terminated earlier under Section 18 (“Termination”) below. Contractor may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by Town in writing and incorporated in written amendments to this agreement.

5. CONTRACTOR’S DUTIES

5.1. **Services.** Contractor shall perform the services identified in the Scope of Services. Town shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

5.2. **Coordination with Town.** In performing services under this Agreement, Contractor shall coordinate all contact with Town through its Agreement Administrator.

5.3. **Budgetary Notification.** Contractor shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Contractor shall concurrently inform the Agreement Administrator, in writing, of Contractor’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.

5.4. **Business License.** Contractor shall obtain and maintain in force a Town business license for the duration of this Agreement.



Professional Standards. Contractor shall perform all work to the highest standards of Contractor's profession and in a manner reasonably satisfactory to Town. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).

- 5.5. Appropriate Personnel.** Contractor has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Contractor or under its supervision or by subcontractor(s) of Contractor, and all personnel engaged in the work shall be qualified to perform such services. Nickolas Fisher

shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without Town's prior written consent.

- 5.6. Project Site.** Contractor shall perform the Services in such a manner as to cause a minimum of interference with Town's operations and the operations of other contractors at each Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Services at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish. Each Project site may include all buildings, offices, and other locations where Services are to be performed, including any access roads. Contractor shall be solely responsible for the safe transportation and packing in proper containers and storage of any equipment required for performing the Services, whether owned, leased or rented. Town will not be responsible for any such equipment which is lost, stolen or damaged or for any additional rental charges for such equipment. Equipment left or stored at a Project site, with or without permission, is at Contractor's sole risk. Town may assume that anything left on the work site an unreasonable length of time after said work is completed has been abandoned. Any transportation furnished by Town shall be solely as an accommodation and Town shall have no liability therefore. Contractor acknowledges and agrees that it shall assume the risk and is solely responsible for its use of any Town owned equipment and property provided by Town for the performance of Services. Town shall have no liability to Contractor therefore. In addition, Contractor further acknowledges and agrees that it shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tolls, or other property which is utilized by Contractor on each Project site.

- 5.7. Prevailing Wages.** This Agreement is subject to the prevailing wage law as more fully set forth in Section 8 (Labor Code), for all work performed under this Agreement for which the payment of prevailing wages is required under the California Labor Code. In



particular, Contractor acknowledges that prevailing wage determinations are available for work performed under this Agreement.

- 5.8. Unauthorized Delay.** In accordance with Government Code 53069.85, and all other applicable law, the Contractor agrees to forfeit and pay Town the amount of Two Hundred Dollars (\$200.00) per day for each and every day of unauthorized delay beyond the Termination Date, which shall be deducted from any monies due to Contractor. This payment shall be considered liquidated damages. Contractor agrees that such liquidated damages are reasonable under the circumstances existing at the time of execution of the contract, that such liquidated damages are to compensate Town for losses that are difficult to measure, and that such damages are not a penalty.
- 5.9. Unforeseeable Delay.** Contractor shall not be deemed in breach of this Agreement and no forfeiture due to delay shall be made because of any delays in the completion of the Scope of Services due to unforeseeable causes beyond the control and without the fault or negligence of Contractor provided Contractor requests from the Agreement Administrator an extension of time in writing. Unforeseeable causes of delay beyond the control of Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of Town, or acts of another contractor in the performance of a contract with Town, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the owner of a utility to provide for removal or relocation of existing utility facilities. Delays caused by actions or negligence of Contractor or its agents, servants, employees, officers, subcontractors, directors, or of any party contracting to perform part of all of the Scope of Services or to supply any equipment or materials shall not be unforeseeable delays. Unforeseeable delays (those beyond Contractor's control) shall not entitle Contractor to any additional compensation beyond the Maximum Amount. The sole recourse of Contractor shall be to seek an extension of time from the Agreement Administrator.
- 5.10. Defective Work.** All work which is defective in its construction or deficient in any of the requirements set by Town Reference Specifications shall be remedied or replaced by Contractor in an acceptable manner at its own expense. Defective work shall not entitle Contractor to any additional compensation beyond the Maximum Amount.
- 5.11. Permits and Approvals.** Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Contractor's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.12. Notification of Organizational Changes.** Contractor shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Contractor's firm or of any subcontractor. Change of ownership or control of Contractor's firm may require an amendment to this Agreement.



- 5.13. Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Town under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of Town. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Town or as part of any audit of Town, for a period of three (3) years after final payment under this Agreement.

6. HEALTH AND SAFETY PROGRAMS

- 6.1.** As appropriate for the scope of work to be performed, the Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all Town site programs.
- 6.2.** Contractor will be responsible for acquiring job hazard assessments as necessary to safely perform all duties of each Project and provide a copy to Town upon request.
- 6.3.** Contractor will be responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of Project and provide copies of the certified training records upon request by Town. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 6.4.** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 6.5.** Town, or its representatives, shall periodically monitor the safety performance of the Contractor working on the Project. All Contractors and their subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Town to Contractor under this Agreement at any time when, or for any Services performed when, Contractor is not in full compliance with this Section 10.



- 6.6. Contractor shall immediately report any injuries to the Town site safety representative. Additionally, the Contractor shall investigate and submit to the Town site safety representative copies of all written accident reports, and coordinate with Town if further investigation is requested.
- 6.7. Contractor shall take all reasonable steps and precautions to protect the health of their employees and other site personnel with regard to their Scope of Services. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Town site safety representative upon request.
- 6.8. Contractor shall develop a plan to properly handle and dispose of all hazardous wastes they generate within the Scope of Services.
- 6.9. Contractor shall advise its employees and subcontractors that any employee, who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Project.
- 6.10. Contractor shall, at the sole option of the Town develop and provide to the Town a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials to include diesel fuel used for trucks owned or leased by the Contractor

7. SUBCONTRACTING AND ASSIGNMENT

- 7.1. **General Prohibition of Assignment.** This Agreement covers construction services of a specific and unique nature. Except as otherwise provided herein, Contractor shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 7.2. **Contractor Responsible.** Contractor shall be responsible to Town for all services to be performed under this Agreement.
- 7.3. **Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein unless (1) such subcontracting is specifically described in the proposal attached hereto or (2) the Town provides prior written approval. In any event, Contractor shall supervise all work subcontracted by Contractor in performing the Services and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work shall not relieve Contractor from any of its obligations under this Agreement with respect to the Services. Contractor is obligated to ensure that any and all



subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 13, to Town's satisfaction.

- 7.4. Compensation for Subcontractors.** Contractor shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. Town shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.
- 7.5. Warranty.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that Contractor shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. Contractor further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, Contractor shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which Town may have, Town shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from Contractor's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by Contractor under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable notice from Town, replace or repair the same to Town's satisfaction. Unless otherwise expressly permitted, all materials and supplies to be used by Contractor in the performance of the Services shall be new and best of kind.

Contractor hereby assigns to Town all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

8. COMPENSATION

- 8.1. General.** Town agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept payment, of the Maximum Amount in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Contractor shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by Town in advance.



- 8.2. Retention.** Town may retain up to 5% of each payment until project completion. Contractor may at its own expense substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code 22300. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with Town, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Town. Upon satisfactory completion of this Agreement, the securities shall be returned to Contractor.
- 8.3. Invoices.** Contractor shall submit to Town an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. Contractor shall include a copy of each subcontractor invoice, if any, for which reimbursement is sought in the invoice.
- 8.4. Taxes.** Town shall not withhold applicable taxes or other payroll deductions from payments made to Contractor except as otherwise required by law. Contractor shall be solely responsible for calculating, withholding, and paying all taxes.
- 8.5. Compensation Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Contractor.
- 8.6. Additional Work.** Contractor shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the Town on a time-and-materials basis pursuant to a written change order. Contractor shall not undertake any such work without prior written approval of the Town. A written change order may be issued without amendment to this Agreement, so long as such written change order does not cause the Maximum Amount to be exceeded. Contractor shall only be compensated for such additional work at the rates and costs for labor and materials included in the bid or proposal.
- 8.7. Town-Initiated Changes** - Town may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify Town in writing of that fact within five (5) days after receipt of written proposal for changes.
- 8.8. Contractor-Initiated Changes** – Contractor may propose in writing changes to the Scope of Services, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement. Contractor must notify the Town's Agreement Administrator of any changed conditions upon discovery and before they are disturbed. The Public Works Director shall investigate, and if the Public Works Director determines that the conditions will materially affect costs, will issue a



Change Order adjusting the compensation for such portion of the Scope of Services. If the Public Works Director determines that conditions are changed conditions and they will materially affect performance time, the Contractor, upon submitting a written request, will be granted an extension of time. If the Public Works Director determines that the conditions do not justify an adjustment in compensation or time, the Contractor will be notified in writing. This notice will also advise the Contractor of its obligation to notify the Public Works Director in writing if the Contractor disagrees.

When and if Town and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. Contractor may not cease work or delay progress on the original project pending negotiations over changes, and must continue to diligently complete the project.

Should the Contractor disagree with the decision, it may submit a written notice of potential claim to the Public Works Director before commencing the disputed work. In the event of such a dispute, the Contractor shall not be excused from any scheduled completion date provided by the Contract and shall proceed with all work to be performed under the Contract. However, the Contractor shall retain any and all rights provided by either Contract or law which pertain to the resolution of disputes and protests between the contracting parties.

The Contractor's failure to give notice of changed conditions promptly upon their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith.

9. LABOR CODE

- 9.1. Prevailing Wage Law.** This Agreement is subject to the requirements of the prevailing wage laws, including, but not limited to, Labor Code Section 1720 et seq., and Labor Code Section 1770 et seq., as well as Code of Regulations, Title 8, Section 16000 et seq., which require payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Contractor shall defend, indemnify, and hold harmless Town, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Contractor to comply with such prevailing wage laws.
- 9.2. Payment of Prevailing Wages.** Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification.
- 9.3. Forfeiture.** Contractor shall forfeit as a penalty to Town Two Hundred Dollars (\$200.00), or any greater penalty provided in the Labor Code, for each calendar day, or



- portion thereof, for each worker paid less than the prevailing wage rates for any work done under this Agreement employed in the performance of the Scope of Services by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.
- 9.4. Apprentices.** Contractor shall comply with the provisions of Labor Code 1777.5 concerning the employment of apprentices on public works projects. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code 1777.5.
- 9.5. Payroll Records.** Pursuant to Labor Code 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code 1811 and Labor Code 1815 for any work performed by his or her employees on the public works project. The payroll records shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code 1776.
- 9.6. 8-Hour Work Day.** This Agreement is subject to 8-hour work day and wage and hour penalty laws, including, but not limited to, Labor Code 1810 and Labor Code 1813. Contractor and any subcontractor(s) of Contractor shall strictly adhere to the provisions of the Labor Code regarding 8-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to Town \$25.00, or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.
- 9.7. Registration with DIR.** Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code 1771 and Labor Code 1725.5 requiring registration with the Department of Industrial Relations (DIR).

10. PUBLIC CONTRACT CODE.



- 10.1. Prompt Payment.** This Agreement is subject to the provisions of Article 1.7 (commencing at § 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.
- 10.2. Public Works Claims Less Than \$375,000.** To the extent applicable, this Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration if the parties fail to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
- 10.3. Ineligible Subcontractor(s).** This Agreement is further subject to the provisions of Public Contracts Code 6109 which prohibits Contractor from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Labor Code 1777.1 or Labor Code 1777.7.
- 10.4. Assignment of Actions.** Contractor and any and all subcontractors shall offer and agree to assign to Town all rights, title, and interest in and to all causes of action it/they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 4) or under the Cartright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time Town tenders final payment to Contractor, without further acknowledgment by the parties.

11. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material including, but not limited to, digital and electronic reports, documents or other written material, and hard copies and originals thereof ("written products" herein), developed by Consultant in the performance of this Agreement shall be and remain the property of Town without restriction or limitation upon its use or dissemination by Town except as provided by



law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

12. RELATIONSHIP OF PARTIES

- 12.1. General.** Contractor is, and shall at all times remain as to Town, a wholly independent contractor.
- 12.2. No Agent Authority.** Contractor shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. Neither Town nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of Town.
- 12.3. Independent Contractor Status.** Under no circumstances shall Contractor or its employees look to the Town as an employer. Contractor shall not be entitled to any benefits. Town makes no representation as to the effect of this independent contractor relationship on Contractor's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Contractor specifically assumes the responsibility for making such a determination. Contractor shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.
- 12.4. Indemnification of CalPERS Determination.** In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Town, Contractor shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

13. INDEMNIFICATION

- 13.1. Definitions.** For purposes of this Section 13, "Contractor" shall include Contractor, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Contractor or its subcontractors, in the performance of this Agreement. "Town" shall include Town, its officers, agents, employees and volunteers.
- 13.2. Contractor to Indemnify Town.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend Town from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or



in connection with Contractor's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Contractor or failure to comply with any provision in this Agreement.

- 13.3. Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Contractor shall not be required to indemnify Town for such loss or damage as is caused by the sole active negligence or willful misconduct of the Town.
- 13.4. Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of Town's choice, expert fees and all other costs and fees of litigation. Contractor shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 13.5. Defense Deposit.** The Town may request a deposit for defense costs from Contractor with respect to a claim. If the Town requests a defense deposit, Contractor shall provide it within 15 days of the request.
- 13.6. Waiver of Statutory Immunity.** The obligations of Contractor under this Section 13 are not limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to Town.
- 13.7. Indemnification by Subcontractors.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 13 from each and every subcontractor or any other person or entity involved in the performance of this Agreement on Contractor's behalf.
- 13.8. Insurance Not a Substitute.** Town does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Contractor's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

14. INSURANCE

- 14.1. Insurance Required.** Contractor shall maintain insurance as described in this section and shall require all of its subcontractors, Contractors, and other agents to do the same. Approval of the insurance by the Town shall not relieve or decrease any liability of Contractor. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement. A category of risk and the applicable insurance requirements will be determined on a "per subcontractor" basis, considering the



14.2. Documentation of Insurance. Town will not execute this agreement until it has received a complete set of all required documentation of insurance coverage, including, but not limited to, a copy of the declarations and policy endorsements page for each insurance policy as applicable. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Contractor shall file with Town:

- 14.3. Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$2,000,000 per occurrence,
(if applicable) \$4,000,000 aggregate
- General Liability:
 - General Aggregate: \$4,000,000
 - Products Comp/Op Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$2,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
 - Workers' Compensation Statutory Limits
 - EL Each Accident \$1,000,000
 - EL Disease - Policy Limit \$1,000,000
 - EL Disease - Each Employee \$1,000,000
- Automobile Liability
 - Any vehicle, combined single limit \$2,000,000



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Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

An employee of the Town signing this Agreement may, in his or her sole discretion, waive the requirement for Professional Liability Insurance by initialing here:

Initials: ET
Name: Erica Teagarden

- 14.4. General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable. The policy shall cover inter-insured suits and include a “Separation of Insureds” or “severability” clause which treats each insured separately. The policy shall not contain a Contractors’ Warranty or other similar language which eliminates or restricts insurance because of a subcontractor’s failure to carry specific insurance or to supply evidence of such coverage.
- 14.5. Worker’s Compensation Insurance.** Contractor is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers’ Compensation (or to undertake equivalent self-insurance), and Contractor will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 14.6. Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks using ISO Business Auto Coverage form CA 00 01 (or equivalent).
- 14.7. Additional Insured Endorsements.** The Town, its Town Council, Commissions, officers, and employees of Yountville must be endorsed as an additional insured for each policy required herein — other than Auto, Workers Compensation and Professional Errors and Omissions — for liability arising out of ongoing and completed operations by or on behalf of the Contractor. The Town must be named as an additional insured for Auto Insurance policies for ongoing operations. Contractor’s insurance policies shall be primary as respects any claims related to or as the result of the Contractor’s work. Any insurance, pooled coverage or self-insurance maintained by



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the Town, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37. An endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent) is required.

14.8. Failure to Maintain Coverage. In the event any policy is canceled prior to the completion of the project and the Contractor does not furnish a new certificate of insurance prior to cancellation, Town has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Contractor under this Agreement. Failure of the Contractor to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.

14.9. Notices. Contractor 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; (3) or the deductible or self-insured retention is increased. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Town, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium. Contractor shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: Town of Yountville, Attn: Erica Teagarden, 6550 Yount Street, Yountville, CA 94599.

14.10. Contractor's Insurance Primary. The insurance provided by Contractor, including all endorsements, shall be primary to any coverage available to Town and be endorsed using Insurance Services office form CG 20 10 (or equivalent) to provide that Town and its officers, employees, and agents shall be additional insureds under such policies. Any insurance or self-insurance maintained by Town and/or its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

14.11. Waiver of Subrogation. Contractor hereby waives all rights of subrogation against the Town. Contractor shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.



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14.12. Report of Claims to Town. Contractor shall report to the Town, in addition to the Contractor's insurer, any and all insurance claims submitted to Contractor's insurer in connection with the services under this Agreement.

14.13. Premium Payments and Deductibles. Contractor must disclose all deductibles and self-insured retention amounts to the Town. The Town may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, Town must approve all such amounts prior to execution of this Agreement.

Town has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Contractor shall be responsible for all premiums and deductibles in all of Contractor's insurance policies. The amount of deductibles for insurance coverage required herein are subject to Town's approval.

14.14. Duty to Defend and Indemnify. Contractor's duties to defend and indemnify Town under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

15. MUTUAL COOPERATION

15.1. Town Cooperation in Performance. Town shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Contractor's services under this Agreement.

15.2. Contractor Cooperation in Defense of Claims. If any claim or action is brought against Town relating to Contractor's performance in connection with this Agreement, Contractor shall render any reasonable assistance that Town may require in the defense of that claim or action.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Contractor's and Town's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Town:

Town of Yountville

If to Contractor:

Fisher Electrical Integration, Inc.



CSA #: _____

Name: Erica Teagarden
6550 Yount Street
Yountville, CA 94599
Telephone: (707) 944-8851
Facsimile: (707) 944-9619
Email: eteagarden@yville.com

Name: Nickolas Fisher
Address: West Sacramento, CA 95961
West Sacramento, CA 95961
Telephone: 916-634-7804
Facsimile: _____
Email: Nickfisher@fisherintegration.com

With courtesy copy to:

Gary B. Bell
Yountville Town Attorney
Colantuono, Highsmith & Whatley, PC
420 Sierra College Dr., Ste. 140 Grass
Valley, CA 95945-5091 Telephone:
(530) 432-7357

17. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.12 (Records), paragraph 12.4 (Indemnification of CalPERS Determination), Section 13 (Indemnity), paragraph 14.8 (Claims-Made Policies), Section 15.2 (Contractor Cooperation in Defense of Claims), and Section 20.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

18. TERMINATION

- 18.1. Town Termination.** Town may terminate this Agreement for any reason on five calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All Town data, documents, objects, materials or other tangible things shall be returned to Town upon the termination or expiration of this Agreement.
- 18.2. Contractor Termination.** Contractor may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 18.3. Compensation Following Termination.** Upon termination, Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement. The Town shall have the benefit of such work as may have been completed up to the time of such termination.



18.4. Remedies. Town retains any and all available legal and equitable remedies for Contractor's breach of this Agreement.

19. INTERPRETATION OF AGREEMENT

19.1. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

19.2. Integration of Exhibits. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Town and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by Town and Contractor.

19.3. Headings. The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.

19.4. Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

19.5. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19.6. No Presumption Against Drafter. Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.



20. GENERAL PROVISIONS

- 20.1. Confidentiality.** All data, documents, discussion, or other information developed or received by Contractor for performance of this Agreement are deemed confidential and Contractor shall not disclose it without prior written consent by Town. Town shall grant such consent if disclosure is legally required. All Town data shall be returned to Town upon the termination or expiration of this Agreement.
- 20.2. Conflicts of Interest.** Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the Town's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 20.3. Non-assignment.** Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Town's prior written consent, and any attempt to do so shall be void and of no effect. Town shall not be obligated or liable under this Agreement to any party other than Contractor.
- 20.4. Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 20.5. No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 20.6. Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 20.7. Non-Discrimination.** Contractor shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in



terms, conditions or privileges of employment, and selection for training. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

- 20.8. Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by Town or Contractor unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by Town or Contractor of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 20.9. Excused Failure to Perform.** Contractor shall not be liable for any failure to perform if Contractor presents acceptable evidence, in Town's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Contractor.
- 20.10. Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 20.11. Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants' and attorneys' fees expended in the action.
- 20.12. Venue.** The venue for any litigation shall be Napa County, California and Contractor hereby consents to jurisdiction in Napa County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

General Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Town and Contractor agree to resolve the dispute in accordance with the following:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.



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The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

20.13. Counterparts; Electronic Signatures. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties further agree that this Agreement may be transmitted by facsimile, electronic mail (email), or other electronic means and that the production or reproduction of signatures by facsimile, electronic mail (email), or other electronic means shall be treated as binding as if originals thereof.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Town”
Town of Yountville

“Contractor”

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

Attest signature not needed if project less than \$45,000 and not requiring Council approval.

By: _____
Eddy Gomez, Town Clerk

Date: _____

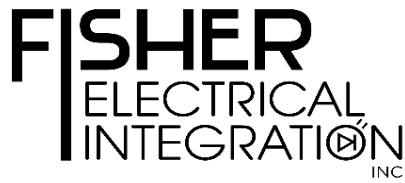
Approved as to form:



CSA #: _____

By: _____
Gary B. Bell, Town Attorney

Date: _____



Automation Service Specialists

www.fisherintegration.com

3166 Industrial Blvd

West Sacramento, CA 95691

Phone: (916)634-7804

Quotation

DATE June 23, 2022

Quotation # 220623NF1

Customer ID 00005

Bill To:

Town of Yountville

Attn: Jeff White

6550 Yount st

Yountville, CA 94599

Quotation valid until: July 23, 2022

Prepared by: Nickolas Fisher

Quotation Terms: Lump Sum

Payment Terms: Net 30

Regarding: Bardessono Well Filter CP Upgrade and SCADA Integration

Comments or special instructions: Lead time: 6-8 Months

LINE ITEM	SCOPE OF WORK	QTY	AMOUNT
1	Filter Control Panel	1	\$ 66,535.71
	•Enclosure, Nema 4		
	•CompactLogix Remote I/O Rack		
	•10" HMI		
	•Cellular Modem		
	•24VDC Power Supply		
	•Unmanaged Ethernet Switch		
	•Interposing Relays		
	•Pilot Valve Manifold		
	•Uninterruptable Power Supply		
	•Termination Equipment		
	Filter Control Panel Engineering Services		
	•Design engineering and drafting services		
	•PLC and HMI configuration and programming		
	•Factory testing		
	•On-site testing and startup services		
	•On-site system training		
2	Control Panel Installation and Wiring	LOT	\$ 24,729.55
	•Field services for control panel installation and wiring		
3	SCADA Programming & Filter CP Integration	LOT	\$ 15,168.49
	•Main PLC programming		

LINE ITEM	SCOPE OF WORK	QTY	AMOUNT
	• Ignition programming		
T	Estimated Sales Tax	TAX	\$ 5,156.52
TOTAL:			\$ 111,590.27

Fisher Electrical Integration specifically excludes the following from our scope of work:

- 1. Installation, labor and materials not specifically listed in the above scope of work.*
- 2. Independent third party testing.*
- 3. Electrical studies, arc flash coordination studies, heat load calculations, seismic calculations/studies, and electrical harmonic calculations/studies/testing*
- 4. PLC, OIT, HMI, SCADA, DCS, GUI, VFD, or RVSS programming labor not specifically listed in the above scope of work*
- 5. PLC, OIT, HMI, SCADA, DCS, GUI, VFD, RVSS or other third party programming software not specifically listed in above scope of work*
- 6. Potholing, excavating, trenching, backfilling, and concrete work*

All NTE T&M and lump sum quotations do not include sales tax. NTE T&M quotations are not a guarantee to complete the quoted scope of work. NTE T&M quotations are a guarantee not to exceed billings in excess of total monies listed above. Any labor, material, fixtures, or other work not specifically listed in the above scope of work shall not be furnished by Fisher Electrical Integration upon acceptance of this quotation.

Terms and Conditions of sale: Fisher Electrical Integration will extend 30-day payment terms on invoices for deliverables provided per this scope of work. Deliverables are FOB – Fisher Electrical Integration 3166 Industrial Blvd West Sacramento, CA 95834 with freight allowed(unless specifically noted otherwise in this proposal). Customer may accept this proposal by separate purchase order or written notice to proceed.

THANK YOU FOR YOUR BUSINESS!