

Release Date: Wednesday, October 23, 2024



REQUEST FOR PROPOSALS

Construction Management Services for Sulphur Creek Fish Passage Project for Napa County Resource Conservation District

Deadline for Submission

Friday, November 15, 2024 at 5:00 p.m. PST

I. BACKGROUND INFORMATION:

Napa County Resource Conservation District ("Napa RCD") is working on the implementation phase for a creek restoration project as part of Napa RCD's Napa River Watershed Fish Passage Restoration Program ("**Program**"). The Program includes five distinct projects that will directly benefit federally threatened central California coast steelhead (*Oncorhynchus mykiss*) as well as other anadromous species throughout the Napa River watershed. The Program receives Federal funding. The National Oceanic and Atmospheric Association ("**NOAA**") has awarded to Napa RCD a cooperative agreement grant (Award No. NA24NMF463C0003-T1-01) to implement the Program.

The purpose of the Program ("**Program Purpose**") is to remove identified barriers to fish passage and open spawning and rearing habitat in the Napa River watershed. To facilitate the Program Purpose, Napa RCD intends to implement the Sulphur Creek Fish Passage Project ("**Project**"). Sulphur Creek is a major tributary in the Napa River watershed that drains the eastern slope of the Mayacamas Mountains near St. Helena. The project site is a fish passage barrier located under a private bridge that crosses Sulphur Creek adjacent to White Sulphur Springs Road. The site is approximately 2.4 miles upstream of the confluence with the Napa River, at the transition between the headwaters of Sulphur Creek, which contains year-round flow and high value steelhead spawning and rearing habitat, and the lower alluvial fan section, which dries out in summer. Access to 3.2 stream miles of high-

quality spawning and rearing habitat is currently limited by this barrier. The Project will improve fish passage by removing the existing fishway and grouted rock apron, replacing the existing bridge with a larger spanning bridge, and restoring the channel upstream and downstream of the bridge. This approach represents the most sustainable long-term solution because it restores a natural channel and corridor. Non-native invasive plants will be treated and removed, and the site will be revegetated with native tree and shrub plantings, live willow stakes and seeding. Napa RCD will conduct post-construction monitoring for at least five (5) years to assess the Project's impact on the stream channel, fish habitat, and vegetation, with additional native tree planting as needed to satisfy permit requirements.

Napa RCD is soliciting Proposals from Contractors providing construction management services as more particularly described in the Scope of Services (see [Attachment A](#)) for the Project, which work shall begin as early as December 2, 2024. Napa RCD plans to evaluate the Proposals and will enter a contract for construction management services with the highest-scoring Respondent, in the form provided in [Attachment B](#). Napa RCD anticipates that the Agreement will be through December 31, 2028.

II. SCHEDULE:

To the extent achievable, the following schedule shall govern the Request for Proposals (RFP). Napa RCD reserves the right to modify the dates below, and will notify all known respondents of any schedule changes.

1. RFP released: Wednesday, October 23, 2024 at 9:00 a.m. PST.
2. Deadline for submission of interpretation and/or questions: Wednesday, October 30, 2024 at 5:00 p.m. PST.
All questions should be submitted via email to: Bill@NapaRCD.org
3. Answers to questions released: Wednesday, November 6, 2024 at 5:00 p.m. PST.
Firms interested in this RFP may email Bill@NapaRCD.org to be included on an email list to receive answers to questions and any RFP Addenda generated. Answers to questions and Addenda will also be posted on Napa RCD's website at <https://naparcd.org/get-involved/rfps-and-rfqs/>
4. Proposals due: Friday, November 15, 2024 at 5:00 p.m. PST.
Responses shall be submitted by email to Bill@NapaRCD.org, as a single pdf file containing all required contents. Hard copy responses will not be accepted. No changes or corrections to responses will be accepted after the due date.
5. Interviews conducted: TBD, only if necessary.
6. Successful respondents notified: no later than Wednesday, November 27, 2024 at 5:00 p.m. PST.
7. Contracts executed: expected week of December 2, 2024.

III. PROPOSAL SUBMISSION REQUIREMENTS:

Responses shall be submitted by email to Bill Birmingham, Bill@NapaRCD.org, as a single PDF file containing the following required contents. Font size shall be no smaller than 12 point. Hard copy responses will not be accepted. Responses are due Friday, November 15, 2024 at 5:00 p.m. PST. No late responses will be accepted. No changes or corrections to responses will be accepted after the due date.

1. Cover Letter (Limit: 1 page):

The cover letter should convey a clear understanding of the requirements and objectives, and why the respondent is uniquely qualified to be awarded a contract. Additionally, the cover letter must contain the following information and be signed by an authorized officer of the Contractor:

- a. Company name (i.e., name of firm, entity or organization);
- b. Federal Employer Identification Number;
- c. Name and title of Contractor's contact person;
- d. Contact information (i.e., address, phone, fax, email);
- e. Contractor's organizational structure (e.g., corporation, LLC, proprietorship etc.). Identify other consultants / firms that make up a team;
- f. Description of Contractor's services or business activities other than what the RFP requests;
- g. Contractor's authorized signature and date.

2. Respondent's Qualifications (Limit: 12 pages):

Explain the demonstrated experience and success in providing the services listed in the scope of services, including for comparable conservation projects, comparable projects in Northern California, and comparable projects which have been grant funded. This Statement of Qualifications (SOQ) must include the following items:

- a. Approach and Management Plan: This section shall not exceed two (2) pages and must provide the firm's proposed approach and management plan for providing the services. Include strategies and processes used to perform work cost-effectively and ensure projects are built on time and on budget. Include an organization chart showing the proposed relationships among consultant staff, sub-consultants, Napa RCD staff and any other parties that may have a significant role in project delivery.
- b. Qualifications, experience, and location of the proposed team, and all other staff and/or subcontractors who will perform the services outlined herein: The SOQ should provide the qualifications and experience of

the Contractor's team that will be available for providing the requested services. For the key team members, please emphasize the specific qualifications and experience from projects similar to the Project. Please include any specialties your team may have, such as experience in creek restoration construction management (with special focus on installing bridges), experience with rare and endangered species, and success in working with regulatory agencies in the San Francisco Bay Area. Please describe how the teams met or exceeded expectations on a construction management project, and how you helped solve construction issues on a project for your client. Replacement of key team members will not be permitted without prior consultation with and approval by Napa RCD.

- c. Staffing Plan: The SOQ should provide a staffing plan that shows anticipated staffing for the duration of the contract. Discuss the workload, both current and anticipated, for all key team members, and their capacity to perform the requested services for the contract.
- d. Additional Relevant Information: Provide additional relevant information that may be helpful in the selection process.
- e. Acknowledgement of the terms in the Model Professional Services Agreement (Attachment B) conditions, and requests for exceptions to specific terms if applicable.

3. Fee Schedule:

Identify the current billing rates for listed personnel, as well as other expenses that would be charged in conjunction with the work. As much as possible provide other expenses as per hour, day, or per unit costs. The contract total amount is anticipated not to exceed \$150,000.

4. References:

For each key team member, provide the names, addresses, and telephone numbers of up to two (2) current or previous clients, particularly public or nonprofit sector clients, who have contracted with the Respondent for services similar to those described in this RFP within the last five (5) years. Include a brief description of each project associated with the reference and the role of the respective team member.

5. Debarment or other Disqualification:

Respondent must disclose any debarment or other disqualification as a supplier or vendor for any federal, state, or local entities. Respondent must describe the nature of the debarment/disqualification, including where and how to find such detailed information.

IV. STANDARD AGREEMENT PROVISIONS:

Following negotiations, the selected Respondent will be expected to enter into a professional services agreement substantially in the form of the Model Professional Services Agreement (Attachment B). Failure to timely execute the Agreement, or to furnish any and all insurance certificates and other materials required in the Agreement, will be deemed an abandonment of Respondent's contract offer. Napa RCD will not be obligated to negotiate different terms in the Model Professional Services Agreement if exceptions are not clearly noted within the Respondent's Proposal. Contract language may not be added which materially changes the requirements of the RFP or the successful responding proposal.

V. EVALUATION PROCESS AND CRITERIA:

Napa RCD will review and evaluate the Proposals to ensure that each Proposal meets all the requirements identified in this RFP. Napa RCD will score the Proposals in accordance with the criteria and methodology described in this RFP. The Respondent that receives the highest score in the selection process will be selected to negotiate an Agreement with Napa RCD. Because the winning proposal is not determined solely by lowest price, they will not be opened in public. Proposals are public records, but they may be withheld until no later than an award recommendation has been made if releasing the proposals earlier will compromise Napa RCD's position during contract negotiations.

The following criteria will be used by Napa RCD in evaluating submissions:

1. Experience and demonstrated competence of the identified key areas of service outlined in the Proposal Submission Requirements section (i.e., Paragraph III) and the Scope of Services (i.e., Attachment A) of this RFQ.
2. Reference recommendations.
3. Comprehensive and reasonable fee schedule.
4. Thoroughness of submission.

Napa RCD reserves the right to award a contract based on written responses only, however oral presentations and written questions for further clarifications may be required of some or all of the respondents.

VI. RIGHT TO REJECT PROPOSALS/SUBJECT TO APPROVAL:

Napa RCD reserves the right to do the following at any time and for its own convenience, at its sole discretion:

- A. To reject any and all proposals without indicating any reasons for such rejection,
- B. Terminate this RFP and issue a new Request for Proposals anytime thereafter,
- C. Extend any or all deadlines specified in the RFP, including deadlines for accepting proposals by issuing an Addendum at any time prior to the deadline for receipt of

responses to the RFP,

D. Procure any services specified in the RFP by other means,

E. Disqualify any Respondent on the basis of any real or perceived conflict of interest or evidence of collusion.

Pursuant to its funding agreements, Napa RCD must receive approval from its funders prior to entering the Agreement. No Agreement will be entered without funder approval.

VII. ADDENDA:

No one is authorized to amend any of these documents in any respect by an oral statement or to make any representation or interpretation in conflict with their provisions. Any changes to these documents will be issued in writing via Addenda.

ATTACHMENT A: SCOPE OF SERVICES

Napa RCD anticipates that the selected firm will provide a licensed civil engineer with construction management experience. Examples of specific tasks to be provided include, but are not limited to:

1. Communicate effectively and regularly with the project lead, Napa RCD, and its consultants working on the Project.
2. Act as construction project coordinator and the point of contact for all communications and interaction with construction firm staff, affected local agencies and landowners, utilities, and designers.
3. Provide bid-ability / constructability review of project plans and specifications.
4. Prepare a bid package to solicit bids for construction.
5. Participate in pre-bid conferences.
6. Ensure all work is performed per specifications and Napa County standards.
7. Ensure all work is performed in accordance with the Project's regulatory permits and mitigation measures.
8. Conduct a pre-construction conference at the project site.
9. Review and monitor construction schedules.
10. Prepare daily and/or weekly reports documenting the progress of construction.
11. Document construction progress on a regular basis with photographs and video recordings.
12. Schedule, manage and document all field and laboratory materials testing services.
13. Evaluate, negotiate, recommend, and prepare change orders.
14. Assist in processing submittals and monitoring design consultant review activities.
15. Identify potential claims and make recommendations to avoid or resolve said claims.
16. Assist in all construction administrative activities, including correspondence, document control, requests for information, and submittals.
17. Perform field inspection activities, monitor construction firm's performance, and enforce all requirements of applicable codes, specifications, and contract drawings.
18. Identify actual and potential problems associated with the construction and recommend sound solutions to Napa RCD.
19. Support the design clarification process (RFIs).
20. Contractor to provide Quality Assurance (QA) services and all Quality Control (QC) functions including third-party testing.
21. Provide coordination and review of construction firm's traffic control plans, detours and staging plans with County traffic engineers, engineering consultant, and local agencies.
22. Facilitate final inspection services and project closeout activities, including preparation of the final construction project report.

23. Provide post-construction services as needed for project closeout and warranty issues.
24. Provide copies of project documentation to Napa RCD and others as required in electronic form.
25. Record and provide adequate records including photographs before, during, and after the course of work of the ongoing construction to verify the as-built drawings are complete.

ATTACHMENT B: FORM OF AGREEMENT

NAPA COUNTY RESOURCE CONSERVATION DISTRICT AGREEMENT NO. _____

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("**Agreement**") is made and entered into by and between the NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a political subdivision of the State of California ("**NCRCD**") and [CONTRACTOR'S NAME AND ADDRESS] ("**CONTRACTOR**"). The "**Effective Date**" of this Agreement is [Effective Date]. NCRCD and CONTRACTOR may be referred to individually as "**Party**" or collectively as "**Parties.**"

RECITALS

WHEREAS, NCRCD is authorized by Public Resources Code section 9408 to enter into contracts with Federal or state agencies to receive funds, and to enter into contracts with private persons to cooperatively expend funds, in furtherance of NCRCD purposes, and is further authorized by Public Resources Code section 9412 to provide technical assistance to private landowners to support projects that minimize resource degradation;

WHEREAS, NCRCD is working on the implementation phase of the Napa River Watershed Fish Passage Restoration Program ("**Program**"). The Program will create a living document that will serve as a pipeline to remediate all artificial barriers to anadromy in the watershed within NCRCD's purview, design and obtain regulatory compliance for removal of five barriers that will open passage to at least 10 miles of spawning and rearing habitat, and implement five previously designed passage barrier removal projects expected to open 10.4 miles of habitat. There are 36 known sites with varying degrees of passage impediment, and the Program will create a framework for remediating all of those barriers, as well as any additional barriers discovered during Program implementation;

WHEREAS, the Program receives Federal funding. The National Oceanic and Atmospheric Association ("**NOAA**") has awarded to NCRCD a cooperative agreement grant (Award No. NA24NMF463C0003-T1-01) to implement the Program;

WHEREAS, NCRCD selected CONTRACTOR via [selection process];

WHEREAS, NCRCD now desires to retain CONTRACTOR to provide [summary of services]; and

WHEREAS, CONTRACTOR is qualified and willing to provide such specialized services to NCRCD under the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, NCRCD hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NCRCD, in accordance with the terms and conditions set forth herein:

TERMS

1. **Term of the Agreement.** The term of this Agreement ("Term") shall commence on the Effective Date and shall expire on [Expiration Date], unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the Parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the Term, and the obligations of CONTRACTOR to NCRCD prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention) shall also survive the Term of this Agreement.

2. **Scope of Services.** CONTRACTOR shall provide NCRCD those services set forth in Exhibit "A," attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NCRCD shall pay CONTRACTOR at the rates set forth in Exhibit "B," attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by NCRCD upon submission of an invoice in accordance with Paragraph 4 at the rates and in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of [MAXIMUM AMOUNT] (\$maximum amount) for professional services expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to NCRCD of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum,

CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the NCRCD Accounting & Administration Specialist who, after review and approval as to form and content, shall submit the invoice to the NCRCD Executive Director or Board of Directors for approval and to the Napa County Auditor for payment.

(b) Legal status. So that NCRCD may properly comply with its reporting obligations under Federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the NCRCD District Administrator upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or the State of California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents, and employees of CONTRACTOR are not, and shall not be deemed, NCRCD employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that NCRCD may monitor the work performed by CONTRACTOR. With the exception of funds describe in paragraph 3(e) of this Agreement, NCRCD shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and Federal taxes. As between the Parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, NCRCD, in addition to any other rights or remedies which NCRCD may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NCRCD with certification of all such coverages upon request by NCRCD's District Administrator.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability or errors and omissions insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased, and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NCRCD's Executive Director, demonstrated by other evidence of coverage acceptable to NCRCD's Risk Manager, which shall be filed by CONTRACTOR with NCRCD prior to commencement of performance of any of CONTRACTOR's duties; shall reference this Agreement by its NCRCD Agreement number; shall be kept current during the term of this Agreement; shall provide that NCRCD shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of

more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3), CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming NCRCD, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of NCRCD shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to NCRCD with respect to any insurance or self-insurance programs maintained by NCRCD. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by NCRCD's District Administrator, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, NCRCD's District Administrator, which approval shall not be denied unless NCRCD's District Administrator determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request of NCRCD's District Administrator if the District Administrator determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects NCRCD, its officers, employees, agents, and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation, General Liability, and Professional Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) Indemnity for Design Professional Liability. With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless NCRCD, its officers, officials, agents, employees, and volunteers (collectively and/or individually "NCRCD") from and against any and all liabilities, claims, damages, losses,

costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONTRACTOR or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "CONTRACTOR"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between NCRCD and CONTRACTOR) that liability is caused by the comparative negligence or willful misconduct of NCRCD, then CONTRACTOR's indemnification and hold harmless obligation shall not exceed CONTRACTOR's finally determined percentage of liability based upon the comparative fault of CONTRACTOR.

Irrespective of any language to the contrary in this Agreement, CONTRACTOR has no duty to provide or to immediately pay for an up-front defense of NCRCD against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by NCRCD to the extent caused by the negligence, recklessness, or willful misconduct of CONTRACTOR. In no event shall the cost to defend charged to CONTRACTOR exceed CONTRACTOR's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

(b) Indemnity for Other Than Design Professional Liability: Except as provided in subsection 8(a), to the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend (with counsel agreed to by NCRCD), and indemnify NCRCD and its officers, officials, agents, employees, and volunteers (collectively and/or individually "NCRCD") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by CONTRACTOR or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of NCRCD.

CONTRACTOR's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than CONTRACTOR are responsible for the claim does not relieve CONTRACTOR from its separate and distinct obligation to defend as stated herein.

(c) No Limitations. Acceptance by NCRCD of insurance certificates and endorsements required under this Agreement does not relieve CONTRACTOR from liability under this indemnification and hold harmless clause. The obligations of CONTRACTOR under this Section 8 will not be 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 NCRCD, its officers, officials, agents, employees, and volunteers. For purposes of Section 2782 of the California Civil Code, the parties hereto recognize and expressly agree that either (1) this Agreement is not a construction contract; (2) this Agreement is a

construction contract and it conforms to Section 2782; or (3) they have negotiated and expressly agreed to the allocation of liability between them.

(d) Subcontractors. CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 8 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of CONTRACTOR in the performance of this Agreement. Failure of NCRCD to monitor compliance with these requirements imposes no additional obligations on NCRCD and will in no way act as a waiver of any rights hereunder.

(e) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents, or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold NCRCD and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either Party shall fail to fulfill in a timely and proper manner that Party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other Party describing the nature of the breach, the non-defaulting Party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting Party in the manner set forth in Paragraph 13 (Notices). NCRCD hereby authorizes the NCRCD Executive Director to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of NCRCD for cause.

10. **Other Termination.** This Agreement may be terminated by either Party for any reason and at any time by giving prior written notice of such termination to the other Party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by NCRCD unless an opportunity for consultation is provided prior to the effective date of the termination. NCRCD hereby authorizes the NCRCD Executive Director to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of NCRCD for the convenience of NCRCD.

11. **Disposition of, Title to, and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, the property of both NCRCD and CONTRACTOR. Unless otherwise expressly provided in this Agreement,

any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only NCRCD shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to NCRCD for damages sustained by NCRCD by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and NCRCD may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to NCRCD from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person, by email, or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval, or communication that either Party desires to give the other Party shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

NCRCD
Lucas Patzek, Executive Director
1303 Jefferson St., Ste. 500B
Napa, CA 94559
lucas@naparcd.org
707-690-3119

CONTRACTOR
[Contractor Name]
Attn: [Contractor Contact Name]
[Contractor Contact Title]
[Contractor Address Line 1]
[Contractor Address Line 2]
[Contractor Email]
[Contractor Phone]

14. **Compliance with Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents, and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by NCRCD

employees or contractors. For purposes of this Paragraph, references in the Policies to "County" and "County of Napa" shall mean NCRCD, to "Board" or "Board of Supervisors" shall mean the NCRCD governing board, and to "personnel director," "county administrator (or CEO)," or any other specifically-titled Napa County officer shall mean the NCRCD Executive Director.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the County computer network shall sign and have on file with Napa County's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995, and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR, which relates to NCRCD's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR, to the extent provided by law, shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of NCRCD, expressed through its Executive Director. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to NCRCD all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by NCRCD.

16. **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of NCRCD Executive Director, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NCRCD to withhold its consent to assignment.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term

of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both Parties. In particular, only NCRCD, through its Board of Supervisors in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in Federal court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the Federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation, or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State, and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic

information, or medical condition (including cancer, HIV, and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5), and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to NCRCD for inspection.

(c) Labor Laws. If this Agreement involves a public work, the provisions of Exhibit "E" (Prevailing Wage) apply.

(d) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file Federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and Federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold NCRCD harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that NCRCD is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish NCRCD with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** NCRCD, any Federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Except where longer retention is required by any

Federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after NCRCD makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and NCRCD each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The Parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to NCRCD and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as NCRCD may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of NCRCD relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, NCRCD may terminate this Agreement immediately upon giving written notice without further obligation by NCRCD to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that NCRCD has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the District Administrator of NCRCD "assuming office," "annual," and "leaving office" Statements of Economic Interest as a "consultant," as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. By authorizing its President to execute this Agreement on its behalf, NCRCD's Board of Directors and Executive Director hereby determine in writing on behalf of NCRCD that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Non-Solicitation of Employees.** Each Party agrees not to solicit for employment the employees of the other Party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other Party, except that nothing in this Paragraph shall preclude either Party from publishing or otherwise distributing applications and information regarding that Party's job openings where such publication or distribution is directed to the public generally.

25. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

26. **Attorneys' Fees.** In the event that either Party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing Party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

27. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

28. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

29. **Special Terms and Conditions; Federal Funding.** The Parties acknowledge that the Program has received or will receive Federal funding. CONTRACTOR shall cooperate with NCRCD to satisfy any conditions directly or indirectly imposed or required by NOAA or otherwise imposed or required as a result of the Program's receipt of Federal funding. CONTRACTOR shall comply with all relevant terms and conditions contained in Exhibits "C" and "D".

IN WITNESS WHEREOF, this the Parties have executed this Agreement below.

[Signatures on following page]

"CONTRACTOR" [CONTRACTOR NAME]

By: _____ Date: _____
[NAME], [Title]

"NCRCD" NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a special district of the State of California

By: _____ Date: _____
LUCAS PATZEK, Executive Director

APPROVED AS TO FORM
NCRCD Legal Counsel

By: (e-signature) _____
Deputy County Counsel

Date: _____

EXHIBIT "A".

SCOPE OF WORK

EXHIBIT "B".

BUDGET & COMPENSATION

EXHIBIT "C"

ADDENDUM FOR CONTRACTS RECEIVING FEDERAL FUNDING

CONTRACTOR agrees to comply with all of the following provisions, as applicable, as required by 2 CFR Part 200 Appendix II to Part 200—Contract Provisions for non-Federal Entity. In the event of a conflict with other provisions in this Agreement that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon CONTRACTOR shall apply.

1. If this value of this Agreement is more than \$250,000 (the Simplified Acquisition Threshold amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council as authorized by 41 U.S.C. section 1908), the following provision applies:

Remedies for Breach. In addition to all other remedies included in this Agreement, CONTRACTOR shall, at a minimum, be liable to NCRCD for all foreseeable damages it incurs as a result of CONTRACTOR violation or breach of the terms of this Agreement. This includes without limitation any costs incurred to remediate defects in CONTRACTOR's services and/or the additional expenses to complete CONTRACTOR's services beyond the amounts agreed to in this Agreement, after CONTRACTOR has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this Agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

2. If this value of this Agreement is more than \$10,000, the following provisions apply:

Termination for Convenience. NCRCD shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. NCRCD shall exercise this option by giving CONTRACTOR written notice of termination. The notice shall specify the date on which termination shall become effective. NCRCD will pay CONTRACTOR for satisfactory Work rendered through the date of termination. In no event shall NCRCD be liable for costs incurred by CONTRACTOR or any of its subcontractors after the termination date specified by NCRCD, except for those costs reasonably necessary to effectuate demobilization or transition from the work. Final payment shall not be made to CONTRACTOR until CONTRACTOR closes out the Work.

Termination for Cause. On and after any event of default by CONTRACTOR, NCRCD may immediately terminate this Agreement for cause. NCRCD shall exercise this option by giving CONTRACTOR written notice of termination and such termination shall take effect immediately, and NCRCD will not be liable for costs incurred by CONTRACTOR or any of its subcontractors after that time. NCRCD shall have the right to offset from any amounts due to CONTRACTOR under this Agreement or any other contract between NCRCD and CONTRACTOR all damages, losses, costs or expenses incurred by NCRCD as a result of such

event of default and any liquidated damages due from CONTRACTOR pursuant to the terms of this Agreement. NCRCD will pay CONTRACTOR for satisfactory work rendered through the date of termination, less any such offset.

3. If this Agreement constitutes a "federally assisted construction contract," as defined in 41 C.F.R. § 60-1.3, the following provision applies:

Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR agrees as follows:

- (a) CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (c) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR's legal duty to furnish information.
- (d) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining contract or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this

section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (e) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h) The CONTRACTOR will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

4. If this Agreement is a construction contract in excess of \$2,000, the following provisions apply:
- a. **Davis-Bacon Act.** CONTRACTOR must comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, CONTRACTOR must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition,

CONTRACTOR must pay wages not less than once a week. The decision to award this Agreement is expressly conditioned upon the acceptance of the wage determination. NCRCD will report all suspected or reported violations to the Federal awarding agency.

b. **Copeland "Anti-Kickback" Act.**

- i. **Contractor.** The CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement. As provided by the those provisions, CONTRACTOR is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
 - ii. **Subcontracts.** The CONTRACTOR or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - iii. **Breach.** A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
5. If this value of this Agreement is more than \$100,000 and the Agreement involves the employment of mechanics or laborers, the following provision applies:

Compliance with the Contract Work Hours and Safety Standards Act.

- (a) **Overtime requirements.** No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section, the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, CONTRACTOR and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

- (c) **Withholding for unpaid wages and liquidated damages.** NCRCD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- (d) **Subcontracts.** The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
6. **Rights to Inventions Made Under a Contract or Contract.** If the Federal award meets the definition of "funding Contract" under 37 C.F.R. § 401.2(a) and NCRCD in entering this Agreement with a small business firm or nonprofit organization for the purpose of the substitution of parties, assignment, or performance of experimental, developmental, or research work under the Federal "funding Contract," CONTRACTOR must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.
7. If this value of this Agreement is more than \$150,000, the following provision applies:
- Clean Air Act and Federal Water Pollution Control Act.** CONTRACTOR must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to NCRCD, the Federal awarding agency, and the Regional Office of the Environmental Protection Agency ("EPA"). When reported to NCRCD, NCRCD will ensure that the violations are reported to the Federal awarding agency and the Regional Office of the EPA. CONTRACTOR will include these requirements in each subcontract exceeding \$150,000 that is, in whole or in part, federally funded.
8. If the value of this Agreement is more than \$25,000, or if this Agreement requires the approval of the federal funding agency, the following provision applies:

Debarment and Suspension.

- (a) This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates

(defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- (b) The CONTRACTOR must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (c) By signing this Addendum, CONTRACTOR certifies that to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - (c) CONTRACTOR's certification is a material representation of fact relied upon by NCRCD. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to NCRCD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (d) The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.
9. **Procurement of Recovered Materials.** The requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962, apply to this Agreement and are fully incorporated into the Agreement by this reference. For individual purchases of \$10,000 or more, CONTRACTOR will make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (A) competitively within the Agreement schedule, (B) in conformance with Agreement performance requirements, or (C) at a reasonable price. Information on this requirement, including a list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines website: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
10. If this Agreement is for construction or facility improvement and exceeds \$250,000 (the Simplified Acquisition Threshold amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council as authorized by 41 U.S.C. section 1908), the following provision applies:

Bonding Requirements. CONTRACTOR must satisfy the following minimum bid guarantee and bonding requirements:

- (a) If applicable, a bid guarantee equivalent to five percent (5%) of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the CONTRACTOR for one hundred percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the CONTRACTOR for one hundred percent (100%) of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

11. **Access to Records.** The following access to records requirements apply to this Agreement:

- a. The CONTRACTOR agrees to provide NCRCD, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The CONTRACTOR agrees to provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

12. **Domestic Preferences for Procurements.** As appropriate and to the extent consistent with the law, the CONTRACTOR should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, as further specified in 2 C.F.R. section 200.322, which is fully incorporated into the Agreement by this reference, including, but not limited to, iron, aluminum, steel, cement, and other manufactured products, as specified therein. The requirements of 2 C.F.R. section 200.322 must be included in all subcontracts and purchase orders for work or products under the federal award.

13. **No Obligation by Federal Government.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Agreement.

14. **Disadvantaged Businesses.** CONTRACTOR agrees to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
15. If this value of this Agreement is more than \$100,000, CONTRACTOR, and its lower tiers, must sign and submit the following certification to NCRCD:

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Contracts

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONTRACTOR, [Contractor Name], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

IN WITNESS WHEREOF, CONTRACTOR agrees to the terms of this Addendum.

CONTRACTOR: **[Contractor Name]**

By: _____
 [Name], [Title]

Date: _____

EXHIBIT "D".

REQUIRED USE OF AMERICAN IRON, STEEL, MANUFACTURED PRODUCTS, AND CONSTRUCTION MATERIALS

Buy America Preference. Recipients of an award of Federal financial assistance from the Department of Commerce (Department) for a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

1. all iron and steel used in the project are produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. all construction materials are manufactured in the United States - this means that all manufacturing processes for the construction material occurred in the United States. The construction materials standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not

fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- a. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- b. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered "produced in the United States." Except as specifically provided, only a single standard should be applied to a single construction material.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All

manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers

When necessary, recipients may apply for, and the Department may grant, a waiver from these requirements. If CONTRACTOR believes it cannot comply with the requirements of the Buy America Preference, CONTRACTOR shall coordinate with NCRCD to request a waiver.

Definitions

“Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

1. The listed items are:

i. Non-ferrous metals;

ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

- iii. Glass (including optic glass);
- iv. Fiber optic cable (including drop cable);
- v. Optical fiber;
- vi. Lumber;
- vii. Engineered wood; and
- vii. Drywall.

2. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

- 1. Articles, materials, or supplies that have been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

2. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

EXHIBIT "E"
PREVAILING WAGE

- 1.1 In General.** For purposes of California labor law, this is a public works contract subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with Labor Code Section 1771, CONTRACTOR and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR") to all workers employed on this project. In accordance with Labor Code Section 1815, CONTRACTOR and all subcontractors shall pay all workers employed on this project 1 ½ the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 1.2 Registration.** CONTRACTOR and all subcontractors are not qualified to bid on or be listed in a bid proposal, subject to the requirements of section 4104 of the California Public Contract Code, and shall not engage in the performance of any work under this Agreement, unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. CONTRACTOR represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subconsultants as required, to NCRCD.
- 1.3 Posting.** CONTRACTOR shall post at the job site the determination of the DIR director of the prevailing rate of per diem wages together with all job notices that are required by regulations of the DIR.
- 1.4 Reporting.** CONTRACTOR and any subcontractors shall keep accurate payroll records in accordance with Section 1776 of the Labor Code and shall furnish the payroll records directly to the Labor Commissioner in accordance with the law.
- 1.5 Report on Prevailing Rate of Wages.** NCRCD has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at NCRCD's offices, and shall be made available to any interested party upon request.
- 1.6 Employment of Apprentices.** CONTRACTOR's attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor. It shall be the responsibility of the CONTRACTOR to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- 1.7 Penalties.** CONTRACTOR's attention is directed to provisions in Labor Code Sections 1775 and 1813. In accordance with Labor Code Section 1775, CONTRACTOR and

subcontractors may be subject to penalties for CONTRACTOR's and subcontractors' failure to pay prevailing wage rates. In accordance with Labor Code Section 1813, CONTRACTOR or subcontractors may be subject to penalties for CONTRACTOR's or subcontractors' failure to pay overtime pay rates for hours worked by workers employed on this project in excess specified hour limitations.

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