

**NAPA COUNTY RESOURCE CONSERVATION DISTRICT
CONTRACT NO. 2025 - XX**

CONSTRUCTION CONTRACT

**NAPA RIVER WATERSHED FISH PASSAGE RESTORATION PROGRAM –
CARNEROS CREEK PROJECT**

THIS CONTRACT (“Contract”) is made and entered into as of this XX day of XX, 2025, by and between the NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a political subdivision of the State of California, hereinafter referred to as "NCRCD," and XXX, a licensed California contractor, whose mailing address is XXX, hereinafter referred to as "CONTRACTOR;"

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 soil and related resource degradation; and

WHEREAS, the National Oceanic and Atmospheric Administration, hereinafter referred to as “granting agency,” gave NCRCD a grant for a project titled “RCD’s Napa River Watershed Fish Passage Restoration Program,” (hereinafter referred to as “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 State and Federal funding. and

WHEREAS, NCRCD wishes to obtain specialized construction services to implement the Project; and

WHEREAS, NCRCD conducted a Request for Proposal for “Napa River Watershed Fish Passage Restoration Program” according to granting agency requirements; and

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

TERMS

NOW, THEREFORE, NCRCD hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NCRCD in accordance with the terms and conditions set forth herein:

1. **Term of the Contract.** The term of this Contract shall commence on the date first above written and shall expire on **2 years after signing**, 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 of the Contract and the obligations of CONTRACTOR to NCRCD shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention).

2. **Scope of Services.** CONTRACTOR shall provide NCRCD those services (Services) set forth in Attachment A attached hereto and incorporated by this reference herein, and the **Request for Bid (RFB)** and CONTRACTOR's response to the proposal set forth in **Attachment B** and incorporated by this reference herein.

3. **Compensation.** CONTRACTOR agrees to receive and accept **Written Dollar Amount (\$X,XXX)** as full compensation for furnishing all materials and for performing all Services as specified in this Contract. CONTRACTOR agrees that, except as expressly provided in the Contract, there will be no additional payment or compensation for any loss or damage arising out of the Services or from any unforeseen difficulties or obstructions which may arise or be encountered in the performance of the Services until its acceptance by the NCRCD.

. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, NCRCD will assess liquidated damages in the amount of \$[1,000] per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from NCRCD's payments due or to become due to Contractor under this Contract.

4. **Method of Payment.**

(a) **Services.** 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, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services, and the position(s) held by such person(s), and the approved hourly or task rate.

(b) **Expenses.** If the Contract provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) **Fixed Price.** If the Contract provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by NCRCD, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the CONSERVATION PROJECT MANAGER 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. NCRCD will provide payment to CONTRACTOR no later than 30 days after NCRCD receives payment from Granting Agency.

(e) 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 Contract, 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 Executive Director 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 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 Contract 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 Contract shall be performed; provided, however, that NCRCD, its agents, private landowners involved in the project, and granting agencies may monitor the work performed by CONTRACTOR and shall be accomplished to the satisfaction of NCRCD. 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 Contract, 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 Contract. CONTRACTOR shall at all times perform its duties under the Project to the best of its ability and in accordance with the highest scientific, professional, and ethical standards of its profession. Because the services to be performed by CONTRACTOR under the terms of this Contract 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 Contract by CONTRACTOR.

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

(a) Workers' Compensation insurance. To the extent required by law during the term of this Contract, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Contract, 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 Executive Director or designee.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Contract 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 ONE MILLION DOLLARS (\$1,000,000) 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 Contract. 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 Contract 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. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1), above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Contract, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NCRCD, demonstrated by other evidence of coverage acceptable to NCRCD, which shall be filed by CONTRACTOR with NCRCD prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Contract by its NCRCD number or title; shall be kept current during the term of this Contract; 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.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, 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. For the

Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Contract, 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 Contract, 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.

(4) Upon request by NCRCD, 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, which approval shall not be denied unless the NCRCD determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Contract and the risks of liability associated with the activities required of CONTRACTOR by this Contract. At the option of and upon request by NCRCD if NCRCD 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 Contract to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Bonding.** CONTRACTOR shall issue a performance bond and a payment and materials bond in favor of NAPA COUNTY RESOURCE CONSERVATION DISTRICT, whose forms are attached hereto as Attachment C and whose requirements are incorporated herein, in the following amounts: faithful performance (100%) of Contract value; labor, and materials (100%) of Contract value. CONTRACTOR shall not begin work under this Contract until such bond(s) have been issued.

9. **Hold Harmless/Defense/Indemnification/warranty**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless NCRCD and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, in rendering services under this Contract, excluding, however, such liability, claims, actions, losses, injuries, damages, or expenses arising from the sole negligence or willful acts of NCRCD or its officers, agents, employees,

representatives. CONTRACTOR shall not be obligated to defend or indemnify representative or agent of NCRCD that is a licensed or certified professional including, but not limited to, any architects, engineers of any kind, surveyors, and attorneys. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Contract. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Contract, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) 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 Contract, 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.

(c) Warranty of Work. CONTRACTOR warrants that the work provided under this Contract will be free from defects in material and **workmanship for a period of one year following completion of the project.** NCRCD agrees that legal and equitable remedies are limited to the cost of repair or replacement of the defective work, or the diminution in value of the defective work, whichever amount is less. In the event of any warranty claim, NCRCD shall give CONTRACTOR a full and fair opportunity to inspect any alleged defective material or workmanship prior to the commencement of any replacement of materials or repairs by the NCRCD, its officers, agents, employees, representatives, contractors, subcontractors, or private land owners. In the event that CONTRACTOR determines and acknowledges any such defects with CONTRACTOR'S materials or workmanship, CONTRACTOR shall be given a reasonable opportunity and time to repair or replace such materials or workmanship at its own cost.

10. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Contract or otherwise breach this Contract 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 Contract 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 Contract on behalf of NCRCD for cause.

11. **Other Termination.**

(a) Termination for Convenience. This Contract 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 Contract on behalf of NCRCD for the convenience of

NCRCD.

(b) Termination for Lack of Grant Funding. Notwithstanding the foregoing, this Contract shall automatically terminate if grant funding is canceled by Funding Agency. Termination of this Contract under this subparagraph shall be effective on the effective date of the cancellation of the Funding Agency Grant Agreement, but NCRCD shall use its best efforts to give

CONTRACTOR at least 30 days prior written notice of any such impending cancellation unless giving such notice within that time period is beyond the reasonable control of NCRCD.

12. **Payment for Work upon Expiration or Termination.** CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice 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 Contract by CONTRACTOR whether or not the Contract 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. In the event of termination of this Contract for any reason, including but not limited to cause, convenience, or lack of grant funding, any materials or equipment on the project that has not been paid for by NCRCD shall remain the sole property of CONTRACTOR. NCRCD shall have no rights or authority seek injunctive relief or to prohibit the removal of any unpaid materials or equipment on the Project. NCRCD shall maintain no lien rights of any kind as against any equipment of CONTRACTOR upon termination for any reason.

13. **Special Provisions.** Special provisions from Funding Agency Agreement XXX, hereinafter referred to as “Funding Agreement,” including but not limited to those detailed below and attached hereto as Attachment D and incorporated herein by reference.

(a) State Disclosure Requirements. CONTRACTOR shall include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Contract: “This project has been funded wholly or in part by NOAA. The contents of this document do not necessarily reflect the views and policies of NOAA endorse trade names or recommend the use of commercial products mentioned in this document.” (Funding Agreement XXX, Exhibit A, Section A, Paragraph 8.)

(b) Prohibition of Indirect Costs. CONTRACTOR is prohibited from using funds for any indirect costs. Indirect costs mean those costs that are incurred for a common or joint purpose benefiting more the one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). (Funding Agreement XXX, Exhibit B, Paragraph B.)

(c) Audit. CONTRACTOR agrees that the Bureau of State Audits, the Governor of the State, NOAA, the Office of Inspector General, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. CONTRACTOR agrees to maintain such records for a possible audit for a minimum of seven (7) years after final payment, unless a longer period of records retention is stipulated. CONTRACTOR agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. (Funding Agreement XXX, Exhibit C,

Paragraph 5.)

(d) Compliance with Law, Regulations, Etc. CONTRACTOR agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. (Funding Agreement XXX, Exhibit C, Paragraph 8.)

(e) Computer Software. CONTRACTOR certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws. (Funding Agreement XXX, Exhibit C, Paragraph 9.)

(f) Fiscal Management Systems and Accounting Standards. CONTRACTOR agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracking of Contract funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Contract. CONTRACTOR further agrees it will maintain separate Project accounts in accordance with the generally accepted accounting principles. (Funding Agreement XXX, Exhibit C, Paragraph 16.)

(g) Nondiscrimination Clause.

i) During the performance of this Contract, CONTRACTOR and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

ii) CONTRACTOR, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

iii) CONTRACTOR, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 12990 (a-f) et. seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, 7285 et. seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part thereof as if set forth in full.

iv) CONTRACTOR, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement, if any.

v) CONTRACTOR shall include nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract. Failure by CONTRACTOR to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Contract that may result in its termination. (Funding Agreement XXX, Exhibit C, Paragraph 23.)

(h) Debarment. CONTRACTOR certifies that to the best of its knowledge and belief, it:

i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department, or the California Department of Industrial Relations (DIR);

ii) Has not within a three-year period preceding this Contract been convicted of or had a civil judgement rendered against it for commission of fraud or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii) Is not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated in paragraph (ii) of this certification; and, has not within a three-year period preceding this Contract had one or more public transactions terminated for cause or default (Funding Agreement XXX, Exhibit C, Paragraph 27.)

(i) Archeological or Historical Resource. Should a potential archeological or historical resource be discovered during implementation of the Project, CONTRACTOR agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Deputy Director of the Division has determined what actions should be taken to protect and preserve the resource. CONTRACTOR agrees to implement appropriate actions as directed by the Division. (Funding Agreement XXX, Exhibit C, Paragraph 25(c).)

(j) Endangered or Threatened Species. Should a federally protected species be unexpectedly encountered during implementation of the Project, CONTRACTOR agrees to promptly notify the NCRCD. This notification is in addition to the CONTRACTOR's obligations under the federal Endangered Species Act. (Funding Agreement XXX, Exhibit C, Paragraph 25(d).)

(k) New Restrictions on Lobbying. CONTRACTOR shall ensure that no grant funds awarded under this Contract are used to engage in lobbying the Federal Government or in litigation against the United States unless authorized under existing law. CONTRACTOR further agrees to comply with Title 40 CFR part 34, New Restrictions on Lobbying, and shall complete and return to NCRCD the form titled "Disclosure of Lobbying Activities". Any recipient of grant funds who makes a prohibited expenditure under 40 C.F.R. part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. (Funding Agreement XXX, Exhibit D, Paragraph 1, 3, and 4.)

(l) Resource Conservation. CONTRACTOR shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Section 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidance developed by the USEPA. The guidelines are listed in 40 C.F.R. part 247. (Funding Agreement XXX, Exhibit D, Paragraph 5.)

(m) Environmentally Sustainable Business Practices. CONTRACTOR shall incorporate, to every extent possible, environmentally sustainable business practices for all work funded under this Contract. Such practices include, but are not limited to: green meeting principles and conscientious use of paper. When developing materials, CONTRACTOR must consider waste reduction and recycled content. (Funding Agreement XXX, Exhibit D, Paragraph 6.)

(n) Responsibilities of Participants Regarding Transactions. NCRCD shall fully comply with Subpart C of 40 C.F.R. part 32, entitled “Responsibilities of Participants Regarding Transactions.” (Funding Agreement **XXX**, Exhibit D, Paragraph 9.)

(o) Trafficking in Persons. CONTRACTOR certifies that it, its employees, and its subrecipients and its subrecipients’ employees receiving any funds pursuant to this Contract, shall not engage in severe forms of trafficking in persons during the term of this Contract; procure a commercial sex act during the term of the Contract; or used forced labor in the performance of this Contract. (Funding Agreement **XXX**, Exhibit D, Paragraph 19.)

(p) In the event of any work stoppage due to (i) Archeological or Historical Resources and/or (j) Endangered or Threatened Species as described herein, CONTRACTOR shall be given a reasonable agreed upon extension of time (inclusive of any potential seasonal/weather related restrictions) to complete the project.

(q) CONTRACTOR shall comply with the requirements set forth in Attachment E: Contractor Off-Road Regulation Assurances. Attachment E shall be incorporated by this reference.

14. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Contract 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 Contract.

15. **Notices.** All notices required or authorized by this Contract shall be in writing and shall be delivered in person 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

CONTRACTOR

Napa County Resource Conservation Dist.
Attn: Executive Director
1303 Jefferson St., Ste. 500B
Napa, CA 94559
707-690-3119

16. **Compliance with Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, Computer Use, and Anti-Trafficking prohibitions.** 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 Contract, 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 Contract requires access to any portion of the Napa 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.

(f) You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the time of that the award is in effect; or use forced labor in the performance of the award of subawards under the award.

17. **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 Contract. CONTRACTOR 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 Contract, 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.

18. **No Assignments or Subcontracts.**

(a) In general. A consideration of this Contract is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Contract or subcontract any of the services CONTRACTOR is to perform hereunder, with the exception of any subcontractor specifically named in this Contract without the prior written consent of NCRCD, 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 Contract within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NCRCD to withhold its consent to assignment. For purposes of this subparagraph, the consent

of NCRCD may be given by the Executive Director.

(b) **Effect of Change in Status.** If CONTRACTOR changes its status during the term of this Contract 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 Contract by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Contract.

19. **Amendment/Modification.** Except as specifically provided herein, this Contract may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any 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. The NCRCD Executive Director is hereby authorized to execute amendments to this Contract.

20. **Interpretation; Venue.**

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

(b) **Venue.** This Contract is made in Napa County, California. The venue for any legal action in state court filed by either party to this Contract for the purpose of interpreting or enforcing any provision of this Contract 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 Contract for the purpose of interpreting or enforcing any provision of this Contract 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 Contract 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 Contract.

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

(d) Prevailing Wages.

(1) The Contractor shall be bound to the provisions of the Davis-Bacon Act and to the provisions of California Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

(2) Affected Work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Contract on or after January 1, 2002, relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(3) Prevailing Wages Rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, and similar purposes) for the above-described portions of the work required under this Contract, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(4) Payroll Records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted Monthly to the NCRCD's finance staff. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(5) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and

payment of apprentices for work under this Contract relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is \$30,000 or more.

(6) **Registration.** CONTRACTOR and subcontractors shall remain registered with the Department of Industrial Relations for the term of this Contract. CONTRACTOR shall deliver to NCRCD proof that CONTRACTOR and subcontractors registration with the Department of Industrial Relations. See Attachment F registration form.

(e) **DIR Registration.** This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code sections 1771.1 and 1725.5. If the entire project cost does not exceed \$25,000 for construction, alteration, demolition, installation, or repair work or \$15,000 for maintenance work (“Small Project Exemption”), the Contractor and subcontractors are not subject to these registration requirements.

22. **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 Contract 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.

23. **Access to Records/Retention.** NCRCD, any federal, state or local 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 Contract 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.

24. **NCRCD Affirmative Representations, Duties & Agreements.**

(a) **Permission to Enter Private Lands.** Prior to the commencement of the Project, NCRCD shall obtain and provide CONTRACTOR with written permission from any private landowners where NCRCD Project work is defined, work is to be performed, or access over private property to the prescribed area of work is required. NCRCD affirmatively represents that CONTRACTOR has written permission of all private land owners to work in NCRCD’s defined areas of work or access. NCRCD shall immediately defend and indemnify CONTRACTOR, its

officers, directors, principals, agents, and employees from any lawsuits, claims, causes of action, damages of any kind, for trespass or inverse condemnation arising out of CONTRACTOR occupying, working or traversing over any property where NCRCD Project work is defined, work is to be performed, or access to the prescribed area of work is required.

(b) Representation of Collective Bargaining Agreements. NCRCD affirmatively represents that it has not entered into any Project Labor Agreements (PLAs) or Project Specific Labor Agreements (PSLAs) with any labor unions for this project other than the Federal and California wage requirements.

(c) Alternative Dispute Resolution: Prior to the filing of any legal action or proceedings arising out of this Agreement/Contract as to any controversy or claim, or the making, performance, or interpretation thereof is subject to a good faith effort at resolution through non-binding mediation unless the parties mutually agree otherwise and shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or Judicial Arbitration & Mediation Services (JAMS) currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the AAA or JAMS. The request may be made concurrently with the filing of a demand for litigation but, in such event, mediation shall proceed in advance any legal or equitable proceedings, which shall be stayed pending mediation for a minimum period of ten (10) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. Any such mediation shall take place within ten (10) days of written request by either party or such longer period as the parties agree. The mediator's fees and any filing fees shall be divided equally among the parties involved. The parties agree to limit the admissibility in any subsequent litigation or proceeding of anything said, any admissions made, and any documents prepared, in the course of mediation, consistent with California Evidence Code Section 1152.5. The mediation shall be held in the place where the Project is located (Napa County), unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties hereby agree to mediate for a minimum of 8 hours prior to the commencement of any legal proceedings.

(e) Force Majeure: There shall be no liquidated damages or penalties as against CONTRACTOR by anyone to this agreement in the event CONTRACTOR's performance of the Work is delayed or interfered with, for any reason or for any period of time, including but not limited to acts or omissions of NCRCD, its engineers, architects, designers, any agents of NCRCD, Owners, contractor, or other contractors and subcontractors, by Change Orders, adverse weather conditions, act of God, public enemy, terrorist action, earthquake, floods strikes, labor troubles, or any other causes beyond the reasonable control of the aforementioned or other events of force majeure, CONTRACTOR shall notify NCRCD in writing, describing the delay and the anticipated results therefrom. NCRCD shall not unreasonably withhold extension of time equal to or greater than the work days delayed.

25. **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 Contract.

26. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Contract 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 Contract. CONTRACTOR agrees that if such financial interest does exist at the inception of this Contract, NCRCD may terminate this

Contract immediately upon giving written notice without further obligation by NCRCD to CONTRACTOR under this Contract.

(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 Elections Division of the Napa County Assessor-Clerk Recorder “assuming office,” “annual,” and “leaving office” Statements of Economic Interest as a “consultant,” as defined in California Code of Regulations, title 2, section 18701(a)(2), 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 Contract on its behalf, NCRCD’s Board of Director’s hereby determines 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.

27. **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 Contract and a period of six (6) months after termination of this Contract 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.

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

29. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Contract 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.

30. **Severability.** If any provision of this Contract, 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 Contract.

31. **Guarantee.** Unless otherwise required by the Contract Documents, the Contractor

guarantees all of the Work for one (1) year from the date NCRCD accepts the Work. Upon receiving Written Notice of a need for repairs which are directly attributable to defective materials or workmanship, the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within ten (10) calendar days from the date of notice from NCRCD. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, NCRCD may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by NCRCD.

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

IN WITNESS WHEREOF, this Contract was executed by the parties hereto as of the date first above written.

Company Name.

By _____
Owner Name, Title

"CONTRACTOR"

NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a political subdivision of the State of California

By _____
 Lucas Patzek, Executive Director

"NCRCD"

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| <p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Douglas Parker (e-sign)</u></p> <p>Date: March 18, 2025</p> | <p>ATTEST: Tatia Wieland Secretary of the Board of Directors</p> <p>By:</p> |
|--|--|