

**NAPA COUNTY AGREEMENT NO. \_\_\_\_\_**

**CONTRIBUTION AGREEMENT**

(Post-Fire Restoration in Hunting Creek Watershed Project)

This CONTRIBUTION AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Napa County, a political subdivision of the State of California (“County”), and Tuleyome, a 501 (c)(3) non-profit volunteer-based organization based in Woodland, California.

**RECITALS**

**WHEREAS**, the Napa County Flood Protection and Watershed Improvement Authority (“Authority”) adopted the Napa County Flood Protection Sales Tax Ordinance (“Ordinance” and/or “Measure A”) on November 4, 1997, and the Ordinance was subsequently approved by the electorate in March, 1998. The Ordinance imposed a one-half of one percent transactions and use tax, with the proceeds to be used for certain specified flood protection and watershed improvement projects. The Ordinance established a Flood Protection and Watershed Improvement Expenditure Plan which described the projects authorized to be funded with the proceeds of the Flood Protection Sales Tax as more particularly set forth in Sections 7 and 8 of the Ordinance, and

**WHEREAS**, Section 8E of the Ordinance provides for (1) flood damage reduction projects including elevating / relocating structures, including bridges, in the floodway and floodplain and (2) agricultural watershed and storm water runoff management improvements planned jointly by the agricultural industry, the County, Napa County Resource Conservation District and the Department of Fish and Game; and

**WHEREAS**, Tuleyome has proposed that County expend a portion of its allocated Measure A funds for the proposed Post-Fire Restoration in Hunting Creek Watershed project in Lake Berryessa watershed (the “Project”) to abate persistent storm water sediment transport negatively impacting the hydro-geomorphology in riparian tributary zones, lower flood damage risk and replenish stocks of native species; and

**WHEREAS**, a Lake Berryessa Watershed Improvement Project Advisory Committee consisting of representatives from the Measure A Finance Oversight Committee, Measure A Technical Advisory Panel, County Public Works and Flood Authority staff reviewed four (4) watershed improvement project applications, deliberated on the proposal evaluations and subsequently conducted Project Team interviews of all proponents; and

**WHEREAS**, the Lake Berryessa Watershed Improvement Project Advisory Committee shortlisted the Post-Fire Restoration in Hunting Creek Watershed project as recommended for Measure A Program funding; and

**WHEREAS**, the Project as further described in Exhibit “A”, which by this reference is made a part of this Agreement, is an authorized project under the provisions of Section 8E of the Ordinance which may be funded out of the County’s share of the proceeds of the Flood Protection Sales Tax; and

**WHEREAS**, County is willing to fund the Project in an amount of up to TWO HUNDRED THIRTY SIX THOUSAND TWO HUNDRED EIGHTY NINE DOLLARS (\$236,289), out of County's share of allocated Measure A funds subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual agreements of the parties, and other valuable consideration the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

**1. Term of the Agreement.** The term of this Agreement shall be effective retroactively to January 4, 2022, and shall expire one year after completion of the Project, except that the obligations of Tuleyome to County under Paragraphs 6 (Hold Harmless / Defense / Indemnification) and 7 (Insurance) shall continue in full force and effect after said expiration date as to the liability for acts and omissions occurring during the term of this Agreement. In addition, the obligations of Tuleyome to County under Paragraph 13 (Access to Records/Retention) shall also survive said expiration date.

**2. Scope of Work.** Tuleyome shall complete the Project as described in Exhibit A, by June 30, 2023. Tuleyome is responsible for implementing the Project, including all necessary tasks for advertising for competitive bids, awarding, constructing and managing the Project.

**3. Compensation.**

(a) Actual Costs: County will reimburse Tuleyome for the work performed under the terms of this Agreement based on seventy-five percent (75%) of Tuleyome's actual costs incurred as it performs work on the Project. Tuleyome shall invoice the County monthly and shall provide Tuleyome's name, address, Social Security or Taxpayer Identification Number on an itemized invoice describing the work completed in the current billing period. The invoice shall be in a form and of sufficient detail to be satisfactory to County. County shall submit the invoice to the Napa County Auditor for payment no later than fifteen (15) calendar days following receipt and approval of the invoice from Tuleyome.

(b) Maximum Reimbursement: Notwithstanding the total cost of the Project, the maximum amount County will pay Tuleyome shall not exceed TWO HUNDRED THIRTY SIX THOUSAND TWO HUNDRED EIGHTY NINE DOLLARS (\$236,289). This level of funding is only intended to partially cover the entire cost of the Project estimated to be \$311,728; the balance of the Project will be funded by Tuleyome or other sources. Once the Project is complete, if the cumulative total of invoices submitted to the County under subparagraph 3(a) is less than TWO HUNDRED THIRTY SIX THOUSAND TWO HUNDRED EIGHTY NINE DOLLARS (\$236,289), Tuleyome may invoice the County for the remaining balance of County funding.

(c) Compensation Limited to Measure A Funds: County's obligation for reimbursement shall not exceed TWO HUNDRED THIRTY SIX THOUSAND TWO

HUNDRED EIGHTY NINE DOLLARS (\$236,289), and shall be limited to only those funds available to County from Measure A.

**4. Review.** Tuleyome shall submit, and County shall review, all contract documents involving the construction and/ implementation phase of the Project, and any modifications to the Project, to ensure Measure A funding eligibility and reasonableness of costs. All such contract documents are subject to the approval of the County, which shall not be unreasonably withheld or conditioned. Any alterations to the Project must maintain eligibility for Measure A funding under the provisions of Section 8, Paragraph E of the Ordinance.

**5. Bid Procedures/Required Document Provisions.**

(a) Bid Procedures: Tuleyome shall comply with all competitive bidding requirements that County would be subject to under state or local law, were County advertising and awarding the Project itself. Tuleyome shall be solely responsible for preparing necessary bid documents, advertising for bids, resolving any bid protests, and preparing any contract revisions or addenda. All bid documents shall receive County review, as described in Paragraph 4 above, prior to being distributed or advertised. Tuleyome shall not award a contract to any contractor that is not registered with the State to perform public works projects.

(b) Required Document Provisions: All bid, design contracts, and construction contracts shall at minimum contain the following provisions:

(i) Prevailing Wage – State prevailing wage requirements apply to this Project. Tuleyome shall ensure all contractors comply with the requirements set forth in Exhibit B, attached hereto and hereby incorporated by reference. This includes any work performed during preconstruction phases of construction, such as inspection and land surveying work, pursuant to California Labor Code section 1720.

(ii) Indemnity – Provisions requiring the contractor to defend at its own expense, indemnify, and hold harmless County and its officers and employees, 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 the contractor or its officers, agents, employees, and subcontractors in performing the work, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the active or sole negligence or willful misconduct of County or its officers or employees.

(iii) Insurance – minimum insurance coverages, in a form acceptable to the County's Risk Manager, including (a) workers compensation and employer's liability insurance, including a waiver of subrogation against County, (b) general liability coverage in a minimum amount of ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, and if the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit, and (c) comprehensive automobile liability insurance of ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Contractor shall name County as additional named insureds on the automobile and general liability coverages. The insurance provided by the contractor must be primary coverage to County with respect to any insurance or self-insurance programs maintained by County. Any deductibles, self-insured retentions, or requests to provide lower limits of insurance coverage shall be subject to approval of County's Risk Manager.

**6. Hold Harmless/Defense/Indemnification.** To the full extent permitted by law, Tuleyome shall defend at its own expense, indemnify, and hold harmless County and its officers, and employees, from and against any liability, claims, actions, proceedings, losses, injuries, damages or expenses, 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 Tuleyome or its officers, agents, employees, volunteers, contractors and subcontractors in performing work on the Project, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the active or sole negligence or willful misconduct of County or its officers or employees. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, 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.

**7. Insurance.** Tuleyome 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, Tuleyome shall provide workers' compensation insurance for the performance of any of Tuleyome'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 County with certification of all such coverages upon request by County's Risk Manager.

(b) Liability Insurance. Tuleyome 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 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 Tuleyome or any officer, agent, or employee of Tuleyome 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. [RESERVED]

(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 Tuleyome'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 Tuleyome 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 Tuleyome or Tuleyome's employees,

officers, or agents will use personal automobiles in any way in the performance of this Agreement, Tuleyome shall provide evidence of personal auto liability coverage for each such person upon request.

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

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its County number or title and department; shall be kept current during the term of this Agreement; shall provide that County 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 paragraph 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in paragraph 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, Tuleyome shall also file with the evidence of coverage an endorsement from the insurance provider naming County, its officers, agents and employees, as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Tuleyome 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 Tuleyome not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of County shall pertain only to liability for activities of Tuleyome under this Agreement, and that the insurance provided is primary coverage to County with respect to any insurance or self-insurance programs maintained by County. 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 County's Risk Manager, Tuleyome 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 County's Risk Manager, which approval shall not be denied unless the County's Risk Manager 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 Tuleyome by this Agreement. At the option of and upon request by County's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects County, its officers, agents and employees, or Tuleyome shall procure a bond guaranteeing payment of losses and related

investigations, claims administration and defense expenses.

**8. Payment of Excess Cost.** It is anticipated that the total project planning and implementation cost of the Project will exceed the amount being provided by the County in paragraph 3 of this Agreement. Tuleyome shall pay all costs necessary to complete the Project that exceed County's contribution. County shall only be obligated to provide reimbursement up to the approved funding amount in paragraph 3.

**9. 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.

**10. Notices.** All notices required or authorized by this Agreement 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.

County  
County of Napa  
Director of Public Works  
1195 Third Street Rm. 101  
Napa, CA 94559

Tuleyome  
Sandra Schubert  
Executive Director  
607 North Street  
Woodland, CA 95695

**11. 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.

**12. Warranty.** Tuleyome warrants, or shall obtain from its contractor(s) a warranty, that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in this Agreement, of good quality, in conformance with the Scope of Services, Exhibits and any attachments thereto, and free of defects in materials and



workmanship. Tuleyome or its contractor(s) shall correct or replace any work not in conformance with this warranty at its own cost and expense, if notified by County within one year after the date the project is complete.

**13. Access to Records/Retention.** County, the Napa County Flood Protection and Watershed Improvement Authority, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of Tuleyome 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, Tuleyome shall maintain all required records for at least five (5) years after County makes final payment for any work authorized hereunder and all pending matters are closed, whichever is later.

**14. Authority to Contract.** County and Tuleyome each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

**15. Independent Contractor.** The parties intend that Tuleyome, in performing the obligations specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Tuleyome and its employees, agents, and volunteers are not to be considered agents or employees of County and are not entitled to participate in any pension plan, insurance, bonus or similar benefits County provides to its employees.

**16. Compliance with County Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** Tuleyome 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. Tuleyome 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 County employees or contractors.

(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 June 20, 2017.

(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 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.

**17. Compliance with Law.** Tuleyome shall comply with all applicable federal, state and local laws, rules and regulations affecting Tuleyome and its work hereunder. Tuleyome represents and warrants to County that Tuleyome has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Tuleyome to do the work hereunder or, if the work is subcontracted, that such subcontractor has all such licenses, permits, qualifications and approvals. Tuleyome represents and warrants to County that Tuleyome shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Tuleyome to do the work contemplated by this Agreement or, if the work is subcontracted, that Tuleyome shall be responsible for ensuring that such subcontractor keeps in effect all such licenses, permits, and approvals.

**18. 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. Tuleyome hereby covenants that it presently has no interest not disclosed to County 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 County may consent to in writing prior to the acquisition by Tuleyome of such conflict. Tuleyome further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. Tuleyome agrees that if such financial interest does exist at the inception of this Agreement, County may terminate this Agreement immediately upon giving written notice without further obligation by County to Tuleyome under this Agreement.

(b) Statements of Economic Interest. Tuleyome acknowledges and understands that County has developed and approved a Conflict of Interest Code as required by state law which requires Tuleyome 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 section 18701(a)(2) of Title 2 of the California Code of Regulations. Tuleyome agrees to timely comply with all filing obligations for a consultant under County’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

**19. 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.

**20. Attorney's 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.

**21. 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.




**22. Amendment of Agreement.** This Agreement may only be amended or modified by mutual agreement of the parties, in writing and signed by both parties.

**23. Entirety of Contract.** This Agreement 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.


**24. Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

**IN WITNESS WHEREOF,** this Agreement is executed by Napa County, acting by and through the Chair of the Board of Supervisors, and by Tuleyome through its duly authorized officer(s).

TULEYOME, a California non-profit organization

By:   
VICTORIA BRANDON, President of Board of Directors

ATTEST:

  
Tuleyome  
ANDREW FULKS, Board Secretary

NAPA COUNTY, a political subdivision of  
the State of California

By: \_\_\_\_\_  
RYAN GREGORY, Chair  
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel  By: <u>Thomas C. Zeleny</u> Interim County Counsel  Date: <u>December 16, 2021</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS  Date: _____ Processed By: _____  _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors  By: _____
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## **EXHIBIT A**

### **(Project Description)**

#### **Post-Fire Restoration in Hunting Creek Watershed**

##### **Project Description**

This project will provide significant watershed benefits in the Lake Berryessa Watershed through erosion control and channel improvements at neighboring sites, as further set forth in TULEYOME's project application dated April 7, 2021: (1) Reshape the 4-mile trail's cross-section and control erosion of the charred and denuded landscape at several water crossings on Cedar Creek Trail in BLM's Knoxville Management Area; and (2) remove the partially failed Aikawa Dam obstruction, stabilize the banks and re-contour a downstream retention pond in UC Davis' McLaughlin Reserve. All work will be within the Berryessa-Snow Mountain National Monument, on prioritized BLM or UCD properties. Both will provide significant match with staff and equipment. TULEYOME, through agreements with BLM and UCD, will manage funds, subcontract team members, lead volunteers, monitor trail conditions and oversee project execution. McCord Environmental (MEI) will manage the project (contracting; organizing, reviewing, and reporting) and ensure regulatory compliance. Napa County RCD will produce a detailed trail assessment, oversee construction, and calculate watershed benefits. Plans will specify designs, materials and cost estimates. BCGE will grade, excavate, transport material and replace culverts.

##### **Project Deliverables to Napa County**

- 1) An electronic version (.pdf format) of the erosion site improvement plans, details and specifications.
- 2) Tabulation of sediment load reduction estimates.
- 3) One (1) electronic or hard copy of each environmental permit application filed with State and Federal government agencies.
- 4) Final environmental permit determinations by jurisdictional government agency.
- 5) Quarterly Progress Reports with photos for duration of the project.

##### **Project Justification**

Wildfire de-vegetation and burn scar have altered the hydrologic characteristics in Knoxville Management Area putting the area at risk of localized flooding and washouts of roads and trails. Stormwater runoff will intensify sediment transport into Lake Berryessa headwaters during the winter months. Hydrologic benefits of the proposed erosion mitigation include reduced flood zone impacts and better water quality downstream of the watershed catchment lands. Sediment load reduction, attenuation of heavy metal mobility, desirable native plant species introduction and engineered soil mixtures that propagate selective growth through dry weather months are project tangibles.

**Measure A Unincorporated Napa County Project Appropriation - \$236,289**

## EXHIBIT B

### CALIFORNIA PREVAILING WAGE REQUIREMENTS

Pursuant to California Labor Code sections 1720 and 1771, construction, alteration, demolition, installation, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. The Contractor and any subcontractors shall comply with State prevailing wage laws including but not limited to the requirements listed below.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to California Labor Code sections 1720 through 1861, the Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including but not limited to all cleanup work at the jobsite.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the Napa County Public Works Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Contractor and all subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

**2. Penalties for Violations.** The Contractor and all subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720 through 1861.

**3. Payroll Records.** The Contractor and all subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. The Contractor shall require all subcontractors to also comply with section 1776. The Contractor and all subcontractors shall furnish records specified in section 1776 on a monthly basis, both to the County and directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. The Contractor shall ensure its subcontractors prepare and submit payroll records to the County and the DIR as required by this section.

**3.1.** If the Contractor or a subcontractor is exempt from the DIR registration requirement pursuant to section 9.4 below, then the Contractor or such subcontractor is not required to furnish payroll records directly to the Labor Commissioner but shall retain the records for at least three years after completion of the work, pursuant to California Labor Code section 1771.4(a)(4).

**3.2.** The County may require the Contractor and its subcontractors to prepare and submit records specified in section 1776 to the County and the Labor Commissioner on a weekly basis, at no additional cost to the County.

**4. Apprentices.** The Contractor and all subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. The Contractor is responsible for compliance with this section for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n).

**5. Working Hours.** The Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** The Contractor shall include, at a minimum, a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, the Contractor is required to secure the payment of compensation of its employees. By signing the Agreement, to which this is an exhibit, the Contractor certifies that:

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

**8. Compliance Monitoring and Enforcement.** This project is subject to compliance monitoring and enforcement by the DIR. The County must withhold contract payments from the Contractor as directed by the DIR, pursuant to California Labor Code section 1727.

**9. Contractor and Subcontractor Registration Requirements.** The Contractor and all subcontractors shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by California Business and Professions Code section 7029.1 or California Public Contract Code sections 10164 or 20103.5, provided the Contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.

**9.1.** A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to the proposal due date; (2) within 24 hours after the proposal due date, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to California Public Contract Code section 4107.

**9.2.** By submitting a bid or proposal to the County, the Contractor is certifying that the Contractor has verified that all subcontractors used on this project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5. The Contractor shall provide proof of registration for themselves and all listed subcontractors to the County at the time of the bid or proposal due date or upon request.

**9.3.** The County may ask the Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this project at any time during performance of this Agreement, and the Contractor shall provide the list within ten (10) working days of the County's request.

**9.4.** This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work, pursuant to California Labor Code sections 1725.5(f) and 1771.1(n).

**10. Stop Order.** Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner must issue and serve a stop order prohibiting the use of the unregistered contractor or subcontractor on ALL public works until the unregistered contractor or subcontractor is registered. Failure to observe a stop order is a misdemeanor.