

NAPA COUNTY AGREEMENT NO. 220130B
NAPA COUNTY RESOURCE CONSERVATION DISTRICT AGREEMENT NO. 2021-16

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 21st day of September 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and the NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a special district established under Division 9 of the California Public Resources Code, whose mailing address is 1303 Jefferson Street, Suite 500B, Napa, CA 94559, hereinafter referred to as “NCRCD.”

RECITALS

WHEREAS, COUNTY entered into Agreement No. D2012307 with the California State Water Resources Control Board (“State Water Board”) for the purpose of implementing the Napa River Restoration Oakville to Oak Knoll, Group D, Phase II (“Project”); and

WHEREAS, COUNTY wishes to obtain specialized environmental monitoring and reporting services in order to carry out the Project; and

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

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on April 30, 2024, 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 Agreement, and the obligations of NCRCD to COUNTY 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). For purposes of this Agreement, “fiscal year” shall mean the period commencing on July 1 and ending on June 30.
2. **Scope of Services.** NCRCD shall provide COUNTY those services set forth in Exhibit “A,” attached hereto and incorporated by reference herein.

3. **Compensation.**

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

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

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of Thirty Seven Thousand Dollars (\$37,000) for professional services and expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by NCRCD to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, NCRCD'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 Agreement 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 Agreement provides for a fixed price, if NCRCD presents interim invoices, NCRCD must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time NCRCD shall be paid the equivalent percentage of the fixed price.

(d) NCRCD shall submit invoices not more often than monthly to the Deputy Director of Public Works who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C."

5. **Independent Contractor.** NCRCD shall perform this Agreement as an independent contractor. NCRCD and the officers, agents, and employees of NCRCD are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. NCRCD shall, at NCRCD's own risk and expense, determine the method and manner by which duties imposed on NCRCD by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by NCRCD. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to NCRCD, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, NCRCD shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that NCRCD, including the agents or employees of NCRCD, shall be the sole providers of the services required by this Agreement. Because the

services to be performed by NCRCD under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by NCRCD.

7. **Insurance.** NCRCD 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, NCRCD shall provide workers' compensation insurance for the performance of any of NCRCD'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. Each party 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. Each party shall obtain and maintain in full force and effect during the term of this Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance satisfactory to other party's risk manager or employee designated by that party to perform such function, or by a combination thereof, covering liability 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 that party under this Agreement except for acts or omissions performed in strict compliance with express direction the other party's governing board, officers or personnel. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability. Each party shall obtain and maintain in full force and effect during the term of this Agreement professional liability/errors and omissions insurance coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for each occurrence and, where provided through a policy of insurance, issued by a company admitted to do business in the State of California and having an A.M. Best Rating of A:VII or better, covering all professional acts or omissions of that party arising out of or in connection with this Agreement except for those acts or omissions performed in strict compliance with express direction from the other party's governing board, officers or personnel unless such direction was based upon professional advice from the first party or its personnel or other agents under this Agreement.

(3) Comprehensive Automobile Liability Insurance. Each party shall obtain and maintain in full force and effect during the term of this Agreement a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased, and non-owned vehicles used in conjunction with that party's activities under this

Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates of Coverage. Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to the other party), the coverages shall be evidenced by one or more certificates of coverage which shall be filed with the other party's Secretary or Clerk prior to reimbursement for performance of any of the party's duties under this Agreement; shall reference this Agreement by its COUNTY number or title and department; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the insurance coverages referenced in 7(b)(1) and (3), NCRCD shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of NCRCD 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 NCRCD 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. Upon request by the other party, the party shall provide or arrange for the insurer to provide the other party with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to COUNTY's Risk Manager.

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, NCRCD and COUNTY shall each defend, indemnify and hold harmless each other as well as their respective 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 out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. 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.

(b) Employee Character and Fitness. NCRCD accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents, or representatives) to provide the services required of NCRCD under this Agreement, including

completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law and deemed necessary by the NCRCD Executive Director. Notwithstanding anything to the contrary in this Paragraph, NCRCD shall hold COUNTY and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or NCRCD's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

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

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

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent NCRCD has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to NCRCD. In addition, to the extent NCRCD maintains COUNTY data on those portions of digital software hosted by NCRCD and not controlled by COUNTY ("County data"), NCRCD shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from NCRCD's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by NCRCD.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although NCRCD may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by NCRCD under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software,

then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights, and trade secrets in the products developed or improved under this Agreement, shall remain with NCRCD or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, NCRCD shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at NCRCD's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

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

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

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

Rick Thomasser
Deputy Director of Public Works
804 First Street
Napa, CA 94559
Richard.Thomasser@countyofnapa.org
707-259-8657

NCRCD

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

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** NCRCD 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. NCRCD 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 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 NCRCD 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.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to NCRCD, which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. NCRCD shall hold all such information as NCRCD may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its DIRECTOR OF PUBLIC WORKS. Upon cancellation or expiration of this Agreement, NCRCD shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that NCRCD may retain for its files a copy of NCRCD's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent NCRCD is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), NCRCD shall adhere to all federal, state, and local laws, rules, and regulations protecting the privacy of such information. NCRCD shall adhere to all existing and future federal, state, and local laws, rules, and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, NCRCD.

(2) NCRCD shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological, and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, NCRCD shall make available to

COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) NCRCD agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information of which it becomes aware.

(4) NCRCD will be responsible for all costs associated with NCRCD's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the COUNTY of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules, or regulations applicable at the time of the breach.

16. No Assignments or Subcontracts.

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

(b) Effect of Change in Status. If NCRCD changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by NCRCD. Failure of NCRCD to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

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

18. Interpretation; Venue.

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

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement

lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation, or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

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

(a) Non-Discrimination. During the performance of this Agreement, NCRCD and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), use of family care leave, or political affiliation or belief. NCRCD 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, NCRCD 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. To the extent this Agreement subcontracts to NCRCD services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and NCRCD and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

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

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

20. **Taxes.** NCRCD agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid

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

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers, and records of NCRCD 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, NCRCD shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

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

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. NCRCD 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 NCRCD of such conflict. NCRCD further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. NCRCD 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 NCRCD under this Agreement.

(b) Statements of Economic Interest. NCRCD acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires NCRCD 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, unless it has been determined in writing that NCRCD, 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 executing this Agreement, the COUNTY hereby determines that NCRCD has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

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

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

26. **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.

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

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

29. **Special Terms and Conditions.** NCRCD shall adhere to the special terms and conditions set forth in Exhibit "D," attached hereto and incorporated by reference herein.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURE PAGE TO FOLLOW]

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

“COUNTY” COUNTY OF NAPA, a political subdivision of the State of California

By: _____ Date: _____
ALFREDO PEDROZA, Chair of the Board Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>John L. Myers (e-sign)</u> County Counsel Date: <u>September 1, 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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“NCRCD” NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a
special district of the State of California

By: _____ Date: _____
JON KANAGY, President of the Board of Directors

APPROVED AS TO FORM Office of County Counsel By: <u>Shana A. Bagley</u> District Counsel Date: <u>September 1, 2021</u>	ATTEST: ANNA MATTINSON District Secretary By: _____
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EXHIBIT “A”

SCOPE OF WORK

NCRCD shall provide COUNTY with the following services:

I. Description of Services.

Bulk Sediment Monitoring & Reporting

NCRCD will conduct bulk sediment monitoring in the Napa River Oakville-to-Oak Knoll (OVOK) restoration reach to establish a baseline for long-term monitoring of fine sediment concentrations in the streambed, including:

- Preparation of a bulk sediment monitoring plan for County submittal to the granting agency by December 10, 2021.
- Identification of potential bulk sampling locations using existing data and/or field reconnaissance in the spring of 2022, including selection of 10 sites and several backup sites.
- Surveying of local channel bed slope at each site to confirm a minimum bed slope of 0.002 (0.2%). Collection, drying, sieving, and processing of bulk sediment samples from 10 sites. Collection of subsamples of fine-grained material for analysis at a qualified laboratory. Slope surveys and sediment sampling will take place between July and November 2022 when the streambed is at or near its most dry.
- Data analysis to generate particle size statistics and distribution plots.
- Preparation of a bulk sediment monitoring report for County submittal to the granting agency prior to the overall Project completion date of April 30, 2023.
- Preparation and submittal of monthly invoices and progress reports.

The work will be conducted in accordance with guidance outlined in applicable sections of the Napa River Sediment TMDL Monitoring Plan and the Quality Assurance Protection Plan (QAPP) developed for the NCRCD’s monitoring program in 2012.

II. Compliance with Government Code Section 7550.

As required by Government Code section 7550, each document or report prepared by NCRCD for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT “B”

COMPENSATION AND EXPENSE REIMBURSEMENT

The maximum budget for labor and expenses shall not exceed \$37,000.

Hourly Rates for Compensation

NCRCD shall bill COUNTY, and COUNTY shall compensate NCRCD for the services outlined in Exhibit A, in accordance with the following hourly rates for the NCRCD employees and/or contractors whose positions are noted:

Name	Position Title	Hourly Rate
Danielle Ashton	Coordinator	\$56.13
Ashley Kvitek	Project Manager	\$76.70
Ruby Stahel	Conservation Project Manager	\$79.52
Miguel Garcia	Sustainable Agriculture Program Manager II	\$80.30
Eric McKee	Project Manager	\$80.68
Martin Perales	Environmental Scientist II	\$83.97
Amanda Benton	Forestry Program Manager II	\$85.56
Anna Mattinson	Office Manager II	\$89.78
Paul Blank	Environmental Scientist III	\$105.40
Bill Birmingham	Conservation Program Manager	\$107.01
Frances Knapczyk	Program Director	\$107.38
Lucas Patzek	Executive Director	\$109.73

NCRCD billable rates include direct and indirect costs. NCRCD adjusts its billable rates annually on July 1 and whenever there is a change in an employee’s underlying direct pay rate. Whenever there is any other change to any of these rates or when new positions are added, NCRCD will notify COUNTY immediately, and with the approval of COUNTY’s Deputy Director of Public Works, NCRCD may implement such adjusted rates. In any case, NCRCD must still adhere to the budget limitations under “BUDGET” above.

Expenses

Expenses related to fulfilling the scope of work in Exhibit “A” may include but are not limited to: mileage reimbursement at the federally approved rate, printing, and minor equipment.

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]

SAMPLE INVOICE

INVOICE # _____
DATE: _____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15	Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/1/15		Smith, Engineer	1	\$165.00	165.00
1/1/15		Smith, Engineer	4	\$165.00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15		Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/3/15		Jones, PE	1.5	\$195.00	292.50
TOTAL					

EXHIBIT “D”

STATE WATER BOARD GRANT AGREEMENT