

**LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT  
AGREEMENT NO. 230381B**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of May, 2023, by and between the LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, a special district of the State of California, hereinafter referred to as “DISTRICT,” and TELSTAR INSTRUMENTS, whose business address is 1717 Solano Way #34, Concord, CA 94520, hereinafter referred to as “CONTRACTOR.” DISTRICT and CONTRACTOR may be referred to below individually as “Party” and collectively as “Parties.”

**RECITALS**

**WHEREAS**, the DISTRICT relies on a Supervisory Control and Data Acquisition (SCADA) system to monitor and control the DISTRICT’s water and wastewater systems; and

**WHEREAS**, the DISTRICT’s existing system is unable to provide an advanced level of automation, remote control, alarm notifications, sufficient network speed, trend analysis, and dependability needed by the DISTRICT in an increasingly stringent regulatory environment; and

**WHEREAS**, the DISTRICT received \$300,000 of American Rescue Plan Act (ARPA) funds through a February 8, 2022, Memorandum of Understanding with Napa County for the replacement of the DISTRICT’s water and wastewater facility SCADA system; and

**WHEREAS**, DISTRICT wishes to obtain specialized services, as authorized by Government Code section 31000 *et seq.*, to perform the Water and Wastewater Facility SCADA Upgrades Project (Project); and

**WHEREAS**, on February 23, 2023, DISTRICT issued a Request for Proposals (RFP) for an engineering consultant to provide such services for the Project; and

**WHEREAS**, DISTRICT staff evaluated and assigned scores to two proposals submittals by engineering firms that culminated in the selection of CONTRACTOR based on their qualifications, expertise, and proposed project approach;

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

**TERMS**

1. **Term of the Agreement.** The term of this Agreement shall be effective on the date approved by the Governing Board and shall expire one year after completion of the Scope of Services, 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 CONTRACTOR to DISTRICT shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), 21 (Access to Records/Retention), and 24 (Warranty).

2. **Scope of Services.** CONTRACTOR shall perform the Water and Wastewater Facility SCADA Upgrades Project, as further described in Exhibit "A" attached hereto and hereby incorporated by reference.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the scope of services, DISTRICT shall pay CONTRACTOR the fixed prices for Tasks 1 through 5, and the cost of the Performance and Payment Bonds, as set forth in Exhibit "A."

(b) Expenses. All expenses are included in the fixed prices.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall not exceed a total of Two Hundred Eighty-Four Thousand Four Hundred and Forty-Eight Dollars and Forty Cents (\$284,448.40) including all expenses and tax.

4. **Method of Payment.**

(a) Invoices. All payments shall be made only upon presentation by CONTRACTOR to DISTRICT of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. If this Agreement provides for a fixed price, instead of providing hourly information CONTRACTOR shall indicate the percentage of work completed (eg. 35% of Task 1.1) in each invoice, and payment shall be calculated based on the equivalent percentage of the fixed price. CONTRACTOR shall provide backup information reasonably necessary to confirm the percentage of work completed, within one week after the request of the District Engineer. CONTRACTOR shall submit no more than one invoice per month to the District Engineer 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."

(b) Legal status. So that DISTRICT may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the District Engineer 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 Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, DISTRICT employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that DISTRICT may monitor the work performed by CONTRACTOR. DISTRICT 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, unless required to do so by court order. As between the Parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Performance and Payment Bonds.** CONTRACTOR shall furnish and maintain the following performance and payment bonds on forms provided in Exhibit "E" for the duration of this Agreement, in the amount set forth in paragraph 3(c) above.

(a) Performance Bond. A performance bond to guarantee faithful performance of the Agreement and associated work, in conformance with the Scope of Services and project schedule.

(b) Payment Bond. A payment bond to satisfy claims of material suppliers and of mechanics and laborers employed on the Project. The payment bond shall be maintained by the CONTRACTOR in full force and effect until the Project is accepted by the DISTRICT and until all claims for materials and labor are paid, and shall otherwise comply with all applicable laws.

(c) Licensed Surety. All bonds shall be in the form shown in Exhibit "E" and issued by such sureties which are admitted insurers in the State of California and are subject to regulation by the Department of Insurance. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

(d) Bankrupt or Insolvent Surety. If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business in California is terminated, CONTRACTOR shall notify the District Engineer and substitute another bond and surety meeting the requirements of this paragraph within seven (7) Days after learning the surety is bankrupt, insolvent, or lost its right to conduct business in California.

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

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

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

(1) **General Liability.** Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than 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 Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

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

(3) **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. 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 Agreement, CONTRACTOR 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 DISTRICT's Risk Manager, demonstrated by other evidence of coverage acceptable to DISTRICT's Risk Manager, which shall be filed by CONTRACTOR with the DISTRICT prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its DISTRICT number or title and department; shall be kept current during the term of this Agreement; shall provide that DISTRICT 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, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming DISTRICT, its officers, employees, agents and volunteers as additional insureds and waiving

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

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of DISTRICT shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to DISTRICT with respect to any insurance or self-insurance programs maintained by DISTRICT. 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 DISTRICT's Risk Manager, 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 DISTRICT's Risk Manager. At the option of and upon request by DISTRICT's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, CONTRACTOR shall provide financial assurance to be agreed upon by CONTRACTOR and DISTRICT.

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

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

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless DISTRICT 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, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the active or sole negligence or willful misconduct of DISTRICT or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. 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. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this

Paragraph, CONTRACTOR shall hold DISTRICT and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

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

10. **Other Termination.** This Agreement may be terminated by DISTRICT for any reason and at any time by giving prior written notice of such termination to CONTRACTOR specifying the effective date thereof at least thirty (30) days prior to the effective date; provided, however, that no such termination may be effected by DISTRICT unless an opportunity for consultation is provided prior to the effective date of the termination. DISTRICT 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 DISTRICT for the convenience of DISTRICT.

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

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of DISTRICT, the property of and shall be promptly returned to DISTRICT, although CONTRACTOR 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 CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only DISTRICT 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 CONTRACTOR 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 DISTRICT 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 DISTRICT is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to DISTRICT or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by DISTRICT 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 DISTRICT.

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

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

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

DISTRICT  
Lake Berryessa Resort Improvement District  
Christopher M. Silke, P.E.  
District Engineer  
1195 Third Street, Suite 101  
Napa, CA 94559

CONTRACTOR  
Telstar Instruments  
Bob Marston  
President  
1717 Solano Way #34  
Concord, CA 94520

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

Agreement, which would interfere with compliance or induce violation of these policies by DISTRICT 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," which is found in the Napa County Policy Manual Part I, Section 37K.

(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 DISTRICT computer network shall sign and have on file with DISTRICT'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 found in the Napa County Policy Manual Part I, Section 37U.

15. **Prevailing Wage Requirements.** The scope of services includes "public works" as defined in the California Labor Code. CONTRACTOR shall comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit "B." Federal labor standards also apply to the scope of services, as set forth in Exhibit "D." In instances where federal (Davis-Bacon) prevailing wages apply to the trade or work, CONTRACTOR shall pay the higher of the two wages.

16. **No Assignments or Subcontracts.**

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

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

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both Parties. 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.

18. **Interpretation; Venue.**

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

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

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

(a) **Non-Discrimination.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (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. 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. To the extent this Agreement subcontracts to CONTRACTOR services or works required of DISTRICT by the State of California pursuant to agreement between DISTRICT 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 CONTRACTOR 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. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to DISTRICT for inspection.

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

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold DISTRICT 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 DISTRICT is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish DISTRICT with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** DISTRICT, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after DISTRICT makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

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

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The Parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to DISTRICT 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 DISTRICT 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 DISTRICT relating to this Agreement.

CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, DISTRICT may terminate this Agreement immediately upon giving written notice without further obligation by DISTRICT to CONTRACTOR under this Agreement.

(b) **Statements of Economic Interest.** CONTRACTOR acknowledges and understands that DISTRICT 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 section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR 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 District Engineer is confirming the Scope of Services does not trigger a requirement for CONTRACTOR to file a statement of economic interests.

24. **Warranty.** CONTRACTOR shall perform the services consistent with the level of care, diligence, and skill ordinarily exercised by professionals performing the same or similar services in California. CONTRACTOR further warrants to DISTRICT that any construction or installation work, including all materials and equipment furnished as part of such work, shall be new, of good quality, in conformance with the Scope of Services and free of defects in materials and workmanship. CONTRACTOR shall correct or replace any work not in conformance with this warranty at its own cost and expense, if notified by DISTRICT within one year after the date the Project is complete.

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. **ARPA Conditions.** This Agreement is funded in whole or in part with federal Coronavirus State and Local Fiscal Recovery Funds received by the DISTRICT through the American Rescue Plan Act (ARPA). CONTRACTOR shall comply with the special terms and conditions set forth in Exhibit “D,” attached hereto and hereby incorporated by reference. CONTRACTOR shall further require any subcontractors it hires to work on the Project to comply with the special terms and conditions set forth in Exhibit “D,” as applicable.

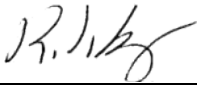
29. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises,

representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

30. **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 the Lake Berryessa Resort Improvement District, acting by and through the Chair of the Governing Board, and by the Contractor through its duly authorized officers.

TELSTAR INSTRUMENT, a California Corporation

By   
Robert S. Marston, President

By   
John D. Gardiner, Vice President

LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT, a Special District of the State of California

By \_\_\_\_\_  
Belia Ramos, Chair of the Governing Board of Lake Berryessa Resort Improvement District

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|--|---|--|
| <p>APPROVED AS TO FORM<br/>Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u><br/>Chief Deputy County Counsel</p> <p>Date: <u>May 9, 2023</u></p> | <p>APPROVED BY THE BOARD OF SUPERVISORS, AS THE GOVERNING BOARD OF THE LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____<br/>Deputy Secretary of the District</p> | <p>ATTEST: NEHA HOSKINS<br/>Secretary of the District</p> <p>By: _____</p> |
|--|---|--|

**EXHIBIT “A”**

**SCOPE OF WORK AND COMPENSATION**

**I. SCOPE OF SERVICES**

CONTRACTOR shall provide all professional services, labor, material, equipment, and software necessary to replace the DISTRICT’s water and wastewater Supervisory Control and Data Acquisition (SCADA) system, as described in DISTRICT’s Request of Proposals (RFP) dated February 14, 2023. The Project shall be performed in accordance with CONTRACTOR’s Proposal dated March 23, 2023. In the event of a conflict between the RFP and CONTRACTOR’s Proposal, the terms of the RFP shall control. Optional Task 6 in CONTRACTOR’s Proposal is not included in the scope of services, but may be the subject of another contract between the parties at a later date.

The RFP and CONTRACTOR’s Proposal are hereby incorporated by reference as if fully set forth herein.

The schedule for performing the scope of services shall be in accordance with the schedule set forth in CONTRACTOR’s Proposal, commencing on the date DISTRICT issues CONTRACTOR a notice to proceed with the work.

**II. COMPENSATION**

CONTRACTOR shall be compensated on fixed price basis, in accordance with the Pricing Information set forth on page 9 of CONTRACTOR’s Proposal for the SCADA system replacement dated March 23, 2023, and duplicated below, in a total amount not to exceed Two Hundred Eighty-Four Thousand Four Hundred and Forty-Eight Dollars and Forty Cents (\$284,448.40). This amount consists of \$281,105.00 for Tasks 1-5 and \$3,343.40 for the Performance and Payment Bonds.

| Task                                    | Cost         |
|---|--------------|
| Task 1.1: Procurement of SCADA Hardware | \$53,557.00  |
| Task 1.2: Procurement of SCADA Software | \$51,068.00  |
| Task 2: Installation                    | \$23,473.00  |
| Task 3: Integration                     | \$82,589.00  |
| Task 4: Training and Testing            | \$46,945.00  |
| Task 5: Warranty                        | \$23,473.00  |
| Total Budget Estimate Task 1-5          | \$281,105.00 |

**III. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of DISTRICT 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"

### 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.

**EXHIBIT "C"**

**[Company Name]**  
 [Street Address]  
 [City, ST ZIP Code]  
 Phone [phone] Fax [fax]  
 Taxpayer ID #

**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.<br>Conf w/Owner<br>AutoCad, Bldg X, 3 <sup>rd</sup> Floor    | Smith,<br>Engineer | 1.5   | \$165.00 | 247.50 |
| 1/1/15       |  | Smith,<br>Engineer | 1     | \$165.00 | 165.00 |
| 1/1/15       |  | Smith,<br>Engineer | 4     | \$165.00 | 660.00 |
|              |  | Smith,<br>Engineer |       |          |        |
| 1/2/15       | Rev plans, phone conf w/Owner  | Jones, PE          | 1.75  | \$195.00 | 341.25 |
| 1/2/15       | AutoCad Bldg X, 3 <sup>rd</sup> Floor<br>Conf w/Owner re 2 <sup>nd</sup> Floor                           | Smith,<br>Engineer | 4     | \$165.00 | 660.00 |
| 1/2/15       |  | Smith,<br>Engineer | .5    | \$165.00 | 82.50  |
| 1/3/15       | Mtg w/Jones re 2 <sup>nd</sup> Floor; conf w/Owner<br>Mtg w/Smith; conf w/Owner re 2 <sup>nd</sup> Floor | Smith,<br>Engineer | 1.5   | \$165.00 | 247.50 |
| 1/3/15       |  | Jones, PE          | 1.5   | \$195.00 | 292.50 |
| <b>TOTAL</b> |  |                    |       |          |        |

**EXHIBIT “D”**  
**American Rescue Plan Act (ARPA)/ CSLFRF**  
**TERMS AND CONDITIONS**

**1. DEFINITIONS**

- 1.1. Government** means the United States of America and any executive department or agency thereof.
- 1.2. Treasury** means the Department of the Treasury of the United States of America.
- 1.3. ARPA** means the American Rescue Plan Act (Pub. L. No. 117-2 (Mar. 11, 2021)) (codified at Section 601 et seq. of Title VI of the Social Security Act) and related funding and financial assistance programs, including the Coronavirus State Fiscal Recovery Fund (CSFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF), collectively referred to as the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) and federal Assistance Listing CFDA 21.027.
- 1.4. Third Party Subcontractor** means a subcontractor at any tier entered into by CONTRACTOR or any subconsultant or subcontractor, financed in whole or in part with federal assistance, including ARPA funds under the Agreement.
- 1.5.** For purposes of this Exhibit, CONTRACTOR shall also mean the CONTRACTOR, Subcontractor, Consultant, or other party to the subject Agreement with the DISTRICT, and may be referred to as such.
- 1.6. Agreement** means that certain Agreement between the Lake Berryessa Resort Improvement District (“DISTRICT”) and CONTRACTOR, and to which this Exhibit is made a part.

As a condition of the Agreement and of the ARPA funding under this Agreement, CONTRACTOR shall comply as follows:

**2. GENERAL REQUIREMENTS**

- 2.1.** CONTRACTOR shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, Treasury policies, procedures, and directives, and program or grant conditions (as may be amended or promulgated from time to time), including but not limited to those requirements of 2 C.F.R.<sup>1</sup> Part 200, and its Subparts B-General Provisions, C-Pre-Federal Award Requirements and Contents of Federal Awards, D-Post Federal Award Requirements, E-Cost Principles, and F-Audit Requirements; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act (including 41 USC 4712);

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<sup>1</sup> Code of Federal Regulations (“CFR”).

the Hatch Act (5 U.S.C.<sup>2</sup> 1501 et seq.); and all related and Treasury-mandated federal regulations, including 31 CFR Part 35.

- 2.2. Whether or not expressly set forth herein, all contractual provisions and grant conditions or assurances required by Treasury (including as may be amended or promulgated from time to time) are hereby incorporated by reference. This Agreement may be amended to further incorporate and expressly state new, revised, and or subsequent contractual provisions or grant conditions as may be required by ARPA and/or Treasury. In the event of any conflict between any provision of this Agreement, this Exhibit, or any federal or Treasury term, condition, or requirement, the stricter standard shall apply. CONTRACTOR shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to DISTRICT for guidance. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause DISTRICT to be in violation of any federal, ARPA, or Treasury term, condition, or requirement.
- 2.3. The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.4. CONTRACTOR shall attach and apply all terms and conditions stated herein to all Third Party Subcontractors and shall require that all subcontractors of all tiers comply with and attach and apply these terms and conditions as to their subcontracts at all levels. The provisions shall not be modified, except to identify the subcontractor who will be subject thereto.

### **3. FURTHER ARPA REQUIREMENTS**

- 3.1. CONTRACTOR acknowledges that all or part of this Agreement will be funded with ARPA financial assistance.
- 3.2. CONTRACTOR shall comply with, and shall not cause the DISTRICT be out of compliance with, the requirements of ARPA, the regulations adopted pursuant thereto, all interpretive guidance issued by Treasury, and DISTRICT's grant assurances related to ARPA funding. CONTRACTOR shall also comply with all other applicable federal statutes, regulations, and executive orders, and shall provide for such compliance by other parties in any agreements it enters into with other parties relating to or involving funding under this Agreement.
- 3.3. Funds, payments, expenses, and procurements under this Agreement shall only be used for eligible ARPA uses and activities in accordance with ARPA and Treasury's implementing regulations (31 CFR Part 35) and related interpretive guidance (including the ARPA Interim Final Rule and Final Rule as applicable), and all other applicable laws and regulations governing the use of ARPA funds. CONTRACTOR shall be responsible for any disallowances, questioned costs, or other items, including interest, not allowed under ARPA funding. CONTRACTOR shall return to DISTRICT any funds disallowed within ninety days of notification from DISTRICT to return such funds.
- 3.4. Any costs, payments, or expenses allowable under the Agreement must be incurred by December 31, 2024. Any funds not timely used must be returned to DISTRICT.
- 3.5. In the event of any violation of any ARPA requirement, any audit exception or disallowance, or of any term or condition of the Agreement, then payments or subawards made under this Agreement shall be subject to recoupment.

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<sup>2</sup> United States Code ("USC").

- 3.6.** Hatch Act. CONTRACTOR agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
- 3.7.** Uniform Administrative, Cost Principles, And Audit Requirements (2 CFR Part 200). CONTRACTOR shall comply with all applicable provisions of the federal Uniform Guidance, 2 CFR Part 200, including applicable Administrative Requirements, Cost Principles, and Audit requirements. Without limitation, all use of funds and procurement of all services (including consultants), supplies, property, or equipment, shall be performed in conformance with 2 CFR 200.318-327 as well as in conformance with all other administrative, costs, and audit requirements under federal laws and regulations. These requirements generally require open and competitive process, with limited exceptions. CONTRACTOR shall maintain records sufficient to detail the history of procurement and provide such records upon request. These records shall include, but are not necessarily limited to: rationale for the method of procurement, selection of contract type, Subcontractor selection or rejection, and the basis for the contract price.
- 3.8.** Allowable costs and allocations shall be only those permitted under the Agreement and as permitted by federal law and regulation, including pursuant to 2 CFR Subpart E. CONTRACTOR must not claim reimbursement under this Agreement for expenditures reimbursed or financed by any other federal, state or local government source.
- 3.9.** Real property, equipment, and intangible property acquired or improved with funds under this Agreement must be held in trust for the beneficiaries of the project or program under which the property was acquired or improved. Liens or other appropriate notices of record may be required to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.
- 3.10.** If applicable, CONTRACTOR shall comply with all program income requirements and restrictions in conformance with 2 CFR 200.307. Any revenue generated by CONTRACTOR from Agreement-supported activities or funds shall be reported to DISTRICT, including for direction as to disposition.
- 3.11.** Government expressly disclaims any and all responsibility or liability to CONTRACTOR or any third persons for the actions of DISTRICT, CONTRACTOR, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the funding or performance of this Agreement, or any other losses resulting in any way from the performance of any contract or subcontract related to this Agreement. CONTRACTOR acknowledges and agrees that the federal government is not a party to this Agreement and is not subject to any obligations to or liabilities of the DISTRICT, CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.
- 3.12.** Conflict of Interest. By executing the Agreement, CONTRACTOR certifies that is does not know of any fact which constitutes a violation of any conflict of interest law, including under Title 9, Chapter 7 (section 87100 et seq.) or Title 1, Division 4, Chapter 1, Article 4 (Section 1090 et seq.) of the California Government Code. CONTRACTOR shall disclose to DISTRICT in writing any potential or actual conflict of interest affecting this Agreement or the funding thereof, in accordance with 2 CFR Part 200 (including 2 CFR 200.112 and 2 CFR 200.318(c)). CONTRACTOR shall provide all

additional information necessary for DISTRICT to fully assess and address such actual or potential conflict of interest. Prohibited conflicts include as to economic and/or personal interests.

### **3.13. NONDISCRIMINATION**

**3.13.1. CONTRACTOR** (and its sub-grantees, contractors, subcontractors, successors, transferees, and assignees) shall comply with all applicable federal, state, and local nondiscrimination laws, rules, and regulations in its employment practices, delivery of services, and performance under this Agreement, and shall not unlawfully discriminate, harass, or allow harassment against any person on the basis of sex, race, color, ancestry, religious creed, national origin, sexual orientation, gender, gender identity, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital or familial status, denial of family care leave, or on any other basis prohibited by law, including without limitation by Title VI of the Civil Rights Act of 1964 (42 USC §§ 200d et seq.) and Treasury’s implementing regulations at 31 CFR Part 22 (prohibiting discrimination on the basis of race, color, or national origin); the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) (prohibiting discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794) and Treasury’s implementing regulations at 31 CFR Part 17 (prohibiting discrimination on the basis of disability); the Age Discrimination Act of 1975, as amended (42 USC 6101 et seq.) and Treasury’s implementing regulations at 31 CFR Part 23 (prohibiting discrimination on the basis of age); Title II of the Americans with Disabilities Act of 1990, as amended (42 USC 12101 et seq.) (prohibiting discrimination in programs, activities, and services on the basis of disability); and the DISTRICT’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

**3.13.2. CONTRACTOR** (and its sub-grantees, contractors, subcontractors, successors, transferees, and assignees) shall ensure that evaluation and treatment of employees and applicants for employment are free from unlawful discrimination and harassment.

**3.13.3. CONTRACTOR**, and all sub-grantees, contractors, subcontractors, successors, transferees, and assignees, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Contractors of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 USC 200d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 USC 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or Agreement.

**3.14. CONTRACTOR** acknowledges, agrees, and shall comply with the following:

**3.14.1.** Compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC 200d et seq.), and as implemented by the Department of the Treasury’s Title VI

regulations, 31 CFR Part 22, and all other pertinent executive orders, directives, circulars, policies, memoranda, and guidances.

- 3.14.2.** Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” seeks to improve access to federally-assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). Denying a person access to programs, services, and activities because of LEP is a form of prohibited national origin discrimination. CONTRACTOR shall initiate reasonable steps, and comply with Treasury directives, to ensure that LEP persons have meaningful access to its programs, services, and activities, which may entail providing language assistance services including oral and written translation when necessary. Reasonable steps for meaningful LEP access is available at 70 CFR 6067 and <http://www.lep.gov>.
- 3.14.3.** To consider the need for language services for LEP persons when developing and conducting programs, services, and activities.
- 3.14.4.** If any real property, structure, or personal property is acquired, provided, or improved with regard to this Agreement, the provisions herein shall apply for the duration during which the property is owned or possessed by CONTRACTOR or used for a purpose for which ARPA funds have been provided or for any other purpose involving the provision of similar services or benefits.
- 3.14.5.** To maintain a complaint log and inform DISTRICT of any complaint of prohibited discrimination, and of any administrative agency or court’s findings of non-compliance with Title VI, including any related information pertaining thereto as requested by DISTRICT.
- 3.14.6.** To cooperate in any enforcement or compliance review by Treasury as to any condition herein, including cooperation with information requests, on-site compliance reviews, and reporting requirements.

Compliance with the foregoing constitutes a condition of performance and of continued funding, and is binding on CONTRACTOR’s successors, transferees, and assignees as may be applicable.

- 3.15. Publications.** Any publications (press releases, social media posts, flyers, project signage) produced under this Agreement must display the following: “This project [is being][was] supported, in whole or in part, by federal award number [as indicated by County] awarded to Napa County by the U.S. Department of the Treasury.”
- 3.16. Whistleblower Protections.** CONTRACTOR shall comply with 41 U.S.C 4712 and not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities described in 41 U.S.C 4712(a)(2) information that the employee reasonably believes is evidence of gross mismanagement of a federally-funded contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. CONTRACTOR shall inform all its employees in writing, in the predominant native language of the workforce, of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.

- 3.17. Increasing Seat Belt Use in the United States. CONTRACTOR is encouraged to adopt and enforce on-the-job seat belt policies and programs for employees when operating company-owned, rented or personally owned vehicles.
- 3.18. Reducing Text Messaging While Driving. CONTRACTOR is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

**4. SUBCONTRACTOR TERMS** (All subawards, funding transfers, and subcontractor agreements, in accordance with 2 CFR 200.331 and as may otherwise be designated in the Agreement)

- 4.1. All or part of the funding of this Agreement will be with Federal awards. CONTRACTOR is designated as a Subcontractor and the federal funds received under this Agreement are designated as a subaward of CSLFRF funds. Funds under this Agreement must be used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award, including all compliance and reporting requirements for ARPA funds. All terms of this Agreement shall remain in effect during all times that Subcontractor possesses or has control over ARPA funds, including any program income therefrom.
- 4.2. CONTRACTOR warrants and represents that it has, and shall maintain, the institutional, managerial, and financial capability to ensure proper planning, management, auditing, and completion of the subject project, program, and/or Agreement scope.
- 4.3. CONTRACTOR shall comply with, and administer all activity in conformance with, 2 CFR Part 200.300, et seq., and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and to maintain necessary source documentation for all costs incurred. CONTRACTOR shall maintain a financial management system which ensures control and documentation over the use and distribution of funds hereunder in accordance with the terms and conditions of this Agreement and with generally-accepted accounting principles.
- 4.4. CONTRACTOR shall maintain procedures for obtaining and recording information evidencing eligibility for any receipt or distribution of funds, including by any given beneficiary or lower-tier subcontractor or CONTRACTOR.
- 4.5. CONTRACTOR understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. 200.318(c) and that such conflict of interest policy is applicable to each activity using funds under this Agreement.
- 4.6. CONTRACTOR agrees to comply with and support all applicable ARPA reporting requirements and all reporting requirements otherwise stated in the Agreement. CONTRACTOR shall maintain compliance with all other federal reporting requirements, including those pertaining to subaward and executive compensation Information (2 CFR Part 170), and shall maintain processes and systems for proper and timely reporting as required under 2 CFR Part 170 Appendix A (unless exempt).
- 4.7. CONTRACTOR shall comply with and be responsible for all audit requirements required under federal law (including under 2 CFR Part 200) and as deemed necessary by authorized governmental entities, including Treasury. Pre-, interim, and post-award audits and other measures may be required, as determined by DISTRICT. All subcontractors (other than for-profit entities) who receive federal funding which taken



together total over \$750,000 in a single fiscal year are subject to single auditing and other requirements under 2 CFR Part 200, Subpart F. Said subcontractors must have a single or program-specific audit conducted for that fiscal year, as required by and in accordance with the provisions of 2 CFR Part 200, Subpart F. A copy of this audit must be forwarded to the DISTRICT as soon as it is complete.

- 4.8. All expenditures of funds under this Agreement shall be reported to DISTRICT, as directed and in form indicated by DISTRICT, including as required by all applicable ARPA requirements.
- 4.9. CONTRACTOR shall permit DISTRICT, and all designated auditors, access to all records and financial statements as necessary for DISTRICT to ensure compliance with this Agreement and all federal laws, regulations, and ARPA requirements.
- 4.10. **Mandatory Disclosures.** CONTRACTOR must disclose, in a timely manner, in writing to DISTRICT all violations of Federal criminal law involving fraud, bribery, or gratuity violations. CONTRACTOR shall report civil, criminal, and administrative proceedings to SAM, as required by 2 CFP Part 180.
- 4.11. CONTRACTOR shall maintain compliance with the System for Award Management (SAM) and Universal Entity Identifier requirements, pursuant to 2 CFR Part 25, including obtaining a unique entity identifier and completing SAM registration prior to receiving the Federal award unless exempt under 2 CFR 25.110. No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its Unique Entity Identifier to DISTRICT. Subcontractors are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.
- 4.12. CONTRACTOR shall comply with the Privacy Act of 1974 and 2 CFR 200.335 in the collection, maintenance, use and dissemination of any personally identifiable information such as social security numbers, financial and medical information. CONTRACTOR will limit the collection, use and access of information about individuals to that which is relevant and necessary to accomplish its purpose, and such data shall be maintained with appropriate administrative, technical and physical safeguards to protect the information.
- 4.13. Upon the earlier of either the expiration (or termination of this Agreement) or the completion of the project and/or program funded under this Agreement, CONTRACTOR shall closeout its use of the funds and its obligations under this Agreement by complying with all closeout requirements under 2 CFR § 200.344. CONTRACTOR shall complete, to DISTRICT's satisfaction, all final closeout requirements when and as requested by DISTRICT. Closeout activities shall include, but are not limited to: close-out certifications, submission of final reports, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable), and determining the custodianship of records.
- 4.14. **Compliance:** CONTRACTOR shall take timely and appropriate action on all deficiencies pertaining to the Agreement and use of DISTRICT -provided funds, as detected through audits, on-site reviews, or as indicated by DISTRICT . CONTRACTOR shall provide written confirmation upon request, highlighting the status of actions planned or taken to address any audit findings or other compliance matters as to the Agreement.

4.15. Pursuant to the Trafficking Victims Protection Act of 2000 (TVPA), as amended, CONTRACTOR and their employees (and subcontractors and their employees) may not:

4.15.1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

4.15.2. Procure a commercial sex act during the period of time that the award is in effect;  
or

4.15.3. Use forced labor in the performance of the award or subawards under the award.

4.16. **Remedies for Noncompliance.** In addition to any other right or remedy arising under the Agreement or in law or equity, DISTRICT may impose additional special conditions or take additional measures if CONTRACTOR fails to comply with any federal law, regulation, or the terms and conditions of this Agreement, fails to meet expected performance goals, or when such measures are otherwise required to comply with federal law and grant funding. Conditions and measures may include:

4.16.1. Withholding cash payments pending correction of the deficiency;

4.16.2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

4.16.3. Disallowing all or part of the cost of the activity or action not in compliance;

4.16.4. Requiring additional or more frequent project status reporting;

4.16.5. Requiring additional, more detailed financial reports;

4.16.6. Requiring additional project monitoring;

4.16.7. Requiring CONTRACTOR to obtain technical or management assistance;

4.16.8. Establishing additional prior approvals; and

4.16.9. Wholly or partly suspending or terminating the award.

## 5. RECORDS

5.1. CONTRACTOR shall keep and maintain full, complete, and accurate program, client, statistical, financial, and other supporting records pertaining to all services and payments, expenditures or distributions, and/or assistance under this Agreement, as required by applicable laws and regulations and consistent with sound, best, and generally-accepted accounting and grant management principles and practices. CONTRACTOR shall provide DISTRICT, Treasury's Office of Inspector General, the Comptroller General of the United States, and the Government Accountability Office, and any of their authorized representatives, access to and the right to examine and copy, all such books, documents, papers, records, accounts, and other documents and sources of information (electronic and otherwise), and shall permit access to facilities, personnel, and other individuals and information as may be necessary or as required by federal regulations and other applicable laws or program guidance, for the purposes of making audits, examinations, investigations, excerpts, and transcriptions pertinent to this Agreement and as may be needed for DISTRICT to meet its ARPA and federal requirements. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed, and to provide access to construction or other work sites relating to any Agreement work.

5.2. CONTRACTOR agrees to maintain all records that are pertinent to this Agreement, including financial, statistical, property, and participant books, records, accounts, reports,

and supporting documentation, for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and closeouts (including return of any remaining funding) are completed, except that in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, CONTRACTOR shall maintain same until the DISTRICT, Treasury, or the Comptroller General (or any of their authorized representatives), have disposed of all such litigation, appeals, claims, or exceptions related thereto. CONTRACTOR shall grant DISTRICT the option of retention of the records, books, papers, and documents in unalterable, electronic form if CONTRACTOR elects to dispose of said documents following the mandatory retention period.

## **6. DEBARMENT AND SUSPENSION**

- 6.1.** This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000, and is subject to 2 CFR Part 180 and Treasury's implementing regulation at 31 CFR Part 19. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 CFR §180.995) or its affiliates (defined at 2 CFR §180.905) are excluded (defined at 2 CFR §180.940) or disqualified (defined at 2 CFR §180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM).
- 6.2.** CONTRACTOR must comply with 2 CFR Part 180, subpart C, 2 CFR Part 3000, subpart C, and Treasury's implementing regulation at 31 CFR Part 19, and shall include 1. a term or condition that the funding is subject to, and 2. a requirement to comply with these regulations, in any lower tier covered transaction it enters into.
- 6.3.** CONTRACTOR represents, warrants, and certifies that it, and its principals, is and are not debarred, suspended, or otherwise excluded from or disqualified or ineligible for participation in Federal assistance programs or activities, including under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it (and each of its principals) is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. CONTRACTOR agrees that neither CONTRACTOR nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 180. Unless exempt, CONTRACTOR must maintain current information in the SAM, consistent with 2 CFR Part 25.
- 6.4.** This certification is a material representation of fact relied upon by DISTRICT. If it is later determined that CONTRACTOR did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to DISTRICT, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- 6.5.** The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**6.6.** CONTRACTOR agrees to the provisions of Exhibit D-1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit D-1, CONTRACTOR is the “prospective lower tier participant.”

**7. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (all construction contracts meeting the definition of “federally assisted construction contract” under 41 CFR 60-1.3)

CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, the CONTRACTOR agrees as follows:

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

- 7.5. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 7.6. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7.7. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7.8. The CONTRACTOR will include the portion of the sentence immediately preceding paragraph 7.1 and the provisions of paragraphs 7.1 through 7.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

## 8. FEDERAL LABOR STANDARDS

**CONTRACT WORK HOURS AND SAFETY STANDARDS** (all contracts in excess of \$100,000 that involve the employment of mechanics, laborers (including watchmen and guards) (as defined by federal law and regulation), or construction work, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

CONTRACTOR and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. CONTRACTOR and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is subject to conditions, as stated in the Act and

regulations. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

**Compliance with the Contract Work Hours and Safety Standards Act.**

- (1) Overtime requirements. No CONTRACTOR or subcontractors contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. DISTRICT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The CONTRACTOR (and all subcontractors) shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**DAVIS-BACON ACT (29 CFR 5.5(a))**

- (1) *Minimum wages.*

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: **Provided**, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, **Provided**, That the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** DISTRICT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay



laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the DISTRICT may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) ***Payrolls and basic records.***

(i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The CONTRACTOR shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Treasury if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to Treasury. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security

number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all subcontractors. CONTRACTORS and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Treasury if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to Treasury, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime CONTRACTOR to require a subcontractor to provide addresses and social security numbers to the prime CONTRACTOR for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The CONTRACTOR or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription

by authorized representatives of the DISTRICT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) *Apprentices and trainees* -**

(i) ***Apprentices.*** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize

apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) ***Trainees.*** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) ***Equal employment opportunity.*** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) ***Compliance with Copeland Act requirements.*** The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) ***Subcontracts.*** The CONTRACTOR and all subcontractors shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the DISTRICT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

(i) By entering into this contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

To the extent work under this Agreement is not covered by any of the other statutes listed in 29 CFR 5.1, further compliance with the Contract Work Hours and Safety Standards Act shall be required as follows:

- (1) The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of the Government, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

## **9. LICENSE AND DELIVERY OF WORKS SUBJECT TO COPYRIGHT AND DATA RIGHTS**

- 9.1.** CONTRACTOR agrees that DISTRICT and Government do reserve, are granted, and shall otherwise have, jointly and severally, a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
- 9.1.1.** The copyright in any work developed with the assistance of funds provided under this Agreement;
- 9.1.2.** Any rights of copyright to which CONTRACTOR purchases ownership with the assistance of funds provided under this Agreement.
- 9.2.** CONTRACTOR grants to DISTRICT and Government, jointly and severally, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONTRACTOR will identify such data and grant to the DISTRICT or acquire on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, the CONTRACTOR will deliver to DISTRICT data first produced in the performance of this Agreement and data required by the Agreement but not first produced in the performance of this Agreement, in formats acceptable by DISTRICT.

## **10. RIGHTS TO INVENTIONS** (contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects)

\*NOT APPLICABLE\*

## **11. CLEAN AIR AND WATER POLLUTION REQUIREMENTS** (all contracts and subcontracts in excess of \$150,000)

### **11.1. Clean Air Act**

**11.1.1.** CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. (42 USC 7401-7671q).

**11.1.2.** CONTRACTOR agrees to report each violation to DISTRICT and understands and agrees that DISTRICT will, in turn, report each violation as required to assure notification to Treasury, and the appropriate Environmental Protection Agency Regional Office.

**11.1.3.** CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with funds under this Agreement.

### **11.2. Federal Water Pollution Control Act**

- 11.2.1. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. (33 USC 1251-1388).
- 11.2.2. CONTRACTOR agrees to report each violation to DISTRICT and understands and agrees that DISTRICT will, in turn, report each violation as required to assure notification to the State of California (if applicable), Treasury, and the appropriate Environmental Protection Agency Regional Office.
- 11.2.3. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with funds under this Agreement.

**12. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended))** (all contracts and subcontracts in excess of \$100,000)

- 12.1. CONTRACTOR, and each tier to the tier above, certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the making or obtaining of any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Contractor who in turn will forward the certification(s) to the federal awarding agency.
- 12.2. CONTRACTOR shall file the required certification, Exhibit D-2, *Certification Regarding Lobbying*, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000.

**13. AFFIRMATIVE SOCIOECONOMIC STEPS (MBE / WBE)**

If subcontracts are to be let, CONTRACTOR, as prime contractor, is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**14. PROCUREMENT OF RECOVERED MATERIALS**

- 14.1. CONTRACTOR shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 14.2. In the performance of this Agreement, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

### *(a) Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the CONTRACTOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds under this Agreement to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### *(c) Exceptions.*

(1) This clause does not prohibit CONTRACTORS from providing—

- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements;
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:



- (i) Covered telecommunications equipment or services that:
  - i. Are not used as a substantial or essential component of any system; and
  - ii. Are not used as critical technology of any system.
- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, CONTRACTOR shall report the information in paragraph (d)(2) of this clause to the Contractor or subContractor, unless elsewhere in this contract are established procedures for reporting the information.

(2) CONTRACTOR shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* CONTRACTOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

## 16. DOMESTIC PREFERENCES FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

*Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

*Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR's actions pertaining to this Agreement.

## **18. BONDS** (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$250,000)

Unless otherwise excepted in writing by DISTRICT, CONTRACTOR shall obtain and maintain bonds as follows:

- 18.1.** A performance bond for 100 percent of the Agreement price, and
- 18.2.** A payment bond for 100 percent of the Agreement price.

## Exhibit D-1

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or CONTRACTOR receiving Federal funds, as well as any subcontractors that the agency or CONTRACTOR enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, and 31 CFR Part 19 and 2 CFR part 180, DISTRICT may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. CONTRACTOR is required to sign the certification below which specifies that neither CONTRACTOR nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that CONTRACTOR will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any CONTRACTOR that is debarred, suspended, or ineligible under 31 CFR Part 19.

#### **Instruction for Certification**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions***

1. CONTRACTOR certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with, commission of any of the offenses enumerated in paragraph (b) of this certification, and
4. Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

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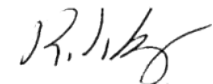
Organization Name

Registration (Contract) No.

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Name of Authorized Signatory (Typed)

Title



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Signature

Date

**Exhibit D-2**

**APPENDIX A, 31 CFR PART 21 –CERTIFICATION REGARDING LOBBYING**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

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

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

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

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

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

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

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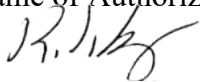
Organization Name

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Name of Authorized Signatory (Typed)

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Title



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Signature

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Date

**EXHIBIT “E”**

**PERFORMANCE AND PAYMENT BONDS**

**LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT  
PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT WE,** \_\_\_\_\_, whose address is \_\_\_\_\_ as Principal, and, \_\_\_\_\_, duly authorized under the laws of the State of California to become sole surety on bonds and undertakings, as Surety, are jointly and severally held and firmly bound unto Lake Berryessa Resort Improvement District, a special district in the State of California, as Obligee, in the full and just sum of **Two Hundred Eighty-Three Thousand Eight Hundred and Ninety-Nine Dollars (\$283,899.00)** lawful money of the United States of America, to be paid to the said Obligee, successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

**THE CONDITION** of the foregoing obligation is such that; whereas, the above bounden Principal has entered into a contract, or is about to enter into a contract with the Obligee to do and perform the following work, to-wit: **LBRID Water and Wastewater Facility SCADA Upgrades Project** as is more specifically set forth in said contract, to which contract reference is hereby made.

**NOW, THEREFORE,** if the said Principal shall well and truly do the said work, and fulfill each and every of the covenants, conditions and requirements of the said contract in accordance with the plans and specifications, then the above obligation shall be null and void, otherwise is shall remain in full force and effect.

**THE SURETY** does hereby consent to any and all alterations, modifications and revisions to the agreement secured by this bond including but not limited to, any extension of time for performance or modifications in manner of performance which may be agreed upon and between the Lake Berryessa Resort Improvement District as Obligee and the Principal, and the Surety does hereby waive notice of any alterations, modifications, revisions, or extensions.

**SEALED** with our seals and dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Principal (Contractor): \_\_\_\_\_ Surety: \_\_\_\_\_  
By: \_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_, Attorney in Fact

**Signatures for Principal and Surety must be acknowledged before Notary Public**

|  |
|--|
| <b>APPROVED AS TO FORM</b><br>Office of DISTRICT Counsel |
| By: _____  |
| Date: _____  |

**LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT  
LABOR AND MATERIAL BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT WE,** \_\_\_\_\_, whose address is \_\_\_\_\_ as Principal, and, \_\_\_\_\_, duly authorized under the laws of the State of California to become sole surety on bonds and undertakings, as Surety, are held and firmly bound unto any and all materialmen, persons, companies or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed under the contract hereinafter mentioned, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said work to be done, and all persons who performed work or labor upon the same, and whose claim has not been paid by the contractor, company or corporation, in the just and full sum of **Two Hundred Eighty-Three Thousand Eight Hundred and Ninety-Nine Dollars (\$283,899.00)** for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION** of the foregoing obligation is such that; whereas the above bounden principal has entered into a contract, or is about to enter into a contract with the Lake Berryessa Resort Improvement District, a special district in the State of California, to do and perform the following work, to-wit: **LBRID Water and Wastewater Facility SCADA Upgrades Project.**

**NOW THEREFORE,** if the above bounden Principal, contractor, person, company or corporation, or his or its subcontractor fails to pay for any materials, provisions, provender, other supplies, or terms used in, upon for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or the subcontractors of the Principal pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, then the Surety of this bond will pay the same, in an amount not exceeding the sum specified in this bond as well as a reasonable attorney's fee, which shall be fixed and awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment therein rendered.

**THE SURETY** does hereby consent to any and all alterations, modifications and revisions to the contract above referred to, and work and labor under which is secured by this bond, including but not limited to, any extension of time for performance or modifications in manner of performance which may be agreed upon by and between the Lake Berryessa Resort Improvement District and the Principal, and the Surety does hereby waive notice of any alterations, modifications, revisions, or extensions.

**THIS BOND** is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code 9550 et seq., inclusive, and all amendments thereto and shall inure to the benefit of any of the persons named in Civil Code section 9100 so as to give a right of action to those person or their assigns in any suit brought upon the bond.

**SEALED** with our seals and dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Principal (Contractor): \_\_\_\_\_ Surety: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_, Attorney in Fact

**Signatures for Principal and Surety must be acknowledged before Notary Public**

|  |
|--|
| <b>APPROVED AS TO FORM</b><br>Office of DISTRICT Counsel |
| By: _____  |
| Date: _____  |