

**AGREEMENT FOR FISH AND WILDLIFE MANAGEMENT AND PLANNING
SERVICES: TASK - C: COLE CREEK PLANNING AND DESIGN**

This Agreement is made and entered into by and between the Lake County Watershed Protection District, hereinafter referred to as “District”, and FlowWest, LLC, hereinafter referred to as “Consultant” or “FlowWest”, collectively referred to as the “parties”.

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to District the services described in the Scope of Services attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A – Scope of Services, Exhibit B – Fiscal Provisions, and Exhibit C – Compliance Provisions, the Agreement shall prevail.

2. **TERM.** This Agreement shall commence on July 31, 2026, and shall terminate on March 1, 2028, unless earlier terminated as hereinafter provided. In the event District desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.

3. **COMPENSATION.** Consultant has been selected by District to provide the services described hereunder in Exhibit “A” (Scope of Services), attached hereto. Compensation to Consultant shall not exceed \$349,647.

The District shall compensate Consultant for services rendered, in accordance with the provisions set forth in Exhibit “B” (Fiscal Provisions), attached hereto, provided that Consultant is not in default under any provisions of this agreement. Compensation to Consultant is contingent upon appropriation of federal, state and County of Lake/District funds.

4. **TERMINATION.**

Notwithstanding any other provision in this Agreement, this Agreement may be terminated by mutual consent of the parties or by County upon 30 days written notice to Contractor. In the event of non-appropriation of funds for the services provided under this Agreement, County may terminate this Agreement, without termination charge or other liability.

In addition to any other remedies available under this Agreement or applicable law, County may, at its sole discretion, take one or more of the following actions in response to Contractor’s noncompliance with or breach of this Agreement:

- a. Require Contractor to submit and implement a corrective action plan (CAP);
- b. Require additional training, supervision, or technical assistance;
- c. Suspend referrals or authorization of services;
- d. Withhold, delay, or deny payment for services;
- e. Disallow costs and recoup funds previously paid to Contractor and not used for services specifically outlined in Exhibit A of this Agreement; and/or
- f. Terminate this Agreement upon fifteen (15) days written notice to Contractor.

The exercise of any of the above remedies shall not preclude County from exercising any other rights or remedies available under this Agreement or at law.

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Upon termination, Contractor shall be paid a prorated amount for the services provided up to the date of termination. Within thirty (30) days of the effective date of termination, Contractor shall:

- a. Submit all financial documents for the effective period of this Agreement, including but not limited to, invoices, canceled checks, bookkeeping records, financial ledgers, and bank records;
- b. Return any payments received that are above and beyond said prorated amount based on the results of an audit by County of said financial documents.

5. MODIFICATION. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the compensation may be modified by mutual written consent of Consultant and District executed by the Water Resources Director.

6. NOTICES. All notices between the parties shall be in writing addressed as follows:

County of Lake
Director, Water Resources
255 N. Forbes Street, Room 309
Lakeport, CA 95453

Consultant: Flow West, LLC
Anthony Falzone, Principal PO
Box 29392
Oakland, CA 94604

7. EXHIBITS. The Agreement Exhibits, as listed below, are incorporated herein by reference:

Exhibit A – Scope of Services
Exhibit B – Fiscal Provisions
Exhibit C – Compliance Provisions

8. TERMS AND CONDITIONS. Consultant warrants that it will comply with all terms and conditions of this Agreement and Exhibits, and all other applicable federal, state and local laws, regulations and policies.

9. INTEGRATION. This Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

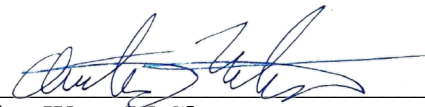
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Executed at Lakeport, California on _____.

LAKE COUNTY WATERSHED
PROTECTION DISTRICT

CONSULTANT

CHAIR, Board of Directors



[FlowWest, LLC]

ATTEST:
SUSAN PARKER
Clerk to the Board of Directors

By: _____

APPROVED AS TO FORM:
LLOYD GUINTIVANO
County Counsel

By:  _____
Nicole Johnson
Sr. Deputy County Counsel

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EXHIBIT “A” – SCOPE OF SERVICES

1. CONSULTANT RESPONSIBILITIES. The Consultant shall perform the following services within the contract term and in coordination with the District, subject to applicable permits, environmental conditions, and regulatory approvals.

Cole Creek Planning and Design

This project focuses on assessing the Cole Creek watershed and developing design drawings for an implementation project to reduce flooding and improve habitat conditions for Clear Lake hitch. This effort involves a reconnaissance level watershed assessment (Task 1), the development of engineering designs for restoration (Task 2), environmental compliance for the proposed project (Task 3), and project management support (Task 4). This effort will result in a multi-benefit, implementation-ready project to alleviate local flooding for landowner and improve habitat conditions for the hitch. The assessment phase will evaluate sediment dynamics, surface flow patterns, flooding, instream barriers, water quality, bank erosion, and riparian habitat suitability. Findings from this analysis will guide the identification and prioritization of restoration actions. Restoration designs will progress through key engineering milestones, from conceptual plans to construction-ready documents.

Task 1: Cole Creek Watershed Assessment

This task will characterize the Cole Creek Watershed in terms of sediment dynamics, surface flow/flooding, in-stream barriers, water quality, bank erosion, hitch spawning suitability, and riparian habitat to improve habitat for the hitch. This task will result in a better understanding of sediment dynamics, hydrology, water quality, and land use impacts to identify and prioritize restoration actions. We will develop conceptual designs to improve hitch passage and spawning, reduce stranding, and reduce flooding for Lower Cole Creek. The assessments in Task 1a-1c will be used to identify and prioritize restoration actions to improve hitch passage and spawning, reduce stranding, and reduce flooding. FlowWest will work collaboratively with the District, the Big Valley Band of Pomo Indians, United States Fish & Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), United States Geological Survey (USGS), landowners, and the community to develop and prioritize restoration alternatives (Task 1d). Restoration opportunities will be compiled and prioritized (Task 1e). A framework for prioritization of passage, habitat, sediment transport, flooding, and restoration actions will be developed collaboratively with tribal and community members and communicated through a summary report (Task 1f).

Task 1a: Sediment Dynamics and Hydrology Assessment

FlowWest will conduct a watershed assessment to better understand sediment deposition and scour, hydrology and flooding, bank erosion, sediment inputs, and land use changes in the Cole Creek Watershed. Cole Creek is a recently gaged tributary to Clear Lake by the USGS (Gage # 11449820). FlowWest will use the USGS gage records starting in 2022 and scale the adjacent Kelsey Creek USGS gage # 11449500 by watershed area to understand the hydrology. FlowWest will walk the channel where access is available to assess bank and bed conditions and note areas of erosion and deposition. FlowWest will obtain historical maps and imagery to better understand modification to Cole Creek and land use changes in the watershed. Using historical analysis and sediment source analysis, FlowWest will develop a better understanding of

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sediment transport and deposition in the lower reach of Cole Creek. Floodplain topography and flooding will be assessed to identify hitch standing areas.

Task 1b: Hitch Habitat Assessment

FlowWest will assess hitch passage and spawning habitat in Cole Creek. FlowWest will collaborate with the Big Valley Band of Pomo Indians and incorporate stranding data collected by the Tribe, District, CDFW, USFWS, USGS, and California State Parks. A passage and spawning assessment will be conducted to identify barriers to fish passage and habitat improvement.

Task 1c: Riparian Habitat Assessment

Riparian habitat or groundwater-dependent ecosystems (GDE) will be assessed in the Cole Creek Watershed. In the lower watershed, channel realignment and land use changes have reduced riparian vegetation along the channel in some places and allowed dense thickets of riparian vegetation to block the channel in other areas. FlowWest will use field surveys, historical maps, historical images, and vegetation databases to better understand the historical conditions and potential for riparian restoration to enhance climate resilience for water temperature and habitat and improve conveyance of flood waters.

Task 1d: Outreach

Conceptual restoration design alternatives that enhance hitch passage and spawning, reduce stranding, and reduce flooding in Lower Cole Creek will be presented at a community meeting. Plan feedback will be used to improve and refine designs and prioritize restoration actions. FlowWest anticipates participation in the conceptual design and prioritization process from the District, the Big Valley Band of Pomo Indians, USFWS, CDFW, USGS, landowners, and the community. In addition to the community meeting, FlowWest will develop a project webpage to be incorporated in the District's website.

Task 1e: Restoration Alternatives and Prioritization

FlowWest will develop conceptual restoration design alternatives that enhance hitch passage and spawning, reduce stranding, and reduce flooding in Lower Cole Creek. FlowWest will develop conceptual designs to communicate concepts with the community and regulatory agencies (Task 2d) and estimate construction quantities and costs. Restoration actions identified in Task 2a and feedback from the community (Task 2b) will be compiled, and restoration actions prioritized. FlowWest will develop a framework for prioritization of passage, spawning, stranding reduction, and flooding reduction. The prioritization framework, community feedback, and the selected preferred alternatives will be summarized in the Watershed Assessment Technical Memorandum. The report will be made available on the project website.

Task 1f: Cole Creek Watershed Assessment Technical Memorandum

FlowWest will compile observations and analysis (Task 1a – 1e) into a summary report that will serve as the basis for the development of restoration designs.

Task 1 Deliverables

- Project website
- Cole Creek Watershed Assessment Technical Memorandum

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Task 2: Restoration Design

FlowWest will develop a set of engineering drawings and documentation that will determine key design criteria such as excavation depths and widths and provide a contractor with the information required to build the Lower Cole Creek Restoration Project. The engineering design process will progress from conceptual design (Task 2a) to 60% designs (Task 2b) followed by 90% designs (Task 2c), and finally construction ready 100% designs (Task 2d). The engineering design process itself will consist of developing grading plans that meet project criteria for inundation frequencies and depths and restore hydraulic and sediment connectivity to increase hitch habitat and reduce stranding. The FlowWest integrated modeling/engineering process will determine the best way to enhance connectivity and maximize hitch habitat created. The FlowWest design engineering team will produce biddable construction documents and specifications for utilization in future phases of the project. The design engineers will develop grading plans and other design documents sufficient to support environmental compliance, cost estimating, and determination of the construction approach for each site. Simple planting designs will be created to guide and inform revegetation of each project site once earthwork is completed. These designs will include woody species to be planted from live cuttings (i.e. cottonwood and willows) and native seed mixes to be broadcast across disturbed areas for erosion control and ecosystem benefits. Planting designs will be created to maximize the quality of hitch habitat, including water temperature control and protective cover for juveniles. The planting designs will include species lists, seed mixes, and application rates.

Task 2a: Lower Cole Creek Restoration Conceptual Designs (30%)

FlowWest will complete conceptual design drawings for Lower Cole Creek. We will integrate the concepts identified in Task 1e and advance them to 30% designs that will serve to communicate concepts with the District, agencies, the Tribe, landowners, and community members. We will develop a HEC-RAS 2D model to inform channel dimensions to convey water and sediment. FlowWest will estimate construction quantities and costs and draft a basis of design report.

Task 2a Deliverables

- 30% design plan set
- 30% design engineer's cost estimate
- 30% design basis of design report

Task 2b: Lower Cole Creek Restoration 60% Designs

FlowWest will complete 60% floodplain reconnection design drawings for Lower Cole Creek. We will integrate comments from the concepts presented to the community and advance them to 60% designs that will serve to communicate concepts with the District, agencies, the Tribe, landowners, and community members. FlowWest will revise construction quantities and costs and update the basis of design report.

Task 2b Deliverables

- 60% design plan set and specifications
- 60% design engineer's cost estimate

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- 60% design basis of design report

Task 2c: Lower Cole Creek Restoration 90% Designs

FlowWest will complete 90% floodplain reconnection design drawings for Lower Cole Creek. We will integrate comments from the 60% designs and advance them to 90% designs that will serve to communicate concepts with the District, agencies, the Tribe, landowners, and community members. FlowWest will revise construction quantities and costs and revise the basis of design report.

Task 2c Deliverables

- 90% design plan set and specifications
- 90% design engineer's cost estimate
- 90% design basis of design report

Task 2d: Lower Cole Creek Restoration 100% Designs

FlowWest will complete 100% floodplain reconnection design drawings for Lower Cole Creek. We will integrate comments from the 90% designs and advance them to 100% designs that will serve as the bid package for a construction contractor.

Task 2d Deliverables

- 100% design plan set and specifications
- 100% design engineer's cost estimate
- 100% design basis of design report
- Bid package

Task 3: Environmental Compliance

FlowWest will initiate environmental compliance for the Lower Cole Creek hitch passage enhancement project. FlowWest anticipates that after consultation with CDFW, USACE, and Water Board, FlowWest will complete a biological assessment, special studies (wetlands and cultural resources), tribal consultation, and CEQA Statutory Exemption for Restoration Projects (SERP) document. FlowWest anticipates that the project will qualify for CEQA exemption for restoration projects. FlowWest will work collaboratively with the Lake County Community Development Department as the CEQA lead agency. FlowWest will initiate the biological assessment, wetland, and cultural resources studies as soon as the project footprint has been defined. CEQA outreach will start as soon as the preferred conceptual designs are selected. Permits will be submitted during the final design and implementation phase of the project.

Task 3a: Biological Assessment

FlowWest will complete a biological assessment ("BA") for potential project effects on protected aquatic or terrestrial species. It is possible that aspects of the Project may be able to be permitted by the programmatic approaches to listed species.

Task 3b: Special Studies

FlowWest will coordinate the wetland assessment, wetland delineation, and habitat maps with a sub-contractor as needed. If available, previous studies shall be used for the boundaries of habitat types and jurisdictional wetlands. If a wetland delineation is required, FlowWest will hire a

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subconsultant to compile an aquatic resources delineation report and map. FlowWest will ensure a final report and map based off a survey of historical aerial photographs, topographic maps, and database searches is completed and compare the deliverable with a field survey prepared in accordance with the Final Map and Drawing Standards for the South Pacific Division Regulatory Program. FlowWest will hire a subcontractor to conduct a records search at the Northwest Information Center to determine if the Project area has yielded previous cultural resources. The subcontractor will assess whether any significant resources in the Project area exist, and if avoidance of such resources is possible with the project design and/or if standard avoidance measures that intend to protect any undiscovered resources are adequate. The subcontractor will provide a technical report that contains a brief description of the Project Area's historical and cultural setting and assess the potential for impacts. FlowWest will identify known fossil localities (i.e., locations at which paleontological resources have been documented), and types of fossils in geologic units that may be within or adjacent to the Project Site. FlowWest will coordinate a fossil locality search of the University of California, Museum of Paleontology online database (<http://bnhm.berkeley.edu>) to identify documented fossil localities from which specimens are from geologic units that might be impacted by Project ground disturbance. The subcontractor will assess the potential to impact paleontological resources and determine if avoidance to such resources is possible with the project design and/or if standard avoidance measures to protect such resources shall be adequate for the Project.

Task 3c: Tribal Consultation

To comply with AB 52, if any sensitive cultural resources are identified throughout Task 3b, FlowWest or our subcontractor will conduct tribal consultation and will work to ensure compliance with applicable laws and regulations, including NHPA Section 106 compliance with the State Historic Preservation Officer. This task will also include the draft of a mitigation and monitoring plan for any relevant and expected construction activities. The Mitigation and Monitoring plan will be reviewed and approved by the Tribal Historic Preservation Officer - THPO offices at the Big Valley Band of Pomo Indians.

Task 3d: Permitting *CDFW Lake and Streambed Alteration Agreement/ Restoration Management Permit*

This subtask will focus on pursuing the most efficient and cost-effective permitting approach for the Cole Creek Restoration Project. FlowWest expects it will be able to utilize the California Department of Fish and Wildlife's Restoration Management Permit (RMP) program. FlowWest will evaluate whether the project qualifies for coverage under the RMP, a new permitting process designed to streamline permitting for restoration actions that provide net environmental benefits and will coordinate closely with CDFW early in the design process to confirm eligibility. FlowWest will engage Ben Ewing at CDFW early in the assessment and design process. If the project qualifies, FlowWest will prepare an RMP application package, demonstrating that proposed actions meet the program's restoration criteria. Should the project or any components fall outside of RMP eligibility, FlowWest will prepare a Lake and Streambed Alteration Agreement (LSAA) under Fish and Game Code Section 1600, leveraging prior templates and documentation from the District's existing LSAA for stream, levee, and Clear Lake maintenance activities.

Clean Water Act Section 404 (USACE)

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This project can qualify for a nationwide permit, specifically Nationwide Permit 27 – Restoration Activities. FlowWest will submit a USACE Section 404 permit application for the Project. FlowWest will prepare a permit application package with associated forms. Forms will include the necessary permit requirements, including basic notification requirements, such as: site location, project description, and type/amount of dredge/fill in potentially jurisdictional areas; appropriate plan and cross-sectional view figures that show proposed impacts to jurisdictional areas, and proposed compensatory mitigation. FlowWest will facilitate and attend a site visit to discuss the proposed Project and potential impacts on areas within USACE jurisdiction with the USACE.

Clean Water Act Section 401

FlowWest will complete the Section 401 Water Quality Certification application for project impacts to waters of the United States. We will coordinate the application with the Regional Water Quality Control Board.

Task 3c: Tribal Consultation

To comply with AB 52, if any sensitive cultural resources are identified throughout Task 3b, FlowWest will conduct tribal consultation and will work to ensure compliance with applicable laws and regulations, including NHPA Section 106 compliance with the State Historic Preservation Officer. This task will also include the draft of a mitigation and monitoring plan for any relevant and expected construction activities. The Mitigation and Monitoring plan will be reviewed and approved by the Tribal Historic Preservation Officer - THPO offices at the Big Valley Band of Pomo Indians.

Task 3d: Permitting

CDFW Lake and Streambed Alteration Agreement/ Restoration Management Permit

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If the project qualifies, FlowWest will prepare an RMP application package, demonstrating that proposed actions meet the program's restoration criteria. Should the project or any components fall outside of RMP eligibility, FlowWest will prepare a Lake and Streambed Alteration Agreement (LSAA) under Fish and Game Code Section 1600, leveraging prior templates and documentation from the District's existing LSAA for stream, levee, and Clear Lake maintenance activities.

Clean Water Act Section 404 (USACE)

This project can qualify for a nationwide permit, specifically Nationwide Permit 27 – Restoration Activities. FlowWest will submit a USACE Section 404 permit application for the Project. FlowWest will prepare a permit application package with associated forms. Forms will include the necessary permit requirements, including basic notification requirements, such as: site

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location, project description, and type/amount of dredge/fill in potentially jurisdictional areas; appropriate plan and cross-sectional view figures that show proposed impacts to jurisdictional areas, and proposed compensatory mitigation. FlowWest will facilitate and attend a site visit to discuss the proposed Project and potential impacts on areas within USACE jurisdiction with the USACE.

Clean Water Act Section 401

FlowWest will complete the Section 401 Water Quality Certification application for project impacts to waters of the United States. We will coordinate the application with the Regional Water Quality Control Board.

California Endangered Species Act

The RMP should provide any CESA coverage necessary for the project, but if not, FlowWest will prepare draft versions of the state applications for Project impacts to Endangered Species Act (ESA) species present and prepare the required permits. FlowWest will submit and revise the documents in response to comments and submit the finalized documents to the regulatory agencies.

Task 3e: CEQA

FlowWest will coordinate closely with the Lake County Community Development Department and the Regional Board to pursue the most efficient CEQA pathway available for the Cole Creek Restoration Project. Given the project's primary purpose of restoring aquatic and riparian habitat and improving fish passage, we anticipate that it will qualify for coverage under the State Water Resources Control Board's Statewide Restoration General Order (General Order) and its associated Programmatic Environmental Impact Report (PEIR). Under this approach, FlowWest will prepare the necessary Notice of Intent (NOI) and Project Submittal Package to secure enrollment under the General Order, with Lake County Community Development Department still serving as the CEQA lead agency. This process provides CEQA compliance through reliance on the certified PEIR for qualifying restoration projects, significantly reducing the need for preparation of a stand-alone environmental document. FlowWest will prepare supporting documentation demonstrating consistency with the General Order's eligibility criteria and mitigation measures, including project description, site plans, biological resources assessment, and avoidance and minimization measures. If any project components fall outside the scope of the General Order or require supplemental analysis, FlowWest will prepare an Addendum to the PEIR or a concise CEQA document in coordination with the Lake County Community Development Department, ensuring full compliance while maintaining a streamlined review process. All required public noticing, filing, and documentation, such as the Notice of Exemption (NOE) or Notice of Determination (NOD), will be prepared and filed with the County Clerk and State Clearinghouse.

Task 3 Deliverables

- Biological Assessment
- Wetlands delineation report
- 401 & 404 permit applications
- Technical Memorandum summarizing cultural and archeological compliance
- Draft Mitigation and Monitoring Plan(s) for cultural considerations

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- Restoration Management Permit (or LSAA) Application Submission
- CEQA PEIR NOD filing

Task 4: Project Management

FlowWest will provide project management assistance for the District for grant reporting. FlowWest will coordinate meetings between the District and FlowWest staff. This task includes activities such as invoicing, assistance for grant administration, reimbursement package tasks, reporting assistance activities, coordination with FlowWest staff, and meeting support.

Task 4a: Coordination and Meetings

FlowWest will generate agendas for public meetings, strategize the best approach to achieve outcomes, and build synergy for progress, timeliness, and quality. Regular coordination will be conducted by phone, zoom, and email.

Task 4b: Invoicing and Accounting

FlowWest will submit monthly invoices to the District. FlowWest will assist the District with quarterly, annual, and final reports as required. This subtask also includes staff time to set up project billing codes, file project documents, receive and pay out invoices for subcontractors, conduct purchasing, track expenditures and research, prepare, and submit reimbursement packages.

Task 4c: Grant Administration and Reporting

FlowWest will be responsible for coordinating all workflow, logistics, and ensuring timely quality deliverables of all tasks. FlowWest will generate, process, and finalize any subcontracts, and assist the District with progress reports, and distribute work products to the funder. This subtask includes tracking progress on tasks and deliverables; maintaining schedules; coordinating field work schedules; distributing reports; communications with the funder; and assisting the District with submitting progress, annual, final reports, and any relevant documents.

Task 4 Deliverables

- Monthly invoices and reimbursement packages
- Meeting agendas/minutes
- Approved and signed agreements and subcontracts
- Contributions to quarterly, annual, and final reports

2. REPORTING REQUIREMENTS. Consultant shall submit quarterly reports in a format approved by District by the 10th of the month following the report period.

3. RECORDS RETENTION. Consultant shall prepare, maintain and/or make available to District upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Consultant shall retain the records until resolution of litigation or audit. After the retention period

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has expired, Consultant assures that confidential records shall be shredded and disposed of appropriately.

4. DISTRICT RESPONSIBILITIES. The District shall perform the following services within the contract term and in coordination with the Consultant.

4.1 The District shall be responsible for overall project administration, including contract management, invoicing coordination, and accounting functions.

4.2 Coordinate with funding agencies regarding reporting compliance.

4.3 Participate in review meetings and provide consolidated comments.

4.4 Provide timely review of draft deliverables (within agreed review window).

4.5 Facilitate access to project sites when possible and coordinate with landowners as needed.

4.6 The District shall facilitate outreach for the project, when feasible.

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EXHIBIT “B” – FISCAL PROVISIONS

1. CONSULTANT’S FINANCIAL RECORDS. Consultant shall keep financial records for funds received hereunder, separate from any other funds administered by Consultant, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget’s Cost Principles.

2. INVOICES.

2.1 Consultant’s invoices shall be submitted in arrears on a monthly basis, or such other time that is mutually agreed upon in writing, and shall be itemized and formatted to the satisfaction of the District.

2.2 District shall make payment within 30 business days for an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the Consultant and approved by the Assistant Purchasing Agent. District is authorized to withhold ten percent of the amount requested in each invoice of Consultant until project completion to maintain compliance with project funding sources.

3. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS

3.1 Consultant warrants that it shall comply with all audit requirements established by District/County and will provide a copy of Consultant’s Annual Independent Audit Report, if applicable.

3.2 District may conduct periodic audits of Consultant’s financial records, notifying Consultant no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Consultant shall allow District/County, or other appropriate entities designated by District/County, access to all financial records pertinent to this Agreement.

3.3 Consultant shall reimburse District for audit exceptions within 30 days of written demand or shall make other repayment arrangements subject to the approval of District/County.

4. BUDGET. The Consultant shall submit, in advance, a detailed budget, in the format provided by District for review and approval by the District. Consultant shall be compensated only for expenses included in the approved budget. Modification to the budget must be approved in advance by the District.

5. EXPENDITURE OF FUNDS.

5.1 Funds payable through this agreement shall not be used to purchase promotional merchandise or to attend conferences unless specifically approved in the budget.

5.2 District reserves the right to refuse payment to Consultant or disallow costs for any expenditure determined to be unreasonable, out of compliance, or inappropriate to the services provided hereunder.

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EXHIBIT “C” – COMPLIANCE PROVISIONS

1. **INFORMATION INTEGRITY AND SECURITY.** Consultant shall immediately notify District of any known or suspected breach of personal, sensitive and confidential information related to Consultant’s work under this Agreement.
2. **NON-DISCRIMINATION.** Consultant shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.
3. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**
 - 3.1 The Consultant certifies to the best of its knowledge and belief, that it and its subconsultants:
 - A. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and
 - D. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for cause or default.
 - 3.2 Consultant shall report immediately to District, in writing, any incidents of alleged fraud and/or abuse by either Consultant or Consultant’s subconsultant. Consultant shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by District.
4. **AGREEMENTS IN EXCESS OF \$100,000.** Consultant shall comply with all applicable orders or requirements issued under the following laws:
 - 4.1 Clean Air Act, as amended (42 USC 1857).
 - 4.2 Clean Water Act, as amended (33 USC 1368).
 - 4.3 Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)
 - 4.4 Environmental Protection Agency Regulations (40 CFR and Executive Order 11738).

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5. INDEMNIFICATION AND HOLD HARMLESS.

Each party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees, arising directly or indirectly out of an actual or alleged injury to a person or property in the same proportion that its own acts and/or omissions are attributed to said claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party.

Consultant's obligations under this Section shall survive the termination of the Agreement.

6. STANDARD OF CARE. Consultant represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner according to generally accepted practices.

7. INTEREST OF CONSULTANT. Consultant assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

8. DUE PERFORMANCE – DEFAULT. Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within 30 days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

9. INSURANCE.

9.1 Consultant shall procure and maintain Workers' Compensation Insurance for all of its employees.

9.2 Consultant shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent consultant's liability.

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9.3 Consultant shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Consultant's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

9.4 Consultant shall procure and maintain Professional Liability Insurance for the protection against claims arising out of the performance of services under this Agreement caused by errors, omissions or other acts for which Consultant is liable. Said insurance shall be written with limits of not less than one million dollars (\$1,000,000).

9.5 Consultant shall not commence work under this Agreement until it has obtained all the insurance required hereinabove and submitted to District certificates of insurance naming the District as additional insured. Consultant agrees to provide to District, at least 30 days prior to expiration date, a new certificate of insurance.

9.6 In case of any subcontract, Consultant shall require each subconsultant to provide all of the same coverage as detailed hereinabove. Subconsultants shall provide certificates of insurance naming the District and the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Consultant shall not allow any subconsultant to commence work until the required insurances have been obtained.

9.7 For any claims related to the work performed under this Agreement, the Consultant's insurance coverage shall be primary insurance as to the District, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by District, its officers, officials, employees, agents or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

9.8 The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The District, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to Consultant's insurance on Form CG 20 10 11 85. Consultant shall not commence work under this Agreement until Consultant has had delivered to District the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

9.9 Insurance coverage required of Consultant under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Consultant for liability in excess of such coverage, nor shall it preclude District from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of District to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

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9.10 Any failure of Consultant to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

10. ATTORNEY'S FEES AND COSTS. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

11. ASSIGNMENT. Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of District except that claims for money due or to become due Consultant from District under this Agreement may be assigned by Consultant to a bank, trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to District. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

12. PAYROLL TAXES AND DEDUCTIONS. Consultant shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

13. INDEPENDENT CONSULTANT. It is specifically understood and agreed that, in the making and performance of this Agreement, Consultant is an independent consultant and is not an employee, agent or servant of District. Consultant is not entitled to any employee benefits. District agrees that Consultant shall have the right to control the manner and means of accomplishing the result contracted for herein.

Consultant is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Consultant and Consultant's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

14. OWNERSHIP OF DOCUMENTS. All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Consultant hereunder are the property of District.

15. SEVERABILITY. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

16. ADHERENCE TO APPLICABLE DISABILITY LAW. Consultant shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

17. HIPAA COMPLIANCE. Consultant will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability

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and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

18. SAFETY RESPONSIBILITIES. Consultant will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Consultant agrees that in the performance of work under this Agreement, Consultant will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

19. JURISDICTION AND VENUE. This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Consultant waives any right of removal it might have under California Code of Civil Procedure Section 394.

20. RESIDENCY. All independent consultants providing services to District for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

21. NO THIRD-PARTY BENEFICIARIES. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

22. PUBLIC RECORDS ACT. Consultant is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Consultant to clearly identify information in those documents that s/he considers to be confidential under the California Public Records Act. To the extent that the District agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.