

**AGREEMENT FOR SALVAGE SERVICE FOR THE STATE SURRENDERED AND
ABANDONED VESSEL EXCHANGE PROGRAM FOR THE LAKE COUNTY
WATERSHED PROTECTION DISTRICT**

THIS AGREEMENT is entered into this 21st day of March, 2017, by and between the Lake County Watershed Protection District, hereinafter referred to as "DISTRICT" and White and Sons Boatworks, a licensed contractor, hereinafter "CONTRACTOR".

RECITALS

WHEREAS, the DISTRICT requires vessel and marine debris salvage service to participate in the California Department of Parks, Division of Boating and Waterways, Surrendered and Abandoned Vessel Exchange Program (SAVE); and

WHEREAS, the DISTRICT has received SAVE grant funding in the amount of \$57,600 for the current funding cycle; and

WHEREAS, the DISTRICT wishes to maximize the number of vessels salvaged in Lake County; and

WHEREAS, CONTRACTOR provides salvage service and is willing to provide said service;

NOW, THEREFORE, based on the foregoing recitals, the parties hereto agree as follows:

I.

CONTRACTOR'S RESPONSIBILITIES

A. CONTRACTOR will furnish all of the material, supplies, tools, equipment, vessels, labor and other services necessary to accomplish the salvaging of vessels, marine debris, and navigational hazards on Clear Lake and within the DISTRICT boundaries. CONTRACTOR will provide the salvage service in accordance with the proposal submitted in response to the Request

for Proposals for Salvage Service for the Surrendered and Abandoned Vessel Exchange Program. Said proposal is attached here and incorporated by reference herein as Exhibit A.

B. In addition to the responsibilities of CONTRACTOR described in Section I. A. of the AGREEMENT, CONTRACTOR understands and agrees that the DISTRICT will require reports for each calendar quarter, by the third week of the last month of each quarter. Each vessel or issue (marine debris, etc.) shall be tracked separately for invoicing and reporting purposes and include photographs prior to salvaging for each vessel or issue. CONTRACTOR shall provide a written final report by the second week of July 2018, showing the number and type of vessels, marine debris and navigational hazards salvaged.

C. **Communication with District Staff.** CONTRACTOR shall maintain open lines of communication with assigned District Project Manager (DPM) in order to facilitate the process and completion of this Contract.

D. **Time for completion.** The work to be performed shall commence on the date on which the AGREEMENT is signed and shall extend until July 31, 2018, which is the completion of this Contract.

II.

DISTRICT RESPONSIBILITIES

Compensation:

For services described above, DISTRICT shall pay CONTRACTOR for each or multiple vessels salvaged and marine debris or navigational hazards salvaged in monthly increments on receipt of bill and satisfactory completion of work described above, or as determined by the County's Director of Water Resources or his designee. The not to exceed cost per vessel, marine debris or navigational hazard shall be agreed upon before salvaging of each item. The total amount of compensation shall not exceed \$57,600.

III.

TERM

This AGREEMENT shall commence on the date hereinabove entered into and shall terminate on July 31, 2018, or earlier if the funding is expended. If CONTRACTOR fulfills the requirements of Section I and future funds are obtained by DISTRICT, then the AGREEMENT may be renewed on an annual basis for two more funding cycles at an available funding level.

IV.

DUE PERFORMANCE - DEFAULT

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not 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 to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure 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.

V.

TERMINATION

This Contract may be terminated as follows:

- A. By mutual written consent of the parties; or

B. By DISTRICT upon 10 days written notice thereof to CONTRACTOR.

Upon termination prior to the full and satisfactory completion of CONTRACTOR'S performance under this Agreement, DISTRICT shall not be liable to pay CONTRACTOR the total compensation set forth in provision II of this Agreement. CONTRACTOR shall only be paid on a per item/issue basis.

VI.

INSURANCE

CONTRACTOR shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to County, and said insurance has been approved by County. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least twenty (20) days prior written notice has been given to County.

CONTRACTOR shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

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

Certificates evidencing the issuance of the following insurance shall be filed with County within ten (10) days after the date of execution of this Agreement by CONTRACTOR and prior to commencement of work hereunder.

A. **Compensation Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR'S own expense during the term hereof, Workers Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be

engaged in work. In any case of such work sublet, CONTRACTOR shall require subcontractor similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONTRACTOR'S Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

B. **Commercial General Liability.** CONTRACTOR shall procure and maintain, at CONTRACTOR'S own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent contractor's liability.

C. **Automobile Liability Insurance.** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONTRACTOR's business in an amount not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence.

D. **Subcontractors.** CONTRACTOR shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the County for each subcontractor which shall be subject to review and approval by County. All insurance coverages for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONTRACTOR described with particularity herein below.

E. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, 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 CONTRACTOR'S insurance on Form CG 20 10 11 85. CONTRACTOR shall not commence work under this Agreement until he has had delivered to County 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.

F. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the CONTRACTOR'S insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either CONTRACTOR shall reduce or eliminate such deductibles or self-insurance retentions or CONTRACTOR shall provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONTRACTOR 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 CONTRACTOR for liability in excess of such coverage, nor shall it preclude County

from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County 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.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, CONTRACTOR agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONTRACTOR may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

CONTRACTOR agrees to waive all rights of subrogation against County, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONTRACTOR under this Agreement.

VII.

INDEMNIFICATION – 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.

CONTRACTOR'S obligations under this Section shall survive the termination of the Agreement.

VIII.

CONTRACTOR'S WARRANTIES

CONTRACTOR hereby makes the following representations and warranties:

A. **Standard of Care.** CONTRACTOR 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 CONTRACTOR or designated subcontractors, in a manner according to generally accepted practices of the salvage profession.

B. **Non-Discrimination in Employment.** In the performance of the work authorized under this Agreement, CONTRACTOR shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

CONTRACTOR shall, 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, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

C. **Adherence to Applicable Disability Law.** CONTRACTOR 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.

D. **HIPAA Compliance.** CONTRACTOR will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

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

F. **Interest of Contractor.** CONTRACTOR hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the

performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this work, no person having such interest shall be employed.

IX.

ASSIGNMENT

CONTRACTOR shall not assign any interest in the Contract 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 to CONTRACTOR from DISTRICT under this Contract may be assigned by CONTRACTOR to a bank, trust company, or other financial institution with such approval. Written notice of any such transfer shall be furnished promptly to DISTRICT. Any attempt at assignment of rights under this Contract except for those specifically consented to by both parties or as stated above shall be void.

X.

INDEPENDENT CONTRACTOR

It is specifically understood and agreed that, in the making and performance of this agreement, CONTRACTOR is an independent contractor and is not an employee, agent or servant of DISTRICT. CONTRACTOR is not entitled to any employee benefits. DISTRICT agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONTRACTOR is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONTRACTOR and CONTRACTOR'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).

XI.

MODIFICATION

This Agreement may only be modified by written amendment hereto, executed by both parties; however, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONTRACTOR and DISTRICT executed by County Water Resources Director to the extent of his authority.

XII.

ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, 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.

XIII.

OWNERSHIP OF DOCUMENTS

All non-proprietary reports, drawings, renderings, information, and/or other documents or materials prepared by and/or submitted to CONTRACTOR hereunder shall become the property of DISTRICT. In the event of the termination of this Agreement for any reason whatsoever, CONTRACTOR shall promptly turn over all said reports, drawings, renderings, information, and/or other documents or materials to DISTRICT without exception or reservation.

XIV.

RECORDS - AUDIT

CONTRACTOR shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids [if applicable], all income, and expenditures. These documents and records shall be retained by CONTRACTOR for at least five (5) years from the completion of this Agreement. CONTRACTOR will permit DISTRICT to audit all books, accounts, and/or records relating to this Agreement and/or all accounts or records of any business entities controlled by

CONTRACTOR who participated in this Agreement. An audit may be conducted on CONTRACTOR'S premises, or at DISTRICT'S option, CONTRACTOR shall provide all books and records within a maximum of fifteen (15) days of CONTRACTOR'S receipt of written notice to do so from the DISTRICT. CONTRACTOR shall refund any moneys erroneously charged.

XV.

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. CONTRACTOR waives any right of removal it might have under California Code of Civil Procedure Section 394.

XVI.

RESIDENCY

All independent contractors 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.

XVII.

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.

XVIII.

SEVERABILITY

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

XIX.

NOTICES

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

COUNTY OF LAKE

Water Resources Director

255 N. Forbes Street, Room 309

Lakeport, CA 95453

CONTRACTOR

White & Sons Boatworks

1555 B Eastlake Drive

Kelseyville, CA 95451

Attention: Ryan White

XX.

ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written and all negotiations, conversations or discussions heretofore we and between the parties related to the subject matter of the Agreement.

DISTRICT and CONTRACTOR have executed this Agreement on the day and year first written above.

LAKE COUNTY WATERSHED
PROTECTION DISTRICT

WHITE AND SONS BOATWORKS

Chair, Board of Directors



Ryan White
Owner

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board

By: _____

APPROVED AS TO FORM:

ANITA L. GRANT
County Counsel

By:  _____