



NORTHCOAST REGIONAL LAND TRUST

WOOD CREEK PHASE III RESTORATION PROJECT – REVEGETATION

CONTRACT DOCUMENTS

Issue for Bid

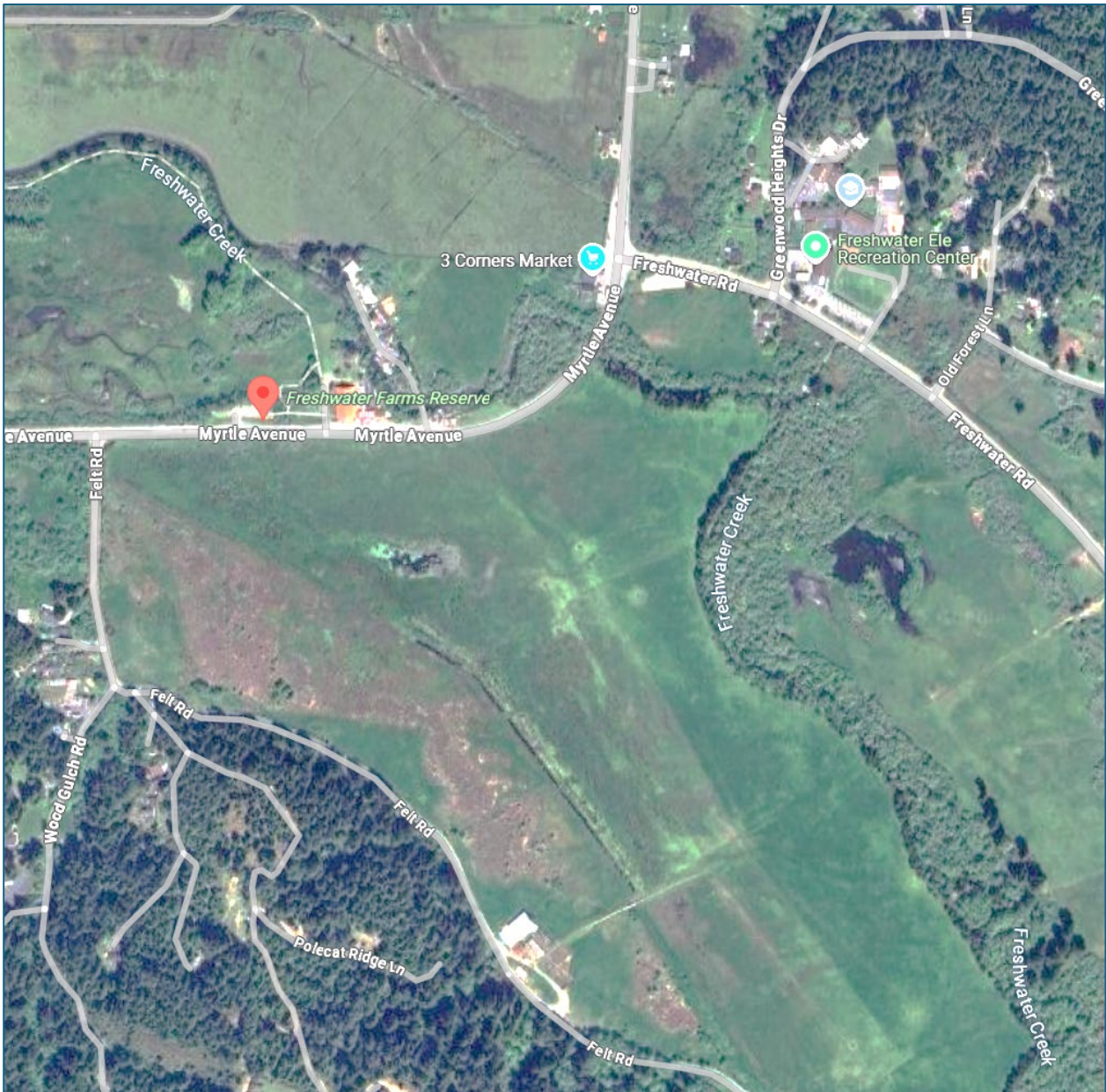
April 2025

Prepared by:
Northcoast Regional Land Trust
P.O Box 398, Bayside, CA 95524



LOCATION MAP

Wood Creek Phase III Restoration Project – Revegetation



Freshwater Farms Reserve Trailhead Parking Lot
5851 Myrtle Avenue, Eureka CA 95503

LOCATION OF MANDATORY BIDDERS' CONFERENCE/SITE WALK
May 9, 2025 at 9:00 AM

Wood Creek Phase III Restoration Project – Revegetation

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ATTACHMENTS

- Attachment A Wood Creek Phase III - Felt Ranch Off Channel Rearing Habitat
Revegetation Design**
- Attachment B Wood Creek Phase III Revegetation Design Technical Specifications**
- Attachment C Permits and Permit Conditions**
- Attachment D Invasive Plant Management Plan**

Notice Inviting Bids

1. **Bid Submission.** The Northcoast Regional Land Trust (“NRLT”), a 501(c)(3) nonprofit organization, will accept bids for its Wood Creek Phase III Restoration Project - Revegetation (“Project”), by or before May 23, 2025, at 1:00 p.m., as further specified in the Instructions to Bidders.

2. **Project Information.**

- 2.1 **Location and Description.** The Project is located at 5851 Myrtle Ave, Eureka, CA 95503. The project is on NRLT’s Freshwater Farms Reserve south of Myrtle Avenue and on the privately owned Felt Ranch north of Myrtle Avenue. The project extends onto County right of way and onto a private parcel north of Felt Road.

The project will restore approximately 12 acres of tidal and freshwater wetlands for fish and wildlife by constructing over 7,500 feet of tidal and stream channels, excavating a pond and two alcoves, building a new County culvert crossing of Wood Creek on Felt Road, plugging the old culvert and rerouting Wood Creek, building 72 planting hummocks along the new channel banks, and installing 102 large wood habitat structures. Much of the project lies in areas with soft and saturated soils that may require specialized low ground pressure equipment, and/or swamp mats, or other means to complete the work. This bid (“Bid”) is specific to the propagation of vegetation, installation of vegetation, maintenance of vegetation, and treatment of limited invasive vegetation areas (collectively termed as “revegetation” throughout this document) following earthwork to create the aforementioned elements.

The Project will be conducted over three seasons, as further specified in the Special Conditions. Year 1 revegetation actions will occur on NRLT property and extend south, under Myrtle Avenue, to the existing Felt Ditch, as indicated in the Contract Drawings. Year 1 vegetation installation will commence in November 2025, for small container planting, and in January 2026 for wetland plug and willow stake planting, both of which are outside the nesting bird season. Year 2 revegetation actions will occur south of the Felt Ditch and will follow the same schedule as Year 1. A one-year maintenance period is a component of the project, which will begin after the completion of Year 1 planting and Year 2 planting. Therefore, maintenance actions will occur into early 2028 which is one year after the Year 2 plantings (which will occur, at the latest, in January 2027). Invasive plant treatments will occur in 2026 (Year 2) and 2027 (Year 3); the first treatment will commence in April 2026 and end in November 2026, and the second treatment will commence in April 2027 and end in November 2027.

- 2.2 **Time for Final Completion.** The project will be completed in three calendar years, as further specified in the Special Conditions. The number of working days to complete each project action is shown below in Table 1. **Please note, plant propagation will need to be considered prior to plant installation dates.** The anticipated start date provided in Table 1 is provided solely for reference and is not binding.

Table 1. Prospective Revegetation Actions, Timeframes and Calendar Days

Year of Revegetation	Start Date	End Date	Working Days
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Year 1 – Small Container Planting	November 1, 2025	December 15, 2025	27
Year 1 – Wetland Plug and Willow Stake Planting	January 1, 2026	February 15, 2026	30
Year 1 – Establishment Period	December 16, 2025	February 15, 2027	287
Year 2 – Invasive Treatment	April 1, 2026	November 15, 2026	156
Year 2 – Small Container Planting	November 1, 2026	December 15, 2026	28
Year 2 – Wetland Plug and Willow Stake Planting	January 1, 2027	February 15, 2027	29
Year 2 – Establishment Period	December 16, 2026	February 15, 2028	287
Year 3 – Invasive Treatment	April 1, 2027	November 15, 2027	155

3. License and Registration Requirements.

3.1 License. This Project requires a valid California contractor's license for the following classification(s): C-27 Landscaping Contractor License.

3.2 DIR Registration. NRLT may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform work subject to prevailing wage requirements pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

4. Contract Documents. The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") may be downloaded from NRLT's website at: <https://ncrlt.org/wood-ck-ph-iii-contractdocuments-revegetation>

5. Bid Security. The Bid Proposal must be accompanied by bid security of five percent of the maximum bid amount, in the form of a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents or certified check made payable to the Northcoast Regional Land Trust. The bid security must guarantee that within ten days after NRLT issues the Notice of Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, and any other submittals required by the Contract Documents and as specified in the Notice of Award.

6. Prevailing Wage Requirements.

6.1 General. Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. If the Project receives State and Federal funding, then the Project is subject to both Federal and State prevailing wage law and the contractor must pay the higher of the two.

6.2 Rates. The prevailing rates are on file with NRLT and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

7. **Performance and Payment Bonds.** The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.
8. **Instructions to Bidders.** All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.
9. **Bidders' Conference/Site Walk.** A bidders' conference and/or site walk will be held on May 9, 2025 at 9:00 a.m., at the following location(s): 5851 Myrtle Ave, Eureka, CA (Freshwater Farms Reserve trailhead parking lot - see attached map) to acquaint all prospective bidders with the Contract Documents and the Worksite. The bidders' conference is mandatory. A bidder who fails to attend a mandatory bidders' conference may be disqualified from bidding.

END OF NOTICE INVITING BIDS

Instructions to Bidders

Each Bid Proposal submitted to the Northcoast Regional Land Trust ("NRLT") for its Wood Creek Phase III Restoration Project – Revegetation ("Project") must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

- 1.1 General.** Each Bid Proposal must be signed and submitted to NRLT, using the form provided in the Contract Documents, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum. Late submissions will not be considered. NRLT reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from NRLT. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.
- 1.2 Electronic Submission.** The Bid Proposal and all required forms and attachments must be completed and signed as specified, and saved as a PDF document for electronic submission to NRLT via email sent to info@ncrlt.org with "Bid for Wood Creek Phase III Restoration Project - Revegetation" in the subject bar.
- 1.3 DIR Registration.** Subject to limited legal exceptions for joint venture bids and federally funded projects, NRLT may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform work subject to prevailing wages pursuant to Labor Code § 1725.5. If NRLT is unable to confirm that the bidder is currently registered with the DIR, NRLT may disqualify the bidder and return its bid unopened. (Labor Code §§ 1725.5 and 1771.1(a).)

- 2. Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed as directed using the Bid Proposal form included with the Contract Documents. The Bid Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 4 below, and any other required bid enclosures, if applicable.

- 3 Bidder's Questionnaire.** A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by NRLT. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

- 4. Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporations Code § 313.

5. **Bid Security.** Each Bid Proposal must be accompanied by bid security of 5% of the total bid amount, in the form of a bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California, or a certified check payable to the Northcoast Regional Land Trust, which is subject to the same conditions set forth in the Bid Bond form. The bid security must guarantee that, within ten days after issuance of the Notice of Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; and submit the insurance certificates and endorsements and any other submittals, if any, required by the Contract Documents or the Notice of Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security. A PDF copy of the bid security must be submitted electronically with the bid, with a hard copy delivered to NRLT at P.O Box 398, Bayside, CA 95524 within 48 hours following the bid submission deadline specified in Section 1 of the Notice Inviting Bids (subject to amendment by addenda), unless extended in writing by NRLT.
6. **Requests for Information.** Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted in writing to Dan Ehresman, Executive Director, at d.ehresman@ncrlt.org. Oral responses are not authorized and are not binding on NRLT. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by NRLT in response to a written inquiry will be issued in an addendum.
7. **Pre-Bid Investigation.**
 - 7.1 **General.** Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Even if the scheduled bidder's conference or site walk is not mandatory, prospective bidders are strongly encouraged to attend. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by NRLT or the Project site without prior written authorization from NRLT.
 - 7.2 **Document Review.** Each bidder is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," e.g., as-builts, technical reports, test data, and the like. A bidder is responsible for notifying NRLT of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor (and not as an architect or engineer). Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to NRLT no later than five Working Days before the scheduled bid opening. (See Section 5, above.) NRLT expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by NRLT.
 - 7.3 **Project Site.** Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to NRLT in writing, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from NRLT. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation and description of

soil conditions indicated by a soil test report existed on the date the test hole was drilled and its applicable location. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during Project construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation. The bidder may request access to underlying or background information on the Project site in NRLT's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.

- 7.4 Utility Company Standards.** The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third-party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third-party utility owners about their requirements before submitting a Bid Proposal.
- 8. Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.
- 9. Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check NRLT's website periodically for any addenda or updates on the Project at: <https://ncrlt.org/wood-ck-ph-iii-contractdocuments-revegetation>
- 10. Brand Designations and "Or Equal" Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Award unless otherwise provided in the Contract Documents.
- 11. Bid Protest.** Any bid protest against another bidder must be submitted in writing and received by NRLT via email at info@ncrlt.org before 5:00 p.m. no later than two Working Days following bid opening ("Bid Protest Deadline") and must comply with the following requirements:
- 11.1 General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of this Section 10, a "Working Day" means a day that NRLT is open for normal business, and excludes weekends and holidays observed by NRLT.
- 11.2 Protest Contents.** The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the *specific* portion or portions of the Contract Documents upon which the protest is

based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.

- 11.3 Copy to Protested Bidder.** Upon submission of its bid protest to NRLT, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
- 11.4 Response to Protest.** The protested bidder may submit a written response to the protest, provided the response is received by NRLT before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.
- 11.5 Copy to Protesting Bidder.** Upon submission of its response to the bid protest to NRLT, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 11.6 Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including legal proceedings.
- 11.7 Right to Award.** NRLT reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.
- 12. Reservation of Rights.** NRLT reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents NRLT's expectations at the time the Notice Inviting Bids was first issued. NRLT is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when NRLT determines, in its sole discretion, the appropriate time for commencing the Work. The NRLT expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by NRLT in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.
- 13. Bonds.** Within ten calendar days following NRLT's issuance of the Notice of Award to the apparent low bidder, the bidder must submit payment and performance bonds to NRLT as specified in the Contract Documents using the bond forms included in the Contract

Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.

14. **License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work.
15. **Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work pursuant to Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.
16. **Intentionally Omitted.**
17. **Bid Schedule.** Each bidder must complete the Bid Schedule form with unit prices as indicated and submit the completed Bid Schedule with its Bid Proposal.
 - 17.1 **Incorrect Totals.** In the event a computational error for any bid item (base bid or alternate) results in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount as the product of the estimated quantity and the unit cost. In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price.
 - 17.2 **Estimated Quantities.** Unless identified as a "Final Pay Quantity," the quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.
18. **Bidder's Questionnaire.** A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by NRLT. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.
19. **For Reference Only.** The following documents are provided "For Reference Only," as defined in Section 3.4 of the General Conditions:
Master Contractor Agreement, together with its attachments, the General and Special Conditions of the Bid Package and the following attachments to the bid package:
Attachment A – (Wood Creek Phase III Felt Ranch Off Channel Rearing Habitat Revegetation Design), Attachment B – (Wood Creek Phase III Revegetation Design Technical Specifications), Attachment C – (Permits and Permit Conditions), and Attachment D - (Invasive Plant Management Plan).

END OF INSTRUCTIONS TO BIDDERS

Bid Proposal

Wood Creek Phase III Restoration Project - Revegetation

_____ (“Bidder”) hereby submits this Bid Proposal to the Northcoast Regional Land Trust (“NRLT”) for the above-referenced project (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced in the Notice.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price (“Base Bid”):

\$_____.

2. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this bid. Bidder waives any claims it might have against NRLT based on its failure to receive, access, or review any addenda for any reason. Bidder specifically acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

3. **Bidder’s Certifications and Warranties.** By signing and submitting this Bid Proposal, Bidder certifies and warrants the following:
 - 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder’s knowledge, there are no errors, omissions, or discrepancies in the Contract Documents.
 - 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.
 - 3.3 **Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the Work to be performed in accordance with the Contract Documents and within the Contract Time.
 - 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed bid. Statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder’s knowledge.
 - 3.5 **Nondiscrimination.** In preparing this bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.

4. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the Notice of Award to Bidder, Bidder will do all of the following:
- 4.1 **Execute Contract.** Enter into the Contract with NRLT in accordance with the terms of this Bid Proposal, by signing and submitting to NRLT the Contract prepared by NRLT using the form included with the Contract Documents;
- 4.2 **Submit Required Bonds.** Submit to NRLT a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and
- 4.3 **Insurance Requirements.** Submit to NRLT the insurance certificate(s) and endorsement(s) as required by the Contract Documents.
5. **Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of 5% of its bid amount in one of the following forms (check one):

- _____ A bid bond, using the Bid Bond form included with the Contract Documents, payable to NRLT and executed by a surety licensed to do business in the State of California.
- _____ A certified check payable to the Northcoast Regional Land Trust and issued by _____ [Bank name] in the amount of \$_____.

This Bid Proposal is hereby submitted on _____, 20__.

s/ _____

Name and Title

First Signer's Email Address

s/ _____
[See Section 3 of Instructions to Bidders]

Name and Title

Second Signer's Email Address

Company Name

License #, Expiration Date, and Classification

Address

DIR Registration #

City, State, Zip

Phone

Contact Name

Contact Email

END OF BID PROPOSAL

Bid Schedule

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column from both bid schedules must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance CF = Cubic Feet CY = Cubic Yard EA = Each LB = Pounds
 LF = Linear Foot LS = Lump Sum SF = Square Feet TON = Ton (2000 lbs)

BASE BID SCHEDULE A					
BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
1	Year 1 Plant Propagation	1	LS	\$	\$
2	Year 1 Small Container Planting	1	LS	\$	\$
3	Year 1 Wetland Plug and Willow Stake Planting	1	LS	\$	\$
4	Year 1 Plant Establishment Period Maintenance	1	LS	\$	\$
5	Year 2 Plant Propagation	1	LS	\$	\$
6	Year 2 Invasive Control Area Treatment	1	LS	\$	\$
7	Year 2 Small Container Planting	1	LS	\$	\$
8	Year 2 Wetland Plug and Willow Stake Planting	1	LS	\$	\$
9	Year 2 Plant Establishment Period Maintenance	1	LS	\$	\$
10	Year 3 Invasive Control Area Treatment	1	LS	\$	\$

TOTAL BASE BID SCHEUDLE A: Items 1 through 10 inclusive: \$ _____

BASE BID SCHEDULE B – Additive Items					
BID ITEM NO.	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT COST	EXTENDED TOTAL AMOUNT
A1	Maintenance Event	1	LS	\$	\$
A2	Supply and Install Additional Wetland Plugs and Willow Stakes Year 3 or 4	1	LS	\$	\$
A3	Supply and Install Additional Container Plants Year 3 or 4	1	LS	\$	\$

TOTAL BASE BID SCHEUDLE B: Items A1 through A3 inclusive:

\$ _____

SUM OF BASE BID SCHEDULE A AND BASE BID SCHEDULE B: \$ _____

Note: The low bidder shall be determined based on the sum of the totals from the two Bid Schedules. The amount entered as the "Total Base Bid" should be identical to the Sum of Base Bid Schedule A and Base Bid Schedule B amount entered in Section 1 of the Bid Proposal form.

BIDDER NAME: _____

END OF BID SCHEDULE

Bid Bond

_____ ("Bidder") has submitted a bid, dated _____, 20____ ("Bid"), to the Northcoast Regional Land Trust ("NRLT") for work on the Wood Creek Phase III Restoration Project - Revegetation ("Project"). Under this duly executed bid bond ("Bid Bond"), Bidder as Principal and _____, its surety ("Surety"), are bound to NRLT as obligee in the penal sum of five percent of the maximum amount of the Bid, including additive alternatives if applicable, as set forth on the Bid Proposal form submitted to NRLT (the "Bond Sum"). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with NRLT in accordance with the terms of the Bid.
2. **Submittals.** Within ten days following issuance of the Notice of Award to Bidder, Bidder must submit to NRLT the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by NRLT in the Project Contract Documents;
 - 2.2 **Payment Bond.** A payment bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required by the Instructions to Bidders or Notice of Award.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to NRLT. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
State/Zip: _____
Phone: _____
Fax: _____
Email: _____
4. **Duration and Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise, it will remain in full force and effect for 60 days following the bid opening or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code §§ 2819 and 2845.

[Signatures are on the following page.]

This Bid Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

BIDDER:

Business Name

s/ _____

Date

Name, Title

END OF BID BOND

Bidder's Questionnaire

Wood Creek Phase III Restoration Project - Revegetation

Within 48 hours following a request by NRLT, a bidder must submit to NRLT a completed, signed Bidder's Questionnaire using this form and all required attachments, including clearly labeled additional sheets as needed. NRLT may request the Questionnaire from one or more of the apparent low bidders following the bid opening and may use the completed Questionnaire as part of its investigation to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part A: General Information

Bidder Business Name: _____ ("Bidder")

Check One: ☐ Corporation (State of incorporation: _____)
 ☐ Partnership
 ☐ Sole Proprietorship
 ☐ Joint Venture of: _____
 ☐ Other: _____

Main Office Address and Phone: _____

Local Office Address and Phone: _____

Website address: _____

Owner of Business: _____

Contact Name and Title: _____

Contact Phone and Email: _____

Bidder's California Contractor's License Number(s): _____

Bidder's DIR Registration Number: _____

Part B: Bidder Experience

1. How many years has Bidder been in business under its present business name? _____ years
2. Has Bidder completed projects similar in type and size to this Project as a general contractor?
_____ Yes _____ No
3. Has Bidder ever been disqualified from a bid on grounds that it is not responsible, or otherwise disqualified or disbarred from bidding under state or federal law?
_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding the disqualification or disbarment, including the name and address of the agency or owner of the project, the type and size of the project, the reasons that Bidder was disqualified or disbarred, and the month and year in which the disqualification or disbarment occurred.

4. Has Bidder ever been terminated for cause, alleged default, or legal violation from a construction project, either as a general contractor or as a subcontractor?

_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Bidder was under contract as a general contractor or a subcontractor, the reasons that Bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about Bidder's past projects performed as general contractor as follows:

- 5.1 Six most recently completed projects within the last three years;
- 5.2 Three largest completed projects within the last three years; and
- 5.3 Any project which is similar to this Project including scope and character of the work.

6. Use separate sheets to provide all of the following information for each project identified in response to the above three categories:

- 6.1 Project name, location, and description;
- 6.2 Owner (name, address, email, and phone number);
- 6.3 Prime contractor, if applicable (name, address, email, and phone number);
- 6.4 Architect or engineer (name, email, and phone number);
- 6.5 Project and/or construction manager (name, email, and phone number);
- 6.6 Scope of work performed (as general or as subcontractor);
- 6.7 Initial contract price and final contract price (including change orders);
- 6.8 Original scheduled completion date and actual date of completion;
- 6.9 Time extensions granted (number of days);
- 6.10 Number and amount of stop notices or mechanic's liens filed;
- 6.11 Amount of any liquidated damages assessed against Bidder; and
- 6.12 Nature and resolution of any project-related claim, lawsuit, mediation, or arbitration involving Bidder.

Part C: Safety

1. Provide Bidder's Experience Modification Rate (EMR) for the last three years:

Year	EMR

2. Complete the following, based on information provided in Bidder's CalOSHA Form 300 or Form 300A, Annual Summary of Work-Related Illnesses and Injuries, from the most recent past calendar year:

2.1 Number of lost workday cases: _____

- 2.2 Number of medical treatment cases: _____
2.3 Number of deaths: _____

3. Has Bidder ever been cited, fined, or prosecuted by any local, state, or federal agency, including OSHA, CalOSHA, or EPA, for violation of any law, regulation, or requirements pertaining to health and safety?
_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding each such citation, fine, or prosecution, including the name and address of the agency or owner of the project, the type and size of the project, the reasons for and nature of the citation, fine, or prosecution, and the month and year in which the incident giving rise to the citation, fine, or prosecution occurred.

4. Name, title, and email for person responsible for Bidder's safety program:

_____	_____	_____
Name	Title	Email

Part D: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named Bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By: _____
Name and Title

END OF BIDDER'S QUESTIONNAIRE

Master Contractor Agreement

This Master Contractor Agreement ("Agreement") is effective as of the date last signed below ("Effective Date"), between Northcoast Regional Land Trust ("NRLT") and [] ("Contractor"). NRLT and Contractor are each referred to herein individually as a "Party" and collectively as the "Parties." In consideration for the mutual promises, covenants, warranties, and other good and valuable consideration as set forth herein, and intending to be legally bound, the Parties hereby agree as follows:

1. ENGAGEMENT OF SERVICES.

- a. Assignments. Subject to the terms of this Agreement, Contractor will, to the best of its ability, render the "Services," which are outlined and defined in a "Statement of Work," a form of which is attached hereto as Exhibit A.
- b. Performance. The manner and means by which Contractor chooses to complete the Services set forth in a Statement of Work is in Contractor's sole discretion and control. Unless otherwise agreed by NRLT, Contractor agrees to provide its own equipment, tools, and other materials at its own expense. Contractor shall perform the services necessary to complete the Services in a timely and professional manner consistent with industry standards and the timelines designated in the Statement of Work.
- c. Compliance. Contractor shall abide by all policies and procedures applicable to the performance of the Services, including but not limited to the policies related to information technology and equipment, network access and security, safety, construction, engineering, and electrical standards, and all prevailing state and federal safety regulations and, where required, prevailing wage requirements.
- d. Site Access. NRLT will provide Contractor, its agents and subcontractors access to the site and, to the extent possible, property records as necessary to perform Contractor's obligations hereunder.

2. COMPENSATION. NRLT agrees pay Contractor a fee for the Services rendered under this Agreement as detailed in the Statement of Work. Contractor shall be responsible for all expenses incurred in performing services under this Agreement and each Statement of Work, including remediation work as may be required to allow NRLT to accept work performed. All changes to work performed or cost of services must be evidenced by a signed change order or revised Statement of Work.

3. PASS THROUGH PROVISIONS.

- a. Grant Compliance and Pass Through Provisions. Contractor acknowledges and agrees that: (i) NRLT is the beneficiary of the following grants (collectively, the "Grants"): (a) Grant Agreement WC-2299KM, as amended, dated March 22, 2023, by the State of California, acting by and through the California Wildlife Conservation Board as grantor and Point Blue Conservation Science as grantee, and NRLT as subgrantee under that certain Funding Agreement, dated December 17, 2024 by and between NRLT and Point Blue Conservation Science, and (b) Grant Agreement Number Q2496102, dated January 6, 2025, by the State of California, acting by and through The California Department of Fish and Wildlife as grantor and NRLT and grantee, (ii) NRLT is required to pass through certain provisions of the Grants to all parties performing work funded by the Grants, including Contractor, (iii) NRLT's obligation to pay Contractor for the Services performed under this Agreement is expressly conditioned upon the adherence to all applicable provisions of the Grants by Contractor, (iv) the pass-through provisions of the Grants are attached as Exhibit B hereto and are deemed fully incorporated into this Agreement by reference, and (v) if additional grants become available to fund the Services, this Agreement will be amended to incorporate the pass-through provisions of such grants. Contractor agrees to be bound by

and to comply with all applicable provisions of the Grants, as specified in Exhibit B, and acknowledges that failure to adhere to such provisions may result in a suspension or termination of payment for Services rendered under this Agreement.

- b. **Bid Package Compliance and Pass Through Provisions.** The Services contemplated under this Agreement will be performed as part of the Wood Creek Phase III Restoration Project - Revegetation, in the vicinity of 5851 Myrtle Avenue, Eureka, CA 95503 ("Project"). The following documents related to the Project are deemed incorporated into and a part of this Agreement (collectively, the "Contract Documents"): (i) all documents set forth in the Wood Creek Phase III Restoration Project - Revegetation Issue for Bid, dated April 2025, including the attachments thereto (i.e., Attachment A – (Wood Creek Phase III - Felt Ranch Off Channel Rearing Habitat Revegetation Design), Attachment B – (Wood Creek Phase III Revegetation Design Technical Specifications), Attachment C – (Permits and Permit Conditions), and Attachment D - (Invasive Plant Management Plan) (collectively, the "Bid Package"), (ii) change orders, if any, (iii) Notice of Award and Notice to Proceed, both as contemplated in the Bid Package, (iv) Addenda, if any, and (v) any other documents which are clearly and unambiguously made part of the Contract Documents.

4. SERVICE STANDARDS.

a. **Professional Standards.** Contractor shall execute its responsibilities by following and applying at all times the highest professional guidelines and standards applicable to the Services provided as described in a Statement of Work. Contractor is responsible to ensure its employees, agents and any approved sub-contractors conform to the professional guidelines and standards applicable to all Services the Contractor provides under a Statement of Work.

b. **Licenses; Permits.** Contractor agrees that the Services and all work performed in connection therewith will comply with all applicable laws and regulations. Contractor represents and warrants to NRLT that Contractor (i) has all licenses, permits, qualifications and approvals of whatsoever nature that are legally required for Contractor to practice Contractor's profession, and (ii) will, at its sole cost and expense, keep in effect all such licenses, permits, qualifications and approvals at all times during the term of this Agreement.

c. **Work Commencement and Completion.** Prior to NRLT issuing any Statement of Work, NRLT and Contractor will mutually agree to performance timelines and Statement of Work commencement and completion dates. Such dates will be detailed in each Statement of Work. In the event a commencement work date or completion date must be adjusted, Contractor will notify NRLT as to such delay and provide adequate detail supporting the need for a delay as soon as practicable, but no less than 10 days prior to any commencement or completion date, whichever may apply.

d. **Construction Contractors.** If any of the Services constitute construction services, forestry services, the construction or repair of any physical structures or improvements, and/or, involve the physical manipulation of land, waterways or standing water, then the additional "Construction Terms and Conditions" set forth in Exhibit C hereto will apply to Contractor's performance of the Services. The Parties will denote whether the Construction Terms and Conditions apply on the applicable Statement of Work.

e. **Prevailing Wage.** The applicable prevailing wage rates of the State of California may apply to this Agreement and the performance of the Services. If prevailing wage requirements apply to the performance of the Services, a prevailing wage addendum, attached hereto as Exhibit D, will be executed together and in connection with the initial Statement of Work executed by Contractor.

5. SUB-CONTRACTING. Contractor shall not delegate any part of this Agreement or any Statement of Work to any other party without first obtaining written consent from NRLT. Consent shall be evidenced

by disclosure in the applicable Statement of Work, signed by Contractor and NRLT. NRLT reserves the right to withhold consent for assignment of Contractor's duties to any sub-contractor for any reason. Upon NRLT's request Contractor will provide information regarding a proposed sub-contractor's qualifications and evidence of good standing with relevant licensing entities. Contractor will be responsible for the timing and quality of the performance of sub-contractor's service and payment for services thereof. In no event will NRLT be responsible for any claim or claim for non-payment by a sub-contractor.

6. INDEPENDENT CONTRACTOR RELATIONSHIP. Contractor's relationship with NRLT will be that of an independent contractor and nothing in this Agreement will be construed to create a partnership, joint venture, or employer-employee relationship. Contractor is not an agent of NRLT and is not authorized to make any representation, contract, or commitment on behalf of NRLT without NRLT's prior written consent. Neither Contractor nor its employees will be entitled to any benefits that NRLT may make available to its employees, such as group insurance, profit sharing or retirement benefits. Contractor is solely responsible for all taxes and payments required by any federal, state or local tax authority with respect to Contractor's performance of the Services and receipt of fees under this Agreement.

7. PROPRIETARY INFORMATION; INTELLECTUAL PROPERTY RIGHTS.

a. **Proprietary Information.** During the term of this Agreement and for three years thereafter that Contractor will take all steps reasonably necessary to hold NRLT and any information pertaining to NRLT's affiliates or subsidiaries' Proprietary Information (defined below) in trust and confidence, will not use Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining NRLT's express written consent on a case-by-case basis. By way of illustration but not limitation, "Proprietary Information" includes the following information related to NRLT, its affiliates and subsidiaries; (a) trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers, and customers and prospective customers; (c) information regarding the skills and compensation of employees; and (d) personally identifying information ("PII") of employees, landowners, customers, and prospective customers. Notwithstanding other provisions of this Agreement, nothing received by Contractor will be considered to be Proprietary Information if (1) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (2) it has been rightfully received by Contractor from a third party without confidential limitations; (3) it has been independently developed for Contractor by personnel or agents having no access to the Proprietary Information, as evidenced by Contractor's written records; or (4) it was known to Contractor prior to its first receipt from NRLT as evidenced by Contractor's written records.

b. **Third Party Information.** Contractor understands that NRLT has received and will in the future receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on NRLT's part to maintain the confidentiality of such information and use it only for certain limited purposes. Contractor agrees to hold Third Party Information in confidence and not to disclose to anyone (other than NRLT representatives and relevant entities who need to know such information in connection with Contractor's work for NRLT) or to use, except in connection with Contractor's work for NRLT.

c. **Work Made for Hire.** Any work product resulting from a Statement of Work during Contractor's engagement with NRLT shall be considered a "Work Made for Hire," and shall be owned by, and for the express benefit of NRLT, or by the Grantors (defined below) if required by the terms of any Grants. In the event it should be established that such work does not qualify as a Work Made for Hire, Contractor hereby assigns to NRLT (or to the Grantors if required by the terms of any Grants) all right,

title, and interest in such work product including, but not limited to, all underlying copyrights and other discrete proprietary rights.

8. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants that (a) Contractor has full right and power to enter into and perform this Agreement without the consent of any third party; (b) Contractor will abide by any and all laws and regulations pertaining to the Services; and (c) neither Work Made for Hire nor any element thereof will infringe the intellectual property rights of any third party.

9. INDEMNIFICATION. Contractor will indemnify, defend, and hold harmless NRLT, the Grantors and their respective officers, affiliates, subsidiaries, directors, employees, and agents from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) which result from a negligence of Contractor, its affiliates, subsidiaries, representatives or sub-contractors, or breach or alleged breach of any representation or warranty of Contractor (each, a "Claim"), provided that NRLT gives Contractor written notice of any such Claim. NRLT shall have the right to participate in the defense of any such Claim at its expense. From the date of written notice from NRLT to Contractor of any such Claim, NRLT shall have the right to withhold any payments due Contractor under this Agreement the amount of any defense costs, plus additional reasonable amounts as security for Contractor's obligations under this Section.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL NRLT BE LIABLE TO CONTRACTOR OR ANY THIRD PARTY FOR ANY GENERAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR LOST OR DAMAGED PROPERTY) ARISING OUT OF OR CONNECTED IN ANY WAY WITH THIS AGREEMENT, ANY STATEMENT OF WORK OR ANY SERVICES RENDERED HEREUNDER, EVEN IF NRLT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO ANY UNDISPUTED FEES OWED TO CONTRACTOR HEREUNDER, THE TOTAL LIABILITY TO NRLT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED FIVE THOUSAND DOLLARS.

11. REMEDIES. Contractor understands and agrees that NRLT is engaging with Contractor to perform the Services in reliance upon this Agreement and applicable Statement(s) of Work, and Contractor will be responsible to NRLT for any damages or harm caused by any breach or threatened breach of this Agreement. Contractor acknowledges and agrees that a breach of this Agreement may result in irreparable harm to NRLT for which monetary damages alone would not be an adequate remedy. Therefore, NRLT may seek any adequate relief at law or equity, including injunction and specific performance in the event of any breach or threatened breach of this Agreement without the necessity of posting a bond. Any such remedy herein shall be in addition to and not in lieu of any appropriate relief at law or equity.

12. FORCE MAJEURE. If either Party is unable to perform or suffers delay in performance due to any cause beyond its reasonable control, (regardless of whether the cause was foreseeable), including without limitation, acts of God, natural catastrophes, acts or omissions of a government or its agencies or departments, pandemics, labor strikes, lockouts or other disturbances, wars, riots, cyber-attacks, terrorist attacks or difficulties in procuring labor, energy shortages, shortage of suitable parts or materials, computer malfunctions, transportation problems, the time for performance shall be extended by a period equal to the length of time it takes to overcome the effect of the event; provided that (i) a Party shall immediately notify the other Party after becoming aware of any such event, and (ii) the Party impacted by such event shall timely make all reasonable efforts to overcome the effect of the event. If there are force majeure delays exceeding sixty (60) days in the aggregate, NRLT may terminate this Agreement.

13. TERM AND TERMINATION.

- a. Term. This Agreement shall commence on the Effective Date until terminated by NRLT or Contractor earlier in accordance with this Agreement. This Agreement may be renewed upon mutual written agreement of the Parties.
- b. Termination for Convenience. NRLT may terminate this Agreement and any Statement of Work at its convenience upon ten (10) days' prior written notice to Contractor. Upon termination NRLT agrees to remit to Grantors a reimbursement request for all fees owed for Services performed as of the termination date, and NRLT will pay such fees pursuant to the "Invoicing and Payment" provision set forth in the Statement of Work.
- c. Termination for Cause. NRLT may terminate this Agreement immediately in its sole discretion upon Contractor's material breach of any section of this Agreement or failure to perform under a Statement of Work.
- d. Effect of Termination. Upon termination of the Agreement, or earlier as requested by NRLT, Contractor will deliver to NRLT any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Work Made for Hire, Third Party Information or Proprietary Information of NRLT. Contractor further agrees that any property situated held by Contractor will be returned to NRLT within 15 days of termination.

14. INSURANCE. Without limiting the remedies or indemnification duties set forth herein, Contractor shall at all times during this Agreement, at its own cost and expense, carry and maintain insurance coverage listing NRLT, the "Grantors" (i.e., collectively, the California Department of Fish and Wildlife, The National Fish and Wildlife Foundation, and Point Reyes Bird Observatory dba Point Blue Conservation Science (and their respective officers, agents and employees)), as additional insureds (excluding Workers' Compensation coverage) as follows:

- a. Commercial General Liability insurance covering claims for bodily injury, death, personal injury, property damage (including loss of use) occurring or arising out of any element of performing under this Agreement or a Statement of Work. Such coverage shall include coverage for premises-operation, products, broad form property damage, personal injury and contractual liability with limits not less than: (i) \$1,000,000 each occurrence, (ii) \$2,000,000 General Aggregate, (iii) \$1,000,000 Products and Completed Operations.
- b. Workers' Compensation insurance in compliance with state statutory limits as required by Contractor's state of operation, and Employer's Liability for no less than \$1,000,000 for each incident. Such coverage will include coverage for any employee entering into any premises in connection with this Agreement or a Statement of Work, even if such coverage is not required by statute.
- c. Comprehensive Auto Liability insurance covering the ownership, operation, and maintenance of all owned and non-owned and hired motor vehicles used in connection with this Agreement or a Statement of Work with limits not less than \$1,000,000 per occurrence for bodily injury and property damage.
- d. Excess Umbrella insurance of \$3,000,000 per occurrence, \$3,000,000 annual aggregate in excess of the coverages set forth in Sections 14(a)-(c) if the aggregate fees for the Services are expected to exceed \$2,000,000.
- e. General. Such insurance shall be primary to NRLT's insurance and must fully protect the Contractor from any and all claims and risks in connection with any activity performed by the Contractor by virtue of this Agreement. Any required endorsement shall be attached to the certificate or certified as issued on the certificate. All certificates of insurance shall be provided to NRLT prior to

commencing the Services. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by NRLT or the Grantors shall be excess only and not contributing with insurance provided under these policies. Contractor agrees to assume all liability of its subcontractors and/or any other party retained by, or on behalf of the Contractor, to perform the Services, and agrees to waive all rights of subrogation against NRLT, the Grantors and their respective officers, agents and employees. If the policies are terminated for any reason during the term of this Agreement, Contractor shall either purchase replacement policies with retroactive start dates coinciding with or preceding the termination date of the terminating policy or shall purchase an extended reporting provision of at least two years to report claims arising from Services performed during the term of the Agreement. If this Agreement is terminated or not renewed, Contractor shall maintain the policies in effect on the date of termination or non-renewal for a period of not less than two years therefrom. If that policy is terminated for any reason during the two-year period, Contractor shall purchase an extended reporting provision at least covering the balance of the two year period to report claims arising from work performed in connection with this Agreement or a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy. In the event Contractor fails to carry any particular type of insurance required by this Agreement, it shall indemnify and hold harmless NRLT, its agents, and employees from and against any damages, claims, and expenses arising out of or resulting from the Services.

15. GENERAL PROVISIONS.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws provision. The state and federal courts located in Humboldt County, California shall have exclusive jurisdiction over all suits, claims, and proceedings arising out of or in connection with this Agreement. Contractor agrees to submit to the jurisdiction of said courts and hereby waives all claims to forum non-conveniens. Notwithstanding the foregoing, if any of the Grants expressly require an alternative legal jurisdiction for the adjudication of any disputes, the jurisdiction set forth in such Grants will control.

b. Severability. If a court finds any provision of this Agreement unenforceable as written, then the court shall interpret, modify or strike all or a portion of that provision so as to effect as much of the Parties' agreement and intent as is legally possible. Regardless of the enforceability of any particular provision, other portions of this Agreement shall continue in full force and effect. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity, or subject, it shall be construed by limiting and reducing it, to be enforceable to the extent compatible with the applicable law as it shall then appear as of the Effective Date.

c. Assignment. This Agreement shall inure to the benefit of NRLT's successors and assigns. Contractor may not assign this Agreement or any Statement of Work without NRLT's consent, any such attempted assignment shall be void and of no effect.

d. Notices. All notices, requests, and other communications under this Agreement must be either: in writing mailed by registered or certified mail, postage prepaid and return receipt requested or, e-mailed to Contractor's primary contact. Notice will be considered to have been given 5 business days after the postmark, or if sent via e-mail, 3 business days after the date stamp noted on such e-mail. The addresses for notice to each Party is set forth on the signature page to this Agreement below.

e. Non-Discrimination. NRLT is an equal opportunity employer and is committed to supporting equitable access to contracts, including with its contractors and subcontractors. Contractor affirms that it is in compliance with all applicable federal, state, and local equal opportunity in employment laws. Contractor shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-

disability leave. Contractor shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a-f) et seq.), and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement. Contractor shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Contractor has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Contractor shall also include the nondiscrimination and compliance provisions of this Agreement in all subcontracts related to the Services.

f. Survival. All sections which, by their nature, are intended to survive the termination of this Agreement, will remain in effect beyond termination, including, but not limited to, Sections 3-11 and 14.

g. Waiver. NRLT's failure to enforce, or inaction in relation to any aspect of this Agreement shall not constitute a waiver by NRLT of any right under this Agreement, nor any other rights or remedies available under law or equity. NRLT shall not be required to give notice to enforce strict adherence to the terms of this Agreement.

h. Entire Agreement. This Agreement, the Contract Documents and their respective exhibits represent the final, complete, and exclusive agreement of the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous understandings or representations, written or oral. All exhibits to this Agreement are deemed incorporated into and a part of this Agreement, provided, however, the Construction Terms and Conditions will only apply if so denoted on a Statement of Work. Neither Party will be deemed the drafting party of this Agreement, and consequently, this Agreement will be construed as a whole, according to its fair meaning and intent, and not strictly for or against either Party. No modification, amendment, nor any waiver of any rights under this Agreement will be effective unless made in writing and signed by authorized representatives of the Parties. The terms of this Agreement will govern all Statements of Work and the Services undertaken by Contractor for NRLT. In the event of any conflict between this Agreement and a Statement of Work, this Agreement shall control and the Statement of Work shall be applied only with respect to the description of and performance of Services contemplated herein. In the event of any other conflict between any Contract Documents, Section 3.2 of the General Conditions (Order of Precedence) will control.

ACCEPTED AND AGREED by the following authorized representatives of the Parties.

Northcoast Regional Land Trust ***Contractor:***

By:

By:

Name:

Name:

Title:

Title:

Date:

Address for notices:

Northcoast Regional Land Trust
PO Box 398
Bayside, CA 95524

Email:

Date:

Address for notices:

Email:

EXHIBIT A

STATEMENT OF WORK NO. [1]

This Statement of Work is subject to the terms and conditions of the Master Contractor Agreement between _____ and NRLT executed on _____ and is incorporated by reference.

Description of Services ("Services"): The Services are comprised of performing the Work, as further detailed in the Bid Package (e.g., the Notice Inviting Bids, Special Conditions and as further described in the Bid Package),

Construction Terms and Conditions: Do the Construction Terms and Conditions (attached as Exhibit C) apply to the Services being performed under this Statement of Work? X YES NO

Fees: NRLT will pay Contractor fee(s) equivalent to the amount(s) set forth in an approved Bid Proposal, subject to the terms of this Exhibit A and the Contract Documents.

Invoicing and Payment Terms: NRLT will pay Contractor for completed Services through a reimbursement method in coordination with each grantor of the Grants (each, a "Grantor" and collectively, the "Grantors"). To initiate payment, Contractor will invoice NRLT in arrears for all work performed in the previous invoice period not more frequently than monthly and not less frequently than quarterly. Invoices must specify the dates covered, the time expended, and describe the services rendered by the Contractor. Invoices are to be sent to NRLT electronically to the email address set forth in the signature block in the Agreement and to bookkeeper@ncrlt.org. Within thirty (30) days of invoice receipt, NRLT will review the invoice and, upon NRLT's approval, submit it to the applicable Grantor(s) for reimbursement. Invoices will be payable upon NRLT's receipt of funding from the applicable Grantor and, subject to the last sentence of this paragraph, such payment will be made to Contractor within thirty (30) days of NRLT's receipt of such funding. Contractor should be aware that it is expected to take upwards of forty-five (45) days to receive a reimbursement check from Grantor(s) following NRLT's submittal of invoice. Payments made to Contractor will be remitted via check mailed to **[INSERT]].** Contractor hereby acknowledges that the Grantors are providing funding for the Services under this Agreement pursuant to the Grants and that NRLT does not have control over the time period in which the Grantors review and make payments on reimbursement requests timely made by NRLT. Payments to Contractor are further subject to Article 8 (Payment) in the General Conditions section of the Bid Package.

Northcoast Regional Land Trust:

Contractor:

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date:

EXHIBIT B

GRANT PASS-THROUGH PROVISIONS

The following pass-through provisions from the Grants apply to Contractor's performance of the Services. The below provisions will apply to Contractor as if Contractor was the "Grantee" or "Subcontractor" as applicable, under the respective Grants. Capitalized terms will have the same meanings as set forth in the applicable Grant.

Pass-through provisions from Grant Agreement WC-2299KM, as amended, dated March 22, 2023, by the State of California, acting by and through the California Wildlife Conservation Board as grantor and Point Blue Conservation Science as grantee, and NRLT as subgrantee under that certain Funding Agreement, dated December 17, 2024 by and between NRLT and Point Blue Conservation Science:

- A. Section 2 – Purpose of the Grant. Grantor is entering into this Agreement, and the Grant Funds shall be used, only for the purpose of making a block grant to Grantee to assist Grantee with the project generally described as using the Grant Funds for wildlife habitat restoration projects either to be undertaken by Grantee or through Sub Agreements (defined in Section 8) (Project) on approximately 40,000 acres located in various counties throughout California (Property). The Property is generally shown on the attached Exhibit A - LOCATION MAP.
- B. Section 6 – Grantee's Covenants.
 - a. Grantee is responsible for obtaining all necessary permits and approvals for the Project (including its construction, management, monitoring, operation, use and maintenance), and complying with all federal, state and local statutes, laws, regulations, ordinances, orders and other governmental and quasi-governmental requirements that apply to the Project (including its construction, management, monitoring, operation, use and maintenance).
 - b. Grantee shall recognize the cooperative nature of the Project and shall provide credit to the Grantor on signs, demonstrations, promotional materials, advertisements, publications, and exhibits prepared or approved by Grantee referencing the Project. Any sign installed on property improved with Grant Funds (Property) referencing the Project shall be subject to the mutual agreement of Grantor, Grantee, and the owners of property enhanced with Project funds (Landowners) regarding text, design, and location and shall display the logo of Grantor.
 - c. No later than thirty (30) days following the Projected Completion Date, Grantee will submit to Grantor for approval one digital copy of a final report of accomplishments, including pre- and post-Project photographs and a final design or site plan of the Project, to Grantor.
 - d. Grantee shall ensure that the Property enhanced with funds provided by Grantor is operated, used and maintained up to January 13, 2038 consistent with the Purposes of Grant and in accordance with the long-term management plan for the Project. Grantee may contract with a Landowner to manage an individual project on behalf of Grantee, but as between Grantor and Grantee, management will remain the responsibility of Grantee.
 - e. Grantee shall cause the Landowners to permit Grantor and their respective members, officers, employees, agents, and representatives to access the

Property at least once every twelve (12) months after the date of Grantor's Notice to Proceed through January 13, 2038 for purposes of inspections and/or monitoring. Such access shall be at times reasonably acceptable to the Landowner and Grantor following Grantor's written or verbal request to the Grantee.

C. Section 7 – Breach and Remedies.

- a. In the event of breach of Grantee's obligations under this Agreement, Grantor shall give notice to Grantee describing the breach. If Grantee does not cure the breach described in the Grantor's notice within 90 days after the date of Grantor's notice (or, if the breach cannot reasonably be cured within 90 days, Grantee does not commence the cure within the 90-day period and diligently pursue it to completion), then Grantee shall be in default of this Agreement.
- b. In the event of a default by Grantee before the Project is complete then, in addition to all other remedies available at law or in equity, Grantor may seek specific performance of this Agreement. Grantee agrees that specific performance is an appropriate remedy because the benefits to Grantor from Grantee's completion of the Project in accordance with this Agreement, as described in Section 2 (Purposes of Grant), are unique and damages would not adequately compensate Grantor for the loss of such benefits.
- c. In the event of a default by Grantee, in addition to all other remedies available at law or in equity, Grantor may withhold Grant Funds from Grantee or may require reimbursement of Grant Funds, including advance payments, that were disbursed in error due to a breach of the Grant terms, including incorrect billing of indirect costs as identified in Section 5.2.
- d. In the event of a default by Grantee, in addition to all other remedies available under this Agreement, at law or in equity, Grantor may require Grantee to reimburse the Grant Funds to Grantor in an amount determined by application of the following Reimbursement Formula:

"Reimbursement Formula"

Formula: Dollar amount of Grant Funds divided by Project Life, times the number of years remaining in the Project Life.

Example: Grantor grants \$50,000 to Grantee for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 15 years. With 10.5 years remaining on the Project Life, the Grantee is in default under the Agreement. The reimbursement amount would be \$35,000, calculated as follows: $(\$50,000 \div 15 \text{ years}) \times 10.5 \text{ years} = \$35,000$. Reimbursement shall be due from Grantee immediately upon written demand by Grantor. Interest shall accrue at the highest rate allowed by law from the time that the reimbursement becomes due until it is actually received by Grantor.

- e. Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Grantee.
- f. Waiver of any breach or default by Grantee shall not be deemed to be a waiver of any subsequent breach or default, nor shall it constitute a modification of this Agreement.
- g. Grantee acknowledges that Grantor may deem there to be a breach or default of this Agreement on a Sub Agreement (defined below) level, and that Grantor may exercise its remedies hereunder with respect to any breach on a Sub Agreement level without exercising such remedies as to the whole of the Agreement.

- D. Section 9.1 – Grantee Responsible for Project. While the Grantor undertakes to assist the Grantee with the Project by providing a grant pursuant to this Agreement, the Project itself remains the sole responsibility of the Grantee. Grantor undertakes no responsibilities to the Grantee, the Landowner, or any third party, other than as expressly set out in this Agreement. The responsibility for implementing the Project is solely that of the Grantee, as is the responsibility for any claim or suit of any nature by any third party related in any way to the Project.
- E. Section 9.2 – Contracts. All agreements between Grantee and any third party related to the Project must be in writing and contain language that establishes the right of the auditors of the State of California to examine the records of the third party relative to the goods, services, equipment, materials, supplies, or other assistance provided to Grantee for the Project. Grantee shall provide a complete copy of each agreement over \$10,000 to Grantor prior to commencing work.
- F. Section 9.3 – CEQA. Grantee shall require that all necessary California Environmental Quality Act (CEQA) compliance is completed prior to award of any Sub Agreement or commitment of any Grant Funds to an individual project. Grantee shall provide such CEQA documentation as a deliverable in its reporting to Grantor. In the event there is no identified CEQA lead agency, Grantee's selection of an individual project shall be contingent upon WCB completing CEQA compliance prior to execution of a Sub Agreement or, if there is no Sub Agreement, prior to commitment of any Grant Funds to the project. WCB retains sole and absolute discretion to approve or disapprove a project consistent with its obligations under CEQA when there is no other identified CEQA lead agency. No project may be funded under this Agreement until a lead agency has completed and approved an appropriate CEQA document (i.e. a Notice of Exception or a Notice of Determination filed with the Governor's Office of Planning and Research).
- G. Section 9.4 – Indemnification. To the fullest extent permitted by law, Grantee shall indemnify, protect, and hold harmless the Wildlife Conservation Board and the State of California, and their respective members, officers, agents, employees and representatives, from and against any and all claims, including lawsuits under CEQA, demands, damages, losses, costs (including attorney' fees), expenses, and liability of any nature (Claims) arising out of incident to the Project, Grantee's entry upon and use of the Property, and the performance of, or failure to observe or perform, any obligations of the Grantee under this Agreement, except Claims arising exclusively from the gross negligence or willful misconduct of Grantor. The obligations of Grantee under this Section 9.4 include, without limitation, Claims resulting from the generation, use, storage, disposal, release or threatened release of any hazardous or toxic substance, material, or waste; petroleum or petroleum products and other substances that present a threat to human health or the environment.
- H. Section 9.6 – Independent Capacity of Grantee; Withholding and Payments. Grantee, its members, officers, directors, employees, agents, and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, officer, agent, employee, or representative of Grantor. Grantee is responsible for withholding and paying employment taxes, insurance and deductions of any kind required by federal, state, or local laws.
- I. Section 9.10 – Termination or Suspension of Agreement. At any time before Grantee has broken ground on the Project, Grantor may terminate this Agreement for any reason

by providing Grantee not less than 30 days written notice of termination. In addition, Grantor may suspend this Agreement at any time upon written notice to Grantee. In either case, Grantee shall immediately stop work under this Agreement and take all reasonable measures to prevent further costs to Grantor. The Grantor shall be responsible for reasonable and non-refundable obligations or expenses incurred by the Grantee under this Agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this Agreement. Any notice suspending work under this Agreement shall remain in effect until Grantor authorizes work to resume by giving further written notice to Grantee.

- J. Section 9.11 – Resolution of Disputes. The State Project Representative is identified the above-referenced grant agreement. The State Project Representative has initial jurisdiction over each controversy arising under or in connection with the interpretation or performance of this Agreement or disbursement of Grant Funds. The Grantee will diligently pursue with the State Project Representative a mutually agreeable settlement of any such controversy. If the controversy cannot be resolved between Grantee and the State Project Representative, the Grantee must direct the grievance together with any evidence, in writing, to the Executive Director of the Wildlife Conservation Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's position and the relief sought. The Executive Director or designee shall meet with a representative of the Grantee to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee within twenty (20) working days of the conclusion of this meeting.
- K. Section 9.12 – Drug-Free Workplace Certification. By signing this Agreement, Grantee hereby certifies under penalty of perjury under the laws of the State of California that Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. 9.12.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance are prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. 9.12.2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation, and employee assistance
 - iv. programs; and,
 - v. penalties that may be imposed upon employees for drug abuse violations.
 - c. 9.12.3. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the contract.
 - d. Failure to comply with these requirements may result in suspension of disbursements under this Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future state contracts if the

Grantor determines that any of the following has occurred: (1) Grantee has made false certification, or (2) Grantee violates the certification by failing to carry out the requirements as noted above.

- L. Section 9.13 – Union Organizing. By signing this Agreement, the Grantee hereby acknowledges the applicability to this Agreement of Government Code Sections 16645 through 16649, and certifies that:
 - a. 9.13.1. No state funds disbursed by this grant will be used to assist, promote, or deter union organizing;
 - b. 9.13.2. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure;
 - c. 9.13.3. Grantee shall, where state funds are not designated as described in 8.12.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program; and
 - d. 9.13.4. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.
- M. Section 9.16 – Informational Products. All informational products (e.g. data, studies, findings, management plans, manuals, photos, etc.) relating to California's natural environment and produced with the use of public funds shall be cataloged in the California Geoportal (<https://gis.data.ca.gov>), maintained by the California Department of Technology.
- N. Section 9.17 – Non-Discrimination. During the performance of this Agreement, Grantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Grantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. Grantee shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a-f) et seq.), and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement.
- O. Section 9.18 – Executive Order N-6-22 Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts and grants with, and to refrain from entering any new contracts or grants with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should Grantor determine Grantee is a target of Economic

Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, which shall be grounds for termination of this Agreement. Grantor shall provide Grantee advance written notice of such termination, allowing Grantee at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of Grantor.

- P. Section 9.19 – Acts Beyond Grantee's Control. Grantee shall promptly notify Grantor if Grantee's performance of this Agreement or any obligations hereunder are prevented, restricted, or interfered with by reason of any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, drought, and earth movement, or any other cause that is reasonably beyond Grantee's control. After notice is provided to Grantor, the Parties will meet and confer to determine the best course of action.
- Q. Section 12.2.4 –Protection of Project. After the Work Term, monitoring, inspection, and/or maintenance activities ("Post-Implementation Activities") shall be conducted during the Post-Implementation Term. The Post-Implementation Term shall commence at the expiration of the Work Term and expire on January 13, 2038. If any part of the Project fails, and the failure is caused by Subgrantee's negligent design, workmanship, or selection of materials, Subgrantee shall reimburse Point Blue for Point Blue's soft and hard costs to cure the failure and to restore the Project, Work, and/or Property to the condition required by the Project Plan. Reimbursement shall be due from Subgrantee immediately upon written demand by Point Blue. Interest shall accrue at the highest rate allowed by law from the time that the reimbursement becomes due until Point Blue receives it.

Pass-through provisions from Grant Agreement Number Q2496102, dated January 6, 2025, by the State of California, acting by and through The California Department of Fish and Wildlife as grantor and NRLT and grantee:

- A. Section 6.03.5 – Subtask 1.1 – Data Management.
 - a. Fisheries Monitoring Subcontractor will coordinate data management activities. Grantee, its subcontractors and collaborators shall be responsible for ensuring that data collection, data acquisition, and/or data development activities will incorporate the standards expressed in CDFW's Scientific Integrity Policy (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=154775&inline>) and Scientific Data Governance Policy. Grantee shall submit a Data Management Plan. The CDFW Grant Manager will provide the Data Management Plan form upon Grant execution.
 - b. Grantee and its subcontractors and/or collaborators are responsible for ensuring that project data are collected using peer-approved methods, undergo a quality control and accuracy assessment process, include metadata that meet CDFW's minimum standards (<https://www.wildlife.ca.gov/Data/BIOS/Metadata>) and include documentation of the methods and quality assessments utilized, and are properly stored and protected until the Project has been completed and data have been delivered as required under this Grant Agreement.
 - c. All scientific data collection efforts are required to include metadata files or records indicating at a minimum:
 - i. Who collected the data;

- ii. When the data was collected;
 - iii. Where the data was collected;
 - iv. How the data was collected (description of methods and protocols);
 - v. The purposes for which the data was collected;
 - vi. Definitions of variables, fields, codes, and abbreviations used in the data, including units of measure;
 - vii. The terms of any landowner access agreement(s), if applicable;
 - viii. References to any related Department permits or regulatory actions;
 - ix. Peer review or statistical consultation documentation; and
 - x. Data licensing and disclaimer language.
- d. All data and associated metadata collected by or created under this Agreement are a required deliverable of this Agreement. All data deliverables should be budgeted for and included in the Project timeline as a part of this Agreement. A condition of final payment on this Agreement shall include the delivery of all related data assets. Geospatial data must be delivered in an industry-standard geospatial data format where applicable and documented with metadata in accordance with the CDFW Minimum Metadata Standards.
- e. Data related to observation, occurrence, or distribution of state or federal special status species or California Native Plant Society listed species shall be reported to the California Natural Diversity Database (CNDDB) using the online field survey form or other digital method.
- f. Consistent with Fish and Game Code Section 857, subdivision (a), Grantee will obtain written landowner consent for data collection requiring access to private lands. The permission letter must state that Grantor cannot limit the distribution of data collected on private land unless the law specifically exempts such data from disclosure. This provision does not apply to emergencies or to wildlife officers carrying out peace officer duties pursuant to Fish and Game Code Section 857, subdivisions (b) and (c), and other laws.
- g. For scientific data collection from an Indian Tribe or requiring access to Tribal lands, Grantee will work cooperatively with the specific tribe to develop an agreement with the tribe consistent with the tribal communication and consultation policies established by CDFW Bulletin 2014-07 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122905&inline>).
- h. Grantee will ensure that it protects from improper disclosure any personal or other confidential information that Grantee collects or maintains in the course of implementing the Project. Grantor will acquire, disclose, and use personal information only in ways that are consistent with CDFW's Privacy Policies — including CDFW's Director's Bulletin No. 2008-02 Policy for Protecting the Confidentiality of Personal Data and CDFW Departmental Bulletin No. 2010-04 Protection of Social Security and Other Personal Data — the Information Practices Act (IPA; Civil Code, § 1798 et seq.), Fish and Game Code, California State Administrative Manual Chapter 5300 Information Technology – Office of Information Security, and other applicable laws.
- i. Water quality data generated by the Project will be collected in a manner that is compatible and consistent with the California Environmental Data Exchange Network (CEDEN, https://www.sfei.org/rdc_tools) (CWC §79704). Grantee shall upload relevant data to CEDEN and provide a receipt of successful data

submission, generated by CEDEN, to the CDFW Grant Manager prior to submitting a Final Invoice.

- B. Exhibit 1b – Section 4 - Audit. Subcontractor agrees that CDFW, the Department of Finance, Department of General Services, California State Auditor's Office, or their designated representatives shall have the right to review and to copy any records and supporting documentation related to the performance of this agreement. Subcontractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. Subcontractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Subcontractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.
- C. Exhibit 1b – Section 5 – Indemnity. Grantee agrees to indemnify, defend, and save harmless the State of California ("State") and CDFW and their officers, agents, and employees from any and all claims and losses accruing or resulting to any and all subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
- D. Exhibit 1b – Section 8 – Non-Discrimination. During the performance of this agreement, Subcontractor shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subcontractor shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. Subcontractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 (a-f) et seq.) and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this agreement. Subcontractor shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Subcontractor has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this section. Subcontractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.
- E. Exhibit 1b – Section 11– Rights in Data. Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement, are subject to the rights of CDFW as set forth in this Section 11. CDFW shall have the right to reproduce, publish,

and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by Grantee, CDFW reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

EXHIBIT C

REVEGETATION TERMS AND CONDITIONS

1. License and Authorization to Perform Services. Contractor represents it is properly licensed in the State of California with a Contractor License Number of []. Contractor further represents it is authorized to perform work in the locations designated in the Statement of Work. Contractor shall not allow such license to expire or be revoked during the term of this Agreement. In the event of any revocation or expiration of a license Contractor shall immediately notify NRLT and cease all work.
2. Acceptance and Payment Conditions. Contractor's work is subject to acceptance by NRLT evidenced by a notice of completion of inspection by NRLT and return of signed as-built construction drawings. To effectuate such approval Contractor will notify NRLT that a Statement of Work has been completed and will submit all as-built drawings, and if applicable, before and after photos for all construction related activities. Such inspection shall be performed within 15 days of work completion, final payment shall not be rendered until Contractor's work has been accepted. Such acceptance may require Contractor to revise or remediate services performed, which Contractor shall complete at Contractor's own expense. In the event NRLT is unable to perform a post-construction inspection within such period, NRLT will indicate Contractor is approved to submit an invoice, but no as-built drawings will be signed until such post-inspection is possible. NRLT reserves the right to request repair or refund of costs to repair any non-complying work so long as such non-compliance is discovered within 180 days of notice of completion of a Statement of Work by Contractor.
3. Insurance. In addition to the insurance requirements set forth in the Agreement, Contractor will maintain the following coverages:
 - a. Employer's Liability in an amount of not less than \$2,000,000 each accident/ \$2,000,000 disease-policy limit/ \$1,000,000 disease each employee.
 - b. Professional Liability in an amount of not less than \$2,000,000 each claim. (Design contracts only).
 - c. All Risk Equipment Floater in the amount of not less than \$2,000,000.

Prior to commencement of any Services, the Contractor shall furnish NRLT with certificates of insurance evidencing the insurance coverage stated above including all requirements set forth in the Agreement.

4. Time for Completion. Contractor will fully complete the Services, meeting all requirements for Final Completion, as set forth in the Contract Documents.
5. Liquidated Damages. As further specifies in section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, NRLT will assess liquidated damages in the amount of \$740 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from NRLT's payments due or to become due to Contractor under this Agreement.

[Signatures are on the following page.]

Acknowledged and Agreed:

[Name of Contractor]

By: _____

Name: _____

Title: _____

Northcoast Regional Land Trust:

By: _____

Name: _____

Title: _____

EXHIBIT D

PREVAILING WAGE ADDENDUM

This exhibit is attached to the Master Contractor Agreement between _____ and Northcoast Regional Land Trust ("NRLT") dated as of _____ regarding the *Wood Creek Phase III Restoration Project - Revegetation*. If the terms of this addendum conflict with any term of the agreement to which it is attached, the terms of this addendum control.

1. Labor Code Provisions

1.1. Prevailing Wage:

- 1.1.1. The Contractor and all Subcontractors under the Contractor will pay all workers on Services performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, under sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, are determined by Director of the State of California Department of Industrial Relations. Prevailing wage rates are available from the Department of Industrial Relation on the internet at (<http://www.dir.ca.gov>).
- 1.1.2. Contractor will ensure that Contractor and all of Contractor's Subcontractors execute the Prevailing Wage and Related Labor Requirements Certification attached to this addendum and incorporated herein.
- 1.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor will post job site notices, as prescribed by regulation. Contractor will comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

1.2. Registration:

- 1.2.1. Contractor will comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPRs") to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations ("DIR"). Labor Code section 1771.1(a) states the following:

A contractor or subcontractor will not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public

Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- 1.2.2. Contractor will ensure that Contractor and all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the DIR that are set forth in Labor Code section 1725.5. Contractor represents to NRLT that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor will not permit any Subcontractor to perform Services on the Project, without first verifying the Subcontractor is properly registered with the DIR as required by law, and providing this information in writing to NRLT. Contractor acknowledges that, for purposes of Labor Code section 1725.5, these Services are a public work to which Labor Code section 1771 applies.

1.3. Hours of Work:

- 1.3.1. ***[Include this sentence only if the Services will have to be done around operating hours:*** Notwithstanding the timing and duration of the Services under the Contract which may subject to NRLT activities and other coordination required for occupied facilities, as provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor will constitute a legal day’s work. ***]***The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract on the Services or on any part of the Services contemplated by this Contract will be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as provided below. Notwithstanding the provisions above, Services performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, will be permitted on this public work on compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- 1.3.2. Contractor will keep and will cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Services or any part of the Services contemplated by this Contract. The record will be kept open at all reasonable hours to the inspection of NRLT and to the Division of Labor Standards Enforcement of the DIR.
- 1.3.3. As provided in Labor Code section 1813, Contractor will as a penalty to NRLT forfeit the statutory amount (as of November 2022, twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

- 1.3.4. Any Services necessary to be performed after regular working hours, or on Sundays or other holidays will be performed without additional expense to NRLT.

1.4. Payroll Records:

- 1.4.1. Contractor and all subcontractors must comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.4 requires Contractor and subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every 30 days, and within 30 day of project completion, the failure to timely provide the CPRs could result in penalties, as determined by Labor Code section 1771.4, applicable laws, and regulations.
- 1.4.2. In addition to submitting CPR(s) to the Labor Commissioner of California under Labor Code section 1771.4 or any other applicable law, if requested by NRLT, Contractor will provide, and will cause each Subcontractor performing any portion of the Services to provide NRLT, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Services.
- 1.4.3. All CPRs will be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
- 1.4.3.1. A certified copy of an employee's CPR will be made available for inspection or furnished to the employee or his/her authorized representative on request.
- 1.4.3.2. CPRs will be made available for inspection or furnished on request to a representative of NRLT, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.
- 1.4.3.3. The public may request to inspect of copy CPRs, but any public request must be made through NRLT, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public will not be given access to the records at the principal office of Contractor.
- 1.4.4. The form of certification for the CPRs will be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have

complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____

Signature: _____

(Section 16401 of Title 8 of the California Code of Regulations)

- 1.4.5. Each Contractor will file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.
- 1.4.6. Any copy of records made available for inspection as copies and furnished on request to the public or any public agency by NRLT, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement must be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded this Contract or performing under this Contract may not be marked or obliterated.
- 1.4.7. Contractor will inform NRLT of the location of the CPRs and payroll records, including the street address, city, and county, and will, within five (5) business days, provide a notice of change of location and address.
- 1.4.8. In the event of noncompliance with the requirements of this section, Contractor will have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. If the noncompliance continues after the ten (10) day period, Contractor will, as a penalty to NRLT forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. On the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.
- 1.4.9. It is the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

1.5. Apprentices:

- 1.5.1. Contractor acknowledges and agrees that, unless this Contract is a contract with the general contractor, or a contract with a specialty contractor not bidding for work through a general or prime contractor, when the contract of the general contractor or the specialty contractor is less than thirty thousand dollars (\$30,000), as specified in Labor Code section 1777.5(o), this Contract is governed by the provisions of Labor Code Section 1777.5. It is the responsibility of Contractor to ensure compliance with this addendum and with Labor Code section 1777.5 for all apprenticeship occupations.
- 1.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, will be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- 1.5.3. Every apprentice, as defined in section 3077 of the Labor Code, will be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and will be employed only at the work of the craft or trade to which she/he is registered.

- 1.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice must be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 1.5.5. Under Labor Code section 1777.5, if that section applies to this Contract as provided above, Contractor and any Subcontractors employing workers in any apprentice-able craft or trade in performing any Services under this Contract will apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Services.
- 1.5.6. Under Labor Code section 1777.5, if that section applies to this Contract as provided above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.
- 1.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, on a determination of noncompliance by the Administrator of Apprenticeship, it will be subject to all applicable penalties, including forfeiture as a penalty to NRLT the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions will be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 1.5.8. Contractor and all Subcontractors must comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 1.5.9. Contractor must become fully acquainted with the law regarding apprentices prior to commencement of the Services. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

Signatures Appear on Following Page

Acknowledged and Agreed:

[Name of Contractor]

By: _____

Name: _____

Title: _____

Northcoast Regional Land Trust:

By: _____

Name: _____

Title: _____

See Next Page for Prevailing Wage Certification Form

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT: Wood Creek Phase III Restoration Project - Revegetation between Northcoast Regional Land Trust (the "Trust") and _____ (the "Contractor") (the "Contract" or the "Project").

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Services on the Project including, without limitation, the requirement that Contractor and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

Date: _____
Legal Name of Contractor/Subcontractor: _____
Signature: _____
Print Name: _____
Title: _____

THIS FORM MUST BE COMPLETED BY THE CONTRACTOR AND ALL SUBCONTRACTORS

END OF CONTRACT

Payment Bond

The Northcoast Regional Land Trust ("NRLT") and _____ ("Contractor") have entered into a contract for work on the Wood Creek Phase III Restoration Project - Revegetation ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to NRLT as obligee in an amount not less than \$ _____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. NRLT waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
State/Zip: _____
Phone: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Humboldt County Superior Court, and no other place. Surety will be responsible for NRLT's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY NRLT:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Performance Bond

The Northcoast Regional Land Trust ("NRLT") and _____ ("Contractor") have entered into a contract for work on the Wood Creek Phase III Restoration Project - Revegetation ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to NRLT as obligee for an amount not less than \$_____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, NRLT will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by NRLT to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which NRLT is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from NRLT of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with NRLT's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to NRLT, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse NRLT the amount of NRLT's costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, NRLT will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Humboldt County Superior Court, and no other place. Surety will be responsible for NRLT's attorneys' fees and costs in any action to enforce the provisions of this Bond.

9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

END OF PERFORMANCE BOND

General Conditions

Article 1 - Definitions

Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means a specific amount that must be included in the Bid Proposal for a specified purpose.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by NRLT, which changes the scope of Work, the Contract Price, or the Contract Time.

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to NRLT in accordance with the requirements of the Contract Documents, and which has been rejected by NRLT, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the fully-executed Master Contractor Agreement between NRLT and Contractor for performing the Services (as defined therein) required for the Project, and all documents expressly incorporated therein.

Contract Documents means those certain documents as set forth in the “Contract Documents” definition in the Contract.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies or equipment following submission of the Bid Proposal.

Contract Time means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture that has signed the Contract with NRLT to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by NRLT to provide architectural, engineering, or electrical engineering design services for the Project.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Project Manager in his or her sole discretion, including Work that was not part of or incidental to the

scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to NRLT's satisfaction, including all punch list items and any required commissioning or training, and has provided NRLT with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by NRLT to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements, and all applicable Project Funding Conditions.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

NRLT means the Northcoast Regional Land Trust, the 501(c)(3) nonprofit organization which has entered into the Contract with Contractor for performance of the Work, acting through its authorized representatives.

Plans means NRLT-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the construction project referenced in the Contract.

Project Funding Conditions has the meaning provided in the Contract Recitals.

Project Manager means the individual designated by NRLT to oversee and manage the Project on NRLT's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to NRLT in the manner and format specified by NRLT.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to NRLT acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of NRLT, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or **Working Day**, whether or not capitalized, means a weekday when NRLT is open for business, and does not include holidays observed by NRLT.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 NRLT.

(A) **NRLT.** The NRLT has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Project Manager, Construction Manager, or Design Professional.

(B) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as NRLT's representative for daily administration of the Project on behalf of NRLT. Unless otherwise specified, all of Contractor's communications to NRLT (in any form) will go to or through the Project Manager. NRLT reserves the right to reassign the Project Manager role at any time or to delegate duties to additional NRLT representatives, without prior notice to or consent of Contractor.

(C) **Construction Manager.** The construction manager ("Construction Manager") assigned to the Project will perform services in the areas of supervision and coordination of the Work of Contractor and/or other contractors, scheduling the Work, monitoring the progress of the Work, providing NRLT with evaluations and recommendations concerning the quality of the Work, recommending the approval of progress payments to Contractor, or other services for the Project in accordance with the Construction Manager's contract with NRLT. NRLT reserves the right to reassign the Construction Manager role at any

time or to delegate duties to additional NRLT representatives, without prior notice to or consent of Contractor.

(D) **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by NRLT, may act on NRLT's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents and Laws, and in an economical and efficient manner in the best interests of NRLT, and with minimal inconvenience to the public.

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by NRLT or specified in the Contract Documents. From the date of commencement of the Work until either the date on which NRLT formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to NRLT, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to NRLT. NRLT's approval of the superintendent is required before the Work commences. If NRLT is not satisfied with the superintendent's performance, NRLT may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to NRLT, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents and Laws and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by NRLT, must attend a pre-construction conference, if requested by NRLT, as well as weekly Project progress meetings scheduled with NRLT. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by NRLT, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by NRLT, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to NRLT for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon NRLT's written request, Contractor must promptly and permanently remove from the Project, at no cost to NRLT, any employee or Subcontractor or employee of a Subcontractor who the Project Manager has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by NRLT to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Plans, Specifications and every other Contract Document, as determined by NRLT, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by NRLT, and any Extra Work performed without NRLT's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from NRLT, or within the time specified in NRLT's notice to correct, NRLT may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If NRLT elects to correct defective Work due to Contractor's failure or refusal to do so, NRLT or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on NRLT property, in order to effectuate the correction, at no extra cost to NRLT. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by NRLT's actions to correct defective Work under these circumstances. Alternatively, NRLT

may elect to retain defective Work, and deduct the difference in value, as determined by the Project Manager, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after NRLT's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, NRLT is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, Addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to NRLT for reference at all times during construction of the Project.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. NRLT reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a NRLT business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to NRLT. Nothing in these Contract Documents creates a

contractual relationship between a Subcontractor and NRLT, but NRLT is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to NRLT, subject to the prior rights of any surety, but only if and to the extent that NRLT accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

2.4 Coordination of Work.

(A) **Concurrent Work.** NRLT reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by NRLT. To the full extent permitted by law, Contractor must hold harmless and indemnify NRLT against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify NRLT if work performed by others, including work or activities performed by NRLT's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. NRLT reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to the Project Manager for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Project Manager. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Project Manager may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current NRLT-accepted schedule for the Work and within the applicable time specified in the Contract

Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by NRLT will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by NRLT is not an assumption of risk or liability by NRLT.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without NRLT's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of NRLT, including costs for the Design Professional, Construction Manager, Project Manager, or Inspector.

(G) **Excessive RFIs.** A RFI will be considered excessive or unnecessary if NRLT determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. NRLT's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Construction Manager, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by NRLT, Shop Drawings must be provided to the Construction Manager for review and acceptance at least 30 days before the Work will be performed. If NRLT requires changes, the corrected Shop Drawings must be resubmitted to the Construction Manager for review within the time specified by the Construction Manager. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by NRLT. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by NRLT does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by NRLT and its employees, agents, or consultants authorized by NRLT; and upon request by NRLT, Contractor must promptly arrange for NRLT representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions,

including safety and security requirements. Upon written notification from the Project Manager, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without NRLT's prior written consent.

Article 3 – Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in NRLT's possession that is necessary for Contractor to form its own conclusions.

(B) **Duty to Notify and Seek Direction.** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Construction Manager and wait for a response from NRLT before proceeding further with the related Work. The RFI must notify NRLT of the issue and request clarification, interpretation or direction. The Construction Manager's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining NRLT's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Construction Manager is Non-Excusable Delay. If Contractor believes that NRLT's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Article 5 and 6.)

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing

any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. In the event of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Grants (as defined in the Contract), except with respect to the invoicing and payment terms set forth in Exhibit A to the Contract (Statement of Work), which will control notwithstanding any contrary provisions in the Grants;
- (B) Prevailing Wage Addendum (Exhibit D to the Contract);
- (C) Change Orders ("Change Orders"), if any;
- (D) Addenda to the Bid Package ("Addenda", if any);
- (E) Contract;
- (F) Notice to Proceed;
- (G) Special Conditions;
- (H) General Conditions;
- (I) Payment and Performance Bonds;
- (J) Permits and Permit Conditions (Attachment C)
- (K) Invasive Plant Management Plan (Attachment D)
- (L) Wood Creek Phase III Revegetation Design Technical Specifications (Attachment B);
- (M) Wood Creek Phase III Felt Ranch Off Channel Rearing Revegetation Design (Attachment A);
- (N) Notice of Award;
- (O) Notice Inviting Bids;
- (P) Instructions to Bidders;
- (Q) Contractor's Bid Proposal and attachments; and
- (R) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

(A) **Limitations.** The "General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by NRLT, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

- (1) Any reference to the "Engineer" is deemed to mean the Construction Manager.
- (2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.
- (3) Any reference to the "Department" or "State" is deemed to mean NRLT.

- 3.4 For Reference Only.** Contractor is responsible for the careful review of any document, study, or report provided by NRLT or appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that NRLT or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.
- 3.5 Current Versions.** Unless otherwise specified by NRLT, any reference to standard specifications, technical specifications, or any NRLT or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.
- 3.6 Conformed Copies.** It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.
- 3.7 Ownership.** No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from NRLT. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and NRLT will retain all rights to such works, including the right to possession.

Article 4 - Bonds

- 4.1 Payment and Performance Bonds.** Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.
- (A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from NRLT, Contractor must substitute a surety acceptable to NRLT. If Contractor fails to substitute an acceptable surety within the specified time, NRLT may, at its sole discretion, withhold payment from Contractor until the surety is replaced to NRLT's satisfaction, or terminate the Contract for default.

(B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from NRLT pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

Article 5 - Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If NRLT determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, NRLT may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to NRLT, in order to achieve a rate of progress satisfactory to NRLT. If Contractor fails to comply with NRLT's directive in this regard, NRLT may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use NRLT's own forces to achieve the necessary rate of progress. Alternatively, NRLT may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Construction Manager, and must provide the schedules in electronic and paper form as requested by the Construction Manager. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following NRLT's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to NRLT for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by NRLT, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) *Specialized Materials Ordering.* Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(B) **NRLT's Review of Schedules.** NRLT will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. NRLT's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit NRLT's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) **Progress Schedules.** After NRLT accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by NRLT, for review and acceptance with each application for a progress payment, or when otherwise specified by NRLT, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to NRLT of any changes in the projected material or equipment delivery dates for the Project.

(1) *Float.* The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Construction Manager to best serve timely completion of the Project.

(2) *Failure to Submit Schedule.* Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which NRLT has noted exceptions that are not corrected, NRLT may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and NRLT has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance.

(D) **Recovery Schedule.** If NRLT determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current NRLT-accepted schedule unless otherwise directed by NRLT. NRLT's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect NRLT's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(F) **Posting.** Contractor must at all times prominently post a copy of the most current NRLT-accepted progress or recovery schedule in its on-site office.

(G) **Reservation of Rights.** NRLT reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by NRLT or others, or to facilitate NRLT's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, during NRLT's normal business hours, except as provided in the Special Conditions or as authorized in writing by NRLT. NRLT reserves the right to charge Contractor for additional costs incurred by NRLT due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Project Manager in writing, regardless of the nature or cause of the delay, so that NRLT has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay are those events set forth in the Force Majeure section of the Contract (Section 14 thereof). The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, NRLT-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

(2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

(3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

(D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight and diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
- (3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
- (4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;
- (5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
- (6) performance or non-performance by Contractor's Subcontractors or suppliers;
- (7) the time required to respond to excessive RFIs (see Section 2.5(G));
- (8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
- (9) time required for repair of, re-testing, or re-inspection of defective Work;
- (10) enforcement of Laws by NRLT, or outside agencies with jurisdiction over the Work; or
- (11) NRLT's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** In addition to entitlement to an extension of Contract Time, Contractor may be entitled to compensation for costs incurred due to delay caused solely by NRLT, but only if that delay is unreasonable under the circumstances involved ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either NRLT or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable

Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by NRLT. Recoverable Costs will not include home office overhead or lost profit.

(G) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to NRLT within ten calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) **Supporting Documentation.** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to NRLT.

(4) **Burden of Proof.** Contractor has the burden of proving that: the delay was an Excusable or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule

and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of NRLT's right to assess liquidated damages for Non-Excusable Delay.

(6) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on NRLT's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, NRLT will suffer damages from the delay that are difficult to determine and accurately specify. If Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, NRLT will charge Contractor in the amount specified in Exhibit C of the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable or Compensable Delay, as set forth above.

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** NRLT is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, NRLT is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute NRLT's acceptance of the Project and will not operate as a waiver of NRLT's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** NRLT's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. NRLT retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change

Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **NRLT-Directed Changes.** NRLT may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with NRLT-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and NRLT have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" unless and only to the extent such compensation is authorized in advance by NRLT in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a NRLT-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that NRLT and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by NRLT. If Contractor refuses to perform the Work in dispute, NRLT may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, NRLT may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** NRLT may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by NRLT in accordance with the original Contract Documents, even if Contractor and NRLT have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Project Manager in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Project Manager will make any adjustments to Contractor's Extra Work Report(s) based on the Project Manager's records of the Work. When an Extra Work Report(s) is agreed on and signed by both NRLT and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a

full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from NRLT, that do not affect the Contract Price or Contract Time and that are approved by the Construction Manager acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from NRLT, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

(E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a NRLT-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, NRLT may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Project Manager within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If NRLT requests that Contractor propose the terms of a Change Order, unless otherwise specified in NRLT's request, Contractor must provide the Project Manager with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving NRLT's request, in a form satisfactory to the Project Manager.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit NRLT to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use NRLT's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by NRLT.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to NRLT-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of NRLT's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by NRLT in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 16.5%:

(1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;

(2) All direct material costs provided by the Contractor, including sales tax, plus 15% markup;

(3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;

(4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and

(5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, NRLT may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that NRLT believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and Licenses.** Contractor must obtain and pay for (unless otherwise specified in the Special Conditions) all permits, fees, or licenses required to perform the Work, including a local business license, as applicable. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide NRLT with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material and equipment.

7.2 Temporary Facilities.

Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by NRLT prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to NRLT's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management.

Contractor must avoid interfering with NRLT's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by NRLT, Contractor must acquire, use and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using

or occupying any property owned by a third party, Contractor must provide NRLT with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding NRLT harmless from any related liability, in a form acceptable to the NRLT Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 Signs. No signs may be displayed on or about NRLT's property, except signage which is required by Laws or by the Contract Documents, without NRLT's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until NRLT has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by NRLT, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, NRLT's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for NRLT, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to NRLT's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; NRLT's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) NRLT wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify NRLT and establish a plan, subject to NRLT's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at NRLT's request, any objects or material from the Project site that NRLT will salvage or reuse at another location.

(4) If directed by Project Manager, Contractor must promptly repair or replace any property damage, as specified by the Project Manager. However, acting in its sole discretion, NRLT may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless NRLT approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or

demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from NRLT.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify NRLT and promptly submit a Request for Information to obtain further directions from the Construction Manager. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Construction Manager. The Construction Manager's written response will be final and binding on Contractor. If the Construction Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to NRLT's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify NRLT of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to NRLT of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to NRLT.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until NRLT has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **NRLT-Provided.** If the Work includes installation of materials or equipment to be provided by NRLT, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify NRLT of any defects discovered in NRLT-provided materials or equipment,

sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligations in the Contract apply to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by NRLT, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Project Manager for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. NRLT has sole discretion to determine whether a proposed substitution is equal, and NRLT's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by NRLT.

(F) **Contractor's Obligations.** NRLT's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by NRLT at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither NRLT's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with NRLT in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Project Manager at least two Working Days before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized NRLT holiday, Contractor must notify the Project Manager at least two Working Days in advance for approval. If approved, Contractor must reimburse NRLT for the cost of the overtime inspection or testing. Such costs, including NRLT's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** NRLT will bear the initial cost of inspection and testing to be performed by independent testing consultants retained by NRLT, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at NRLT's hourly rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.
- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by NRLT.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to NRLT's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Project Manager notifies Contractor that an airborne nuisance exists. The Project Manager may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If NRLT determines that the dust control is not adequate, NRLT may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by NRLT, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on public roads, streets, or highways. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site,

Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by NRLT.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any NRLT clean up order, NRLT may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to NRLT three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for NRLT to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to NRLT at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to NRLT for review.

(B) **Training.** Contractor or its Subcontractors must train NRLT's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate hand marked-up record plans known as the as-built drawings which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. NRLT may withhold the estimated cost for NRLT to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of NRLT. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to

the Project Manager for review and acceptance as a condition precedent to Final Completion and Final Payment.

- 7.12 Existing Utilities.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.
- 7.15 Trenching of Five Feet or More.** As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to NRLT for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.
- 7.16 New Utility Connections.** Except as otherwise specified, NRLT will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify NRLT sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.
- 7.17 Lines and Grades.** Contractor is required to use any benchmark provided by the Construction Manager. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Construction Manager of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.
- 7.18 Historic or Archeological Items.**
- (A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").
- (B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by NRLT. If required by NRLT, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such

assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At NRLT's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

- 7.19 Environmental Control.** Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into the storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

- 7.20 Noise Control.** Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

- 7.21 Mined Materials.** Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which is available online at:
<http://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf>.

Article 8 - Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. The amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that NRLT has deleted or reduced in scope, except for any labor, material or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual,

direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Contract, Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.

(B) **Payment of Undisputed Amounts.** NRLT will pay any undisputed amount as set forth in Exhibit A of the Contract. NRLT will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. NRLT may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. NRLT may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, NRLT may withhold or deduct an amount based on NRLT's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, NRLT may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, NRLT may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, NRLT may withhold or deduct an amount based on NRLT's estimated cost to correct or complete the Work.

(E) For any unreleased stop payment notice or mechanics lien, NRLT may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, NRLT may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents, NRLT may withhold or deduct an amount based on NRLT's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings that have been accepted by NRLT, when accepted Shop Drawings are required before proceeding with the Work, NRLT may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, NRLT may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, NRLT may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither NRLT's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. NRLT will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following NRLT's acceptance of the Project.

(A) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop payment notices or mechanics liens, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor following acceptance of the Project by NRLT.

8.6 Payment to Subcontractors and Suppliers. Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding invoicing period. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Payment Notice or Mechanics Lien.** NRLT will withhold 125% of the amount claimed by an unreleased stop payment notice or mechanics lien, a portion of which may be retained by NRLT for the costs incurred in handling the stop payment notice or mechanics lien, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** NRLT reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if NRLT determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by NRLT's counsel. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between NRLT and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

- 8.7 Final Payment.** Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, NRLT reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that NRLT acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to NRLT exceeds the amount of Final Payment, NRLT retains the right to recover the balance from Contractor or its sureties.
- 8.8 Release of Claims.** NRLT may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing NRLT with a written waiver and release of all claims against NRLT arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of law. Any disputed amounts may be specifically excluded from the release.
- 8.9 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to NRLT free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under the Contract.
- (B) **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to NRLT as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
- (C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- (D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.
- 9.3 Prevailing Wages.** Each worker performing Work under the Contract that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid

at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with NRLT and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

(A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to NRLT as a penalty up to \$200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) Intentionally Omitted.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct; and

(2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to NRLT, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or

damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

(A) **Reporting Requirements.** Contractor must immediately notify NRLT of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to NRLT of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to NRLT.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide NRLT with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If NRLT determines, in its sole discretion, that any part of the Work or Project site is unsafe, NRLT may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to NRLT's satisfaction. If Contractor fails to promptly take the required corrective measures, NRLT may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with NRLT's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, the Work does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to NRLT. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and NRLT.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Construction Manager if a specified product or material cannot be used safely.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from NRLT if, under the circumstances, there is inadequate time to seek prior authorization from NRLT.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection and Punch List.** When the Work required by the Contract is fully performed, Contractor must provide written notification to NRLT requesting final inspection. The Project Manager will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, NRLT will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include NRLT's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by NRLT or by a third party retained by NRLT due to Contractor's failure to timely complete any such outstanding item.

(B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by NRLT's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to NRLT's satisfaction.

(C) **Acceptance.** The Project will be considered accepted upon the date of NRLT's issuance of a written notice of acceptance. In order to avoid delay of Project close out, NRLT may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** If Contractor fails to complete all of the punch list items within the specified time, NRLT may withhold up to 150% of NRLT's estimated cost to complete each of the remaining items from Final Payment and may use

the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At NRLT's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply NRLT with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from NRLT to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to NRLT's satisfaction.

(F) **NRLT's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by NRLT, or sooner if required by the circumstances, NRLT may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse NRLT for its costs in accordance with subsection (H), below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, NRLT may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse NRLT for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse NRLT for its costs to repair under subsections (F) or (G), above, within 30 days following NRLT's submission of a demand

for payment pursuant to this provision. If NRLT is required to initiate legal action to compel Contractor's compliance with this provision, and NRLT is the prevailing party in such action, Contractor and its surety are solely responsible for all of NRLT's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs NRLT incurs to correct the defective Work.

11.3 Use Prior to Final Completion. NRLT reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if NRLT has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion.

(A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of NRLT's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **NRLT's Responsibility.** NRLT will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to NRLT acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to NRLT in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by NRLT, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by the Contractor.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and NRLT. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to NRLT in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by NRLT.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

(E) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and NRLT.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to NRLT in writing, clearly identified as a "Claim" submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of NRLT's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format and Content.** A Claim must be submitted in the following format:

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
- (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of NRLT's rejection of that demand, in whole or in part.
- (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:
 - a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
 - b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
 - c. A chronology of relevant events; and
 - d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) ***Submission Deadlines.***

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that NRLT notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.7, Final Payment.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

12.3 NRLT's Response. NRLT will respond within 60 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 60-day period is extended by mutual agreement of NRLT and Contractor. However, if NRLT determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, NRLT may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that NRLT may have against the Claim.

(A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of NRLT and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

(B) **Non-Waiver.** Any failure by NRLT to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes NRLT's written response, or NRLT fails to respond within the specified time, within 15 days of receipt of NRLT's response or within 15 days of NRLT's failure to respond within the applicable 60-day time period under Section 12.3, respectively, Contractor may notify NRLT of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify NRLT of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, NRLT will schedule the meet and confer conference to be held within 60 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near NRLT's principal office.

(C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, NRLT will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after NRLT issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation.

(A) **Mediation.** Within ten working days after NRLT issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, NRLT and Contractor will mutually agree to a mediator. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

12.6 Reserved.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to the Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-

availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The NRLT will not be directly liable to any Subcontractor or supplier.

- 12.9 Legal Proceedings.** In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of NRLT's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and NRLT reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.
- 12.10 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to the Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by NRLT. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to NRLT, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, NRLT may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to NRLT's satisfaction.

(A) **Notice of Suspension.** Upon receipt of NRLT's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of NRLT's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** NRLT's right to suspend the Work will not give rise to a duty to suspend the Work, and NRLT's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** NRLT reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be

appropriate for NRLT's convenience. Upon notice by NRLT pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by NRLT except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. NRLT may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon NRLT's declaration that Contractor is in default due to a material breach of the Contract Documents, if NRLT determines that the default is curable, NRLT will afford Contractor the opportunity to cure the default within ten days of NRLT's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, NRLT may issue written notice to Contractor and its performance bond surety of NRLT's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), NRLT may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that NRLT determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by NRLT to complete the Work following termination, where "additional cost" means all cost in excess of the cost NRLT would have incurred if Contractor had timely completed Work without the default and termination. In addition, NRLT will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on NRLT property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to NRLT of all equipment and materials for the Project for which Contractor has already been compensated, NRLT will submit invoices to the applicable Grantor(s) for reimbursement. Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to NRLT's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by NRLT, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from NRLT of the total compensation to be paid by NRLT.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. NRLT reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) **Compensation to Contractor.** In the event of NRLT's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

(1) **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) **Termination Markup.** Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) **Disputes.** If Contractor disputes the amount of compensation determined by NRLT pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from NRLT of total compensation to be paid by NRLT.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, NRLT may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to NRLT.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to NRLT all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with NRLT's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with NRLT's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to NRLT or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to NRLT's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to NRLT.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Contractor and its Subcontractors agree to assign to NRLT all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time NRLT tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required by Laws to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended to comply with applicable Laws.
- 14.3 Waiver.** NRLT's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by NRLT. NRLT's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by NRLT.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.
- 14.6 Survival.** The provisions of these General Conditions that survive termination or expiration of the Contract include: Section 2.2(J) (Contractor's Records), Section 2.3(C) (Termination), Section 3.2 (Order of Precedence), Section 3.7 (Ownership), Section 11.2, Warranty, and Article 12 (Dispute Resolution).

END OF GENERAL CONDITIONS

Special Conditions

1. Project Funding Requirements. The following provisions apply to work on the Wood Creek Phase III: Felt Ranch Off-Channel Rearing Habitat, pursuant to Exhibit 1b to the California Department of Fish and Wildlife ("CDFW") Cannabis Restoration Grant Program, Grant Agreement Number Q2496102. See Master Contractor Agreement, Exhibit B "Grant Pass Through Provisions" for the complete list of provisions.

- 1.1 State Agency Audit Rights.** Contractor agrees that CDFW, the California Department of Finance, the California Department of General Services, and the California State Auditor's Office, or their designated representatives shall have the right to review and to copy any records and supporting documentation related to the performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of three years after Final Payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Contractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.
- 1.2 Non-Discrimination.** During the performance of this Contract, Contractor shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family care leave, medical-care leave, or pregnancy-disability leave. Contractor shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 (a-f) et seq.) and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this agreement. Contractor shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Contractor has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this section. Contractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this Contract.

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2. **Permits and Approvals.** Pursuant to Section 3.2 of the General Conditions, the terms of this provision take precedence over any conflicting or inconsistent provisions in the General Conditions, Plans, or Specifications. Contractor and its subcontractors are responsible for complying with all permits and similar regulatory agency approvals governing the Work on the Project or any portions thereof, including permits already acquired by NRLT, permits to be acquired by NRLT, or permits that must be obtained by the Contractor, as follows:

1 NRLT Permits.

(A) Contractor must comply with the applicable provisions of the following permits or approvals which have been secured by NRLT and are provided in Attachment C:

- 1) U.S. Army Corps of Engineers Clean Water Act Section 404 Individual Permit, approved 2/5/2024
- 2) North Coast Regional Water Quality Control Board Clean Water Act Section 401 Water Quality Certification, approved 8/23/2023
- 3) California Department of Fish and Wildlife Streambed Alteration Agreement and Restoration Management Permit, approved 11/30/2023
- 4) National Oceanic and Atmospheric Administration Fisheries Restoration Center's Programmatic Biological Opinion
- 5) U.S. Fish and Wildlife Service's Programmatic Biological Opinion, approved 7/28/2023
- 6) California Coastal Commission Consistency Determination
- 7) Humboldt County Conditional Use Permit, approved 1/26/2024
- 8) Humboldt County Encroachment Permit (for bid purposes only – contractor to secure)

(B) Contractor will also be required to comply with the applicable provisions of any required permits and approvals, which have not yet been issued, including those listed below. This subsection 2.1 will be amended by addendum or Change Order, as applicable, after the required permits or approvals are issued. If and only to the extent that any permit or approval issued following award of the Contract imposes new requirements that will impact the time or cost to perform the Work, Contractor may submit a Change Order request pursuant to Articles 5 and/or 6 of the General Conditions. If NRLT is unable to timely secure any of the following required permits and approvals, NRLT may elect to suspend or terminate the Contract for convenience, as specified in Article 13 of the General Conditions.

- 1) *Humboldt County Grading Permit*

2 Contractor Permits. Contractor is required to obtain the following permit(s) at Contractor's sole expense before commencing work on the Project:

- 1) *Humboldt County Encroachment Permit (fee waived)*

3. Authorized Work Days and Hours.

Except as expressly authorized in writing by NRLT, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by NRLT:

Monday – Friday, 8 am to 5 pm

If Contractor wishes to work extended hours or on a weekend or holiday, the Contractor must submit the request in writing to the Construction Manager a minimum of two Working Days prior. Approval of request is at the sole discretion of the Construction Manager. If approved, Contractor must reimburse NRLT for the cost of the overtime construction observation, inspection, or testing. Such costs, including NRLT's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

4. Pre-Construction Conference. NRLT will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between NRLT and Contractor will be discussed, and Contractor must present NRLT with the following information or documents at the meeting for NRLT's review and acceptance before the Work commences:

- 1 Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
- 2 List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
- 3 Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
- 4 Draft baseline schedule for the Work as required under Section 5.2, to be finalized within ten days after NRLT issues the <Pre-Construction Phase> Notice to Proceed;
- 5 Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
- 6 Schedule with list of Project submittals that require NRLT review, and list of the proposed material suppliers;
- 7 Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
- 8 Any other documents specified in the Special Conditions or Notice of Award.

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5. **Construction Manager Role and Authority.** Michael Love & Associates, Inc. (MLA) will provide the Construction Manager for this Project. The Construction Manager will assist NRLT in the management of the construction of the Project. The Construction Manager may perform services in the areas of supervision and coordination of the work of Contractor and/or other contractors, scheduling the Work, monitoring the progress of the Work, providing NRLT with evaluations and recommendations concerning the quality of the Work, recommending the approval of progress payments to Contractor, or other services for the Project in accordance with the Construction Manager's contract with NRLT.

- 1 **Communications.** Contractor must submit all notices and communications relating to the Work directly to the Construction Manager in writing, as follows:

*GHD, Inc.
Attn: Kerry McNamee
PO Box 1010, Eureka CA 95503
Kerry.mcnamee@ghd.com
707-267-2207*

With a copy to NRLT:

Dan Ehresman
PO Box 398, Bayside CA 95524
d.ehresman@ncrlt.org
707-822-2242

- 2 **On-Site Management and Communication Procedures.** The Construction Manager will provide and maintain a management team on the Project site to provide contract administration as an agent of NRLT, and will establish and implement coordination and communication procedures among NRLT, the Design Professional, Contractor, and others.
- 3 **Contract Administration Procedures.** The Construction Manager will establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents, Shop Drawings, samples, other submittals, schedule adjustments, Change Order proposals, written proposals for substitutions, payment applications, and maintenance of logs.
- 4 **Pre-Construction Conference.** Contractor will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.
- 5 **Contractor's Construction Schedule.** The Construction Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

END OF SPECIAL CONDITIONS