

## **Agreement for Environmental Site Assessment and Field Investigation for Santa Rosa Aqueduct at Santa Rosa Creek Crossing Project**

This agreement ("Agreement") is by and between **Sonoma County Water Agency**, a body corporate and politic of the State of California ("Sonoma Water") and **PES Environmental, Inc.**, a California corporation ("Consultant"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

### **RECITALS**

- A. Consultant represents that it is a duly qualified and licensed engineering and environmental firm, experienced in conducting Phase I environmental site assessments, field investigations, and related services.
- B. In the event of an earthquake, the Santa Rosa Aqueduct is vulnerable to failure where it currently crosses Santa Rosa Creek in downtown Santa Rosa near the intersection of Second Street and E Street.
- C. Sonoma Water has been awarded federal grant funds to design and construct a seismic hazard mitigation project for the Santa Rosa Aqueduct at Santa Rosa Creek Crossing (Project).
- D. Under this Agreement, Consultant will assess and evaluate the potential for environmental impact to soil and groundwater for the Project.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### **AGREEMENT**

#### **1. RECITALS**

- 1.1. The above recitals are true and correct.

#### **2. LIST OF EXHIBITS**

- 2.1. The following exhibits are attached hereto and incorporated herein:
  - a. Exhibit A: Scope of Work
  - b. Exhibit B: Schedule of Costs
  - c. Exhibit C: Estimated Budget for Scope of Work
  - d. Exhibit D: Federal Requirements
  - e. Exhibit E: Insurance Requirements

### 3. **SCOPE OF SERVICES**

- 3.1. *Consultant's Specified Services:* Consultant shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.
- 3.2. *Cooperation with Sonoma Water:* Consultant shall cooperate with Sonoma Water in the performance of all work hereunder. Consultant shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

<b>Sonoma Water</b>	<b>Consultant</b>
Project Manager: Steve Koldis Phone: 707-547-1914 Email: steve.koldis@scwa.ca.gov  Grant Manager: Joan Hultberg Phone: 707-547-1902 Email: joan.hultberg@scwa.ca.gov  404 Aviation Boulevard Santa Rosa, CA 95403-9019	Contact: Nicholas Pogoncheff 1682 Novato Boulevard, Suite 100 Novato, CA 94947 Phone: 415-899-1600 Email: npogoncheff@pesenv.com
<b>Remit invoices to:</b>	<b>Remit payments to:</b>
Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Same address as above.

- 3.3. *Performance Standard and Standard of Care:* Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Sonoma Water shall not operate as a waiver or release. Sonoma Water has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. If Sonoma Water determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Sonoma Water, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Sonoma Water to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.

3.4. *Assigned Personnel:*

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time Sonoma Water, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from Sonoma Water.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Sonoma Water to be key personnel whose services were a material inducement to Sonoma Water to enter into this Agreement, and without whose services Sonoma Water would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Sonoma Water.
- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

4. **PAYMENT**

- 4.1. *Total Costs:* Total costs under this Agreement shall not exceed \$80,000.
  - a. Total costs for Tasks 1-3 shall not exceed \$70,000.
  - b. Total costs for Optional Task 4, if requested in writing by Sonoma Water, shall not exceed \$10,000.
  - c. No more than \$72,000 will be paid until the draft report is submitted.
- 4.2. *Method of Payment:* Consultant shall be paid in accordance with Exhibit B (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit B.
- 4.3. *Invoices:* Consultant shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Sonoma Water. The bills shall show or include:
  - a. Consultant name
  - b. Name of Agreement
  - c. Sonoma Water's Project-Activity Code T0405C001
  - d. Task performed with an itemized description of services rendered by date
  - e. Summary of work performed by subconsultants, as described in Paragraph 15.4
  - f. Time in quarter hours devoted to the task
  - g. Hourly rate or rates of the persons performing the task
  - h. List of reimbursable materials and expenses

- i. Copies of receipts for reimbursable materials and expenses
- 4.4. *Cost Tracking:* Consultant has provided an estimated breakdown of costs, included in Exhibit C (Estimated Budget for Scope of Work). Exhibit C will only be used as a tool to monitor progress of work and budget. Actual payment will be made as specified in Paragraph 4.2.
- 4.5. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Sonoma Water business after presentation of an invoice in a form approved by Sonoma Water for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by Sonoma Water.
- 4.6. *Taxes Withheld by Sonoma Water:*
- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, Sonoma Water shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
  - b. If Consultant does not qualify, as described in Paragraph 4.6.a, Sonoma Water requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, as described in Paragraph 4.6.a, then Sonoma Water requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify Sonoma Water of any changes in the facts. Forms should be sent to Sonoma Water pursuant to Article 16 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, Consultant has the option to provide Sonoma Water with either a full or partial waiver from the State of California.
- 4.7. *Federal Funds:*
- a. All or part of this Agreement will be paid with federal awards. As a pass-through entity, Sonoma Water is required to provide certain information regarding federal award(s) to Consultant as a sub recipient. In signing this Agreement, Consultant acknowledges receipt of the following information regarding federal award(s) that will be used to pay this Agreement:

CFDA Title	Hazard Mitigation Grant Program
CFDA Number	97.039



Award Name	Water Transmission Pipeline Seismic Hazard Mitigation at the Santa Rosa Creek Crossing
Award Number	FEMA-4240-DR-CA, Project #PJ0034
Federal Agency	U.S. Department of Homeland Security, Federal Emergency Management Agency
Pass-through Agency	California Governor's Office of Emergency Services

- b. As a sub recipient of federal awards, Consultant is subject to the provisions of U.S. Office of Management and Budget Circular A-133, *Audits of states, Local Governments, and Non-Profit Organizations* (hereinafter "OMB Circular A-133"). In signing this Agreement, Consultant acknowledges that it understands and will comply with the provisions of OMB Circular A-133. One provision of OMB circular A-133 requires a sub recipient that expends \$500,000 in federal awards during its fiscal year to have an audit performed in accordance with OMB Circular A-133. If such an audit is required, Consultant agrees to provide Sonoma Water with a copy of the audit report within nine months of Consultant's fiscal year end. Questions regarding OMB Circular A-133 can be directed to the Sonoma County Auditor-controller Treasurer-Tax Collector's Office - General Accounting Division.
- c. Consultant is informed and aware that this Agreement is funded by a grant from FEMA (award number 4240-PJ0034), which grant is conditioned upon various terms that apply to Consultant. Consultant has reviewed the grant award documents attached hereto as Exhibit D (Federal Requirements) and hereby agrees to comply with them to the extent they apply to a subrecipient.

## 5. **TERM OF AGREEMENT AND COMMENCEMENT OF WORK**

### 5.1. *Term of Agreement:*

- a. This Agreement shall expire on June 30, 2021, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- b. Sonoma Water shall have two options to extend this Agreement for a period of one year each by providing written notice to Consultant thirty days in advance of the expiration date noted in this Article and of the first extension option.

### 5.2. *Commencement of Work:* Consultant is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

## 6. **TERMINATION**

- 6.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Sonoma Water shall have the right,

in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Sonoma Water may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Sonoma Water all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.10 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 6.3, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by Consultant.
- 6.6. *Change in Funding:* Consultant understands and agrees that Sonoma Water shall have the right to terminate this Agreement immediately upon written notice to Consultant in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which Sonoma Water anticipated using to pay Consultant for services provided under this Agreement or (2) Sonoma Water has exhausted all funds legally available for payments due under this Agreement.

## **7. INDEMNIFICATION**

- 7.1. Consultant agrees to accept responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, and to indemnify, hold harmless,

and release Sonoma County Water Agency, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or its agents, employees, contractors, subcontractors, or invitees. Consultant agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency based upon a claim relating to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. The duty to defend shall not apply to professional liability claims in which case the Consultant shall reimburse Sonoma Water for reasonable defense costs for claims arising out of Consultant's professional negligence based on the percentage of Consultant's liability.

## **8. INSURANCE**

- 8.1. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit E (Insurance Requirements).

## **9. PROSECUTION OF WORK**

- 9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

## **10. EXTRA OR CHANGED WORK**

- 10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Sonoma Water personnel are without authorization to order all other extra or changed work or waive

Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

## **11. CONTENT ONLINE ACCESSIBILITY**

- 11.1. *Accessibility:* Sonoma Water policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Sonoma Water managed or Sonoma Water funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and Sonoma Water's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Consultant shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Consultant shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Consultant agrees to cooperate with Sonoma Water staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Sonoma Water's Web Site Accessibility Policy shall be the responsibility of Consultant. If Sonoma Water, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Sonoma Water managed or Sonoma Water funded Web site does not comply with Sonoma Water Accessibility Standards, Sonoma Water will promptly inform Consultant in writing. Upon such notice, Consultant shall, without charge to Sonoma Water, repair or replace the non-compliant materials within such period of time as specified by Sonoma Water in writing. If the required repair or replacement is not completed within the time specified, Sonoma Water shall

have the right to do any or all of the following, without prejudice to Sonoma Water's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order
- b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
- c. In the case of custom Electronic and Information Technology (EIT) developed by Consultant for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such event, Consultant shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.

11.6. *Sonoma Water's Rights Reserved:* Notwithstanding the foregoing, Sonoma Water may accept deliverables that are not strictly compliant with Sonoma Water Accessibility Standards if Sonoma Water, in its sole and absolute discretion, determines that acceptance of such products or services is in Sonoma Water's best interest.

## **12. REPRESENTATIONS OF CONSULTANT**

- 12.1. *Status of Consultant:* The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *No Suspension or Debarment:* Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.3. *Taxes:* Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Sonoma Water harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Sonoma Water is audited for compliance regarding any

withholding or other applicable taxes, Consultant agrees to furnish Sonoma Water with proof of payment of taxes on these earnings.

- 12.4. *Records Maintenance:* Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
- 12.5. *Conflict of Interest:* Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Sonoma Water, Consultant shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Sonoma Water within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.6. *Statutory Compliance/Living Wage Ordinance:* Consultant agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.7. *Nondiscrimination:* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.8. *Drug-Free Workplace Certification (Certification of Compliance):* By signing this Agreement, Consultant, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350

*et seq.*) and have or will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
- b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  - i. The dangers of drug abuse in the workplace,
  - ii. Consultant's policy of maintaining a drug-free workplace,
  - iii. Any available counseling, rehabilitation, and employee assistance programs, and
  - iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c. Provide, as required by Government Code section 8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Agreement:
  - i. Will receive a copy of Consultant's drug-free policy statement, and
  - ii. Will agree to abide by terms of Consultant's condition of employment, contract or subcontract.

12.9. *Assignment of Rights:* Consultant assigns to Sonoma Water all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Sonoma Water in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Sonoma Water may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Sonoma Water. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Sonoma Water.

12.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Sonoma Water. Sonoma Water shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement,

Consultant shall promptly deliver to Sonoma Water all such documents, which have not already been provided to Sonoma Water in such form or format as Sonoma Water deems appropriate. Such documents shall be and will remain the property of Sonoma Water without restriction or limitation. Consultant may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.

### **13. PREVAILING WAGES**

- 13.1. *General:* Consultant shall pay to any worker on the job for whom prevailing wages have been established an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Sonoma Water to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Consultant shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file at Sonoma Water and will be made available to any person upon request.
- 13.2. *Subcontracts:* Consultant shall insert in every subcontract or other arrangement which Consultant may make for performance of such work or labor on work provided for in the Agreement, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), Consultant shall provide to each Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
- 13.3. *Compliance Monitoring and Registration:* This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Consultant shall furnish and shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code 1771.4 (a)(3)). Consultant and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.



- 13.4. *Compliance with Law:* In addition to the above, Consultant stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq.

#### **14. DEMAND FOR ASSURANCE**

- 14.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 14 limits Sonoma Water's right to terminate this Agreement pursuant to Article 6 (Termination).

#### **15. ASSIGNMENT AND DELEGATION**

- 15.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 15.2. *Subcontracts:* Notwithstanding the foregoing, Consultant may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement. Approved subconsultants are as follows:

Name	Type of Services	Prevailing Wages Apply? Y/N
Cascade Drilling	Drilling	Yes
K Prime, Inc.	Laboratory	Yes
C. Cruz Sub-Surface Locators	Utility Locator Service	Yes
Bay Area Traffic Solutions	Traffic Control Services	Yes
American Integrated Services, Inc.	Waste Disposal	Yes

- 15.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 15.2 will be utilized, Consultant may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 15.2. The following provisions apply to any subcontract entered into by Consultant other than those listed in Paragraph 15.2:
- a. Prior to entering into any contract with subconsultant, Consultant shall obtain Sonoma Water approval of subconsultant.
  - b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water in substantially the same form as that contained in Article 7 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.
- 15.4. *Summary of Subconsultants' Work:* Consultant shall provide Sonoma Water with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.2. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

**16. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS**

- 16.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.
- 16.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 16.

**17. MISCELLANEOUS PROVISIONS**

- 17.1. *No Bottled Water:* In accordance with Sonoma Water Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding

shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.

- 17.2. *No Waiver of Breach:* The waiver by Sonoma Water of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 17.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Sonoma Water acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 17.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 17.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 17.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 17.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 17.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this

Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

17.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

17.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 18/19-082

By: \_\_\_\_\_  
Sonoma County Water Agency  
Division Manager - Administrative  
Services

Approved as to form:

By: \_\_\_\_\_  
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with  
Sonoma Water

Date/TW Initials: 8/20/19 JES

**Sonoma County Water Agency**

**PES Environmental, Inc.**, a California  
corporation

By: \_\_\_\_\_  
Grant Davis  
General Manager  
Authorized per Sonoma County Water  
Agency's Board of Directors Action on  
October 8, 2019

By: \_\_\_\_\_  
\_\_\_\_\_  
(Please print name here)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DIR Registration #: 1000049719

# **Exhibit A**

## **Scope of Work**

### **1. TASKS**

#### **1.1. Task 1: Limited Phase 1 Environmental Site Assessment**

- a. Perform a limited Phase I environmental site assessment (LESA) to evaluate potential features of environmental concern and recognized environmental conditions in the Project area as a result of past or current activities in the Project area and surrounding properties. Complete the LESA to assess the potential for encountering hazardous materials during construction and to facilitate support planning for the Project.
- b. Review and evaluate pertinent available records to identify properties and operations associated with the potential use and releases of chemical constituents and hazardous materials, which have adversely affected, or have potential to affect, soil, groundwater, and soil vapor in the vicinity of the Project including:
  - i. Historical aerial photographs of the area at and in the vicinity of the Project
  - ii. Fire insurance maps (as available)
  - iii. Published regulatory agency lists of hazardous material release sites; hazardous waste generator, treatment, storage or disposal sites; landfill sites; underground storage tank sites; and documented spill sites
- c. Conduct a site visit to visually corroborate indications of possible hazardous material contamination identified during the review of historical records.
- d. Report.
  - i. Contents. Prepare a Report that includes, but is not limited to, the items below.
    - a) Table of Contents
    - b) A location map
    - c) A description of the observations made during the site visit and offsite reconnaissance
    - d) Conclusions relating to the potential presence of soil and groundwater contamination in the Project area.
    - e) A proposed scope of work to assess site-specific soil and groundwater conditions within the realignment area beneath E Street and Sonoma Avenue
    - f) A detailed description of the work performed, including methodology, literature reviewed, and individuals and agencies contacted
    - g) Other information to support the Report or as requested by Sonoma Water

- ii. Review. Submit to Sonoma Water for review.
  - a) First Draft: Prepare the Report in draft form and submit to Sonoma Water for review and approval in accordance with the date listed for this deliverable. Sonoma Water will return 1 copy of the draft Report to Consultant with comments or approval in writing.
  - b) Subsequent Draft(s): If Sonoma Water requests revisions, revise the draft Report and resubmit 3 copies of the Report for Sonoma Water approval.
- iii. Final: Following Sonoma Water approval and prior to Sonoma Water's acceptance of work under this Agreement, submit the final approved Report to Sonoma Water in accordance with the date listed for this deliverable.

<b>Deliverable</b>	<b>Due Date</b>
Draft Phase I Report	Within 30 calendar days of Effective Date
Final Phase I Report	Within 60 calendar days of Sonoma Water's approval of draft Report

1.2. Task 2: Phase II Soil and Groundwater Assessment

- a. Based on the findings of the LESA described in Task 1.1, perform a Phase II soil and groundwater assessment within the realignment area of E Street and Sonoma Avenue to assess the potential for encountering hazardous materials during construction and to facilitate support planning for the Project.
- b. Collect and analyze soil and groundwater samples for laboratory chemical analysis.
- c. Contain investigation derived wastes including soil cuttings and water generated from soil borings in 55 gallon steel drums, and transport to and temporarily store at Sonoma Water's Mirabel Facility located at 10290 Westside Road, Healdsburg, CA. Store wastes until proper offsite disposal can be arranged based on laboratory analytical results of the soil and groundwater samples.
- d. Document results in Soil and Groundwater Site Management Plan as specified in Task 1.3.

<b>Deliverable</b>	<b>Due Date</b>
Draft results of Phase II soil and groundwater assessment, included in Soil and Groundwater Site Management Plan	In accordance with the schedule included in the Soil and Groundwater Site Management Plan developed under Task 3
Final results of Phase II soil and groundwater assessment, included in Soil and Groundwater Site Management Plan	In accordance with the schedule included in the Soil and Groundwater Site Management Plan developed under Task 3

- 1.3. Task 3: Soil and Groundwater Site Management Plan
  - a. Following completion of the soil and groundwater assessment described in Task 1.2, prepare a site-specific Soil and Groundwater Site Management Plan (SGMP) to facilitate the development of future planning components for the Project.
  - b. SGMP.
    - i. Contents. Prepare SGMP that includes, but is not limited to, the items below.
      - a) Table of Contents
      - b) Results of Phase II soil and groundwater assessment as specified in Task 1.2
      - c) Details for preliminary characterization of soils for landfill disposal
      - d) As appropriate, preliminary design components for treatment of groundwater prior to discharge to the Subregional Wastewater Collection System
      - e) Lithologic logs for the soil borings completed during the soil and groundwater assessment
      - f) Future planning components for the Project, including, but not limited to:
        - i. Contract specifications to address the potential presence of environmental contaminants
        - ii. Health and safety
        - iii. Management of soil and groundwater generated during construction of the Project
      - g) A scaled map of sampling locations and the respective laboratory analytical reports
      - h) A detailed description of the work performed, including methodology, literature reviewed, and individuals and agencies contacted
      - i) Other information to support the SGMP or as requested by Sonoma Water
    - ii. Review. Submit to Sonoma Water for review.
      - a) First Draft: Prepare the SGMP in draft form and submit to Sonoma Water for review and approval in accordance with the date listed for this deliverable. Sonoma Water will return 1 copy of the draft SGMP to Consultant with comments or approval in writing.
      - b) Subsequent Draft(s): If Sonoma Water requests revisions, revise the draft SGMP and resubmit 3 copies of the SGMP for Sonoma Water approval.
    - iii. Final: Following Sonoma Water approval and prior to Sonoma Water's acceptance of work under this Agreement, submit the final approved SGMP to Sonoma Water in accordance with the date listed for this deliverable.

Deliverable	Due Date
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Draft SGMP	Within 180 calendar days of Effective Date
Final SGMP	Within 210 calendar days of Sonoma Water's approval of draft

- 1.4. Optional Task 4: Additional Services
  - a. Do not proceed with this task unless requested in writing by Sonoma Water.
  - b. Perform additional services as requested by Sonoma Water to support the work. The additional services will be agreed to by Consultant and Sonoma Water and described in writing by Sonoma Water.

Deliverable	Due Date
To be determined	To be determined

## 2. **DELIVERABLES**

- 2.1. Submit one electronic copy in PDF format (emailed, on CD, or via internet) of each final deliverable to Sonoma Water.
- 2.2. Comply with requirements of Article 11 (Content Online Accessibility).

## Exhibit B

### Schedule of Costs

<b>PERSONNEL</b>	
<b>Title</b>	<b>Hourly Rates not Subject to Prevailing Wage</b>
Principal Hydrogeologist	\$205
Associate Engineer	\$170
Associate Hydrogeologist/Geologist	\$170
Senior Staff Engineer/Geologist	\$123
CADD	\$98
Word Processing and Clerical	\$68
<b>PREVAILING WAGES</b>	
For work subject to prevailing wage rates, the hourly rate charged will be equivalent to the prevailing wage rate applicable to the work performed by each laborer.	
<b>EXPENSES</b>	
<b>Item</b>	<b>Cost</b>
Vehicle/Fuel	\$110 per day
Mileage for personal car	Current IRS rate
Field Equipment/Supplies	\$500 per day
Permits	at cost
Subconsultant: Bay Area Traffic Solutions (Certified Traffic Control Plan)	at cost, not to exceed \$1500
Subconsultant: C. Cruz Sub-Surface Locators (Utility Locator Service)	at cost, not to exceed \$1500
Subconsultant: Bay Area Traffic Solutions (Traffic Control Service)	\$750 per day
Subconsultant: Cascade Drilling DPT	at cost
Subconsultant: K Prime Laboratory Analytical Services	at cost, not to exceed \$13,800
Subconsultant: Cascade Drilling - IDW Storage, Trans, Disposal (3 Drums Non-Hazardous)	at cost, not to exceed \$83 per drum
Subconsultant: American Integrated Services, Inc. (Waste Disposal)	at cost, not to exceed \$1500

## Exhibit C

### Estimated Budget for Scope of Work

Resources			Task 1.1 Limited Phase I ESA/Scope for Phase II Soil and Groundwater Assessment		Task 1.2 Phase II Soil and Groundwater Assessment		Task 1.3 Soil and Groundwater Management Plan		Task 1.4 Additional Services		Total Costs		
			Units	Cost	Units	Cost	Units	Cost	Units	Cost	Units	Cost	
PES LABOR													
Principal Hydrogeologist	hr	\$205	24	\$4,920	24	\$4,920	48	\$9,840	40	\$8,200	136	\$27,880	
Associate Engineer	hr	\$170	0	\$0	0	\$0	24	\$4,080	8	\$1,360	32	\$5,440	
Associate Hydrogeologist/Geologist	hr	\$170	0	\$0	12	\$2,040	0	\$0	0	\$0	12	\$2,040	
Senior Staff Engineer/Geologist	hr	\$123	8	\$984	40	\$4,920	4	\$492	0	\$0	52	\$6,396	
CADD	hr	\$98	2	\$196	2	\$196	4	\$392	0	\$0	8	\$784	
Word Processing & Clerical	hr	\$68	2	\$136	2	\$136	2	\$136	0	\$0	6	\$408	
TOTAL PES LABOR COSTS				\$6,240		\$12,210		\$14,940		\$9,560		\$42,950	
PES EQUIPMENT													
Vehicle/Fuel	dy	\$110		\$0	4	\$440	0	\$0	2	\$220	6	\$660	
PES Field Equipment/Supplies	dy	\$500		\$0	3	\$1,500	0	\$0	1	\$500	4	\$2,000	
TOTAL PES EQUIPMENT COSTS				\$0		\$1,940		\$0		\$720		\$2,660	
REIMBURSABLES/SUBCONCTOR SERVICES													
Certified Traffic Control Plan	ea				1	\$1,500					1	\$1,500	
City Santa Rosa Encroachment Permit	ea				1	\$2,500					1	\$2,500	
County Sonoma DHS Drilling Permit	ea				1	\$600					1	\$600	
Utility Locator Service	ea				1	\$1,500					1	\$1,500	
Traffic Control Service	dy				2	\$1,500					2	\$3,000	
Cascade Drilling DPT	bid				1	\$8,000					1	\$8,000	
K Prime Laboratory Analytical Services	bid				1	\$13,800					1	\$13,800	
IDW Storage, Trans, Disposal (3 Drums Non Hazardous)	ea				3	\$250					3	\$750	
Waste Disposal	ea				1	\$1,500					1	\$1,500	
TOTAL REIMBURS/SUBCONTRACTOR COSTS				\$0		\$34,270		\$0		\$0		\$34,270	
TOTAL ESTIMATED PLANNING COSTS				\$6,240		\$48,420		\$14,940		\$10,280		\$79,880	

# **Exhibit D**

## **Federal Requirements**

FEDERAL REQUIREMENTS – FEMA  
*Construction and Services Agreements*  
[Revise date 10-1-18]

**1. DEFINITIONS**

- 1.1 Government** means the United States of America and any executive department or agency thereof.
- 1.2 FEMA** means the Federal Emergency Management Agency.
- 1.3 Third Party Subcontract** means a subcontract at any tier entered into by Contractor or any subcontractor, financed in whole or in part with federal assistance derived from the Federal Emergency Management Agency.
- 1.4** For purposes of this Exhibit, **Contractor** means the Contractor or Consultant as identified in the Agreement, and shall sometimes be referred to as “contractor.”
- 1.5 Agreement** means that certain Agreement between the Sonoma County Water Agency (“Owner”) and Contractor, and to which this Exhibit is made a part.

**2. FEDERAL REQUIREMENTS**

- 2.1** Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement.
- 2.2** Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, and FEMA policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 C.F.R.<sup>1</sup> 200.317 through 200.326 and Appendix II to 2 CFR Part 200—“Contract Provisions for non–Federal Entity Contracts Under Federal Awards,” which is included herein by reference; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act; the Hatch Act (5 U.S.C.<sup>2</sup> 1501 et seq.); and all related and Department of Homeland Security--mandated federal regulations, including 44 CFR Part 7.
- 2.3** Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated by reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived inconsistency between this Agreement and any federal requirement to Owner for

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

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

guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause Owner to be in violation of any FEMA term, condition, or requirement.

- 2.4** Contractor acknowledges that this Agreement may be subject to grant assurances mandated by funding federal agencies. In such event, this Agreement shall be subject to and subordinate to all such grant assurances in effect at all times during the term of this Agreement. Any grant assurances mandated by any federal funding agency for inclusion after the execution date of this Agreement shall be deemed by the parties to have been incorporated herein.
- 2.5** Contractor must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- 2.6** The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.7** Drug-free workplace. Contractor acknowledges Owner maintains a drug-free workplace plan. Contractor shall comply with applicable requirements of that plan and otherwise comply with applicable requirements of the Drug-Free Workplace Act of 1988 (41 USC 701-707).
- 2.8** Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.
- 2.9** Whistleblower Protections. Contractor shall inform all its employees in writing of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.
- 2.10** Repair or Construction Activity. For all repair or construction activity done pursuant to this Agreement (if applicable), all such repair or construction shall be carried out in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards, including those required pursuant to 44 CFR 206.400.
- 2.11** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

### **3. ACCESS TO RECORDS**

- 3.1** Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Government access to records, accounts, documents, information, facilities, and staff, including compliance review, investigation, evaluation, documentation and reporting requirements.
- 3.2** The Contractor agrees to provide Owner, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are related to this Agreement, for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to

permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 3.3** The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
- 3.4** The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until Owner, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant Owner the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.
- 3.5** The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

#### **4. DEBARMENT AND SUSPENSION**

- 4.1** This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. (2 CFR Part 200 Appendix II, (I)). No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its unique entity identifier to Owner.
- 4.2** Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 200. Gov. Code § 4477.
- 4.3** The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Exhibit 1,

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit 1, Contractor is the “prospective lower tier participant.”

- 4.4** The Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 4.5** This certification is a material representation of fact relied upon by Owner. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to Owner, the Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4.6** The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- 5.1** Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.
- 5.2** The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

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

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

- 6.1** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity,



or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 6.2** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 6.3** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 6.4** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.5** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6.6** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6.7** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**6.8** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**7. NONDISCRIMINATION CLAUSE**

**7.1** Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis.

**7.2** Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

**7.3** Contractor shall comply with the applicable provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

**7.4** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS** (all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

**Compliance:** Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5,

which are incorporated hereto. CFR Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Contractor shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

- A. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics (including watchmen and guards) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph A, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions of paragraph B in the sum of \$25 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph A.
- C. Withholding for unpaid wages and liquidated damages:** Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph B of this section.
- D. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

Further requirements are contained in the Davis-Bacon provisions (see 29 CFR 5.5(a)) stated further herein and are incorporated here by reference.

## **9. NOTICE OF REPORTING REQUIREMENTS**

- 9.1** Contractor acknowledges that it has read and understands the reporting requirements of FEMA, including the "SF-425 Federal Financial Report Filing Instructions" (available at <https://www.fema.gov/media-library/assets/documents/28389>). Contractor agrees to comply with all applicable reporting requirements, including those contained in any

grant terms and conditions, notices of funding opportunity, or any program guidance associated with any FEMA funding related to this Agreement.

- 9.2** The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**10. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

- 10.1** Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

**10.1.1** The copyright in any work developed with the assistance of funds provided under this Agreement;

**10.1.2** Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

- 10.2** The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

- 11. PATENT RIGHTS** (contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects financed by FEMA)  
-Not applicable-

**12. ENERGY CONSERVATION REQUIREMENTS**

- 12.1** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

- 12.2** The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

- 13. CLEAN AIR AND WATER REQUIREMENTS** (all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

- 13.1** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 USC 1251-1388) (as all or any may be amended), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

- 13.2** Contractor agrees to report each violation of these requirements to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

**13.3** The Contractor agrees to include the above paragraphs in each Third Party Subcontract exceeding \$150,000, such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**14. TERMINATION FOR CONVENIENCE OF OWNER** (all contracts in excess of \$10,000)

See Article 6 (Termination) Paragraph 6.2, as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

**15. TERMINATION FOR DEFAULT** (all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

See Article 6 (Termination) Paragraph 6.3, as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

**16. CHANGES**

See Article 10 (Extra or Changed Work), as may be modified by Owner's applicable Notice to Bidders, Special Provisions, and Addenda.

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

**17.1** Contractor shall not use or expend any funds received under this Agreement with any person or organization to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**17.2** Contractor agrees to the provisions of Exhibit 2, Certification Regarding Lobbying, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-

Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

- 17.3** Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**18. MBE / WBE REQUIREMENTS**

Contractor shall make good faith effort and take all necessary affirmative steps (including those listed in 2 CFR 200.321) to assure that Minority and Women's Business Enterprises and labor surplus area firms are used when possible. Failure to engage in such affirmative steps shall be considered as a material breach of the contract.

Contractor, and all its subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including as sources of supplies, construction, equipment, or services. These affirmative steps must be documented and reported. Failure of Contractor or any subcontractor thereof to take the following steps shall be deemed a material breach of this Agreement:

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

If subcontracts are to be let, Contractor shall take the affirmative steps listed above and as otherwise required by 2 CFR 200.321.

**19. PROCUREMENT OF RECOVERED MATERIALS**

- 19.1** Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative

procurement program for procurement of recovered materials identified in the EPA guidelines.

**19.2** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

**19.2.1** Competitively within a timeframe providing for compliance with the contract performance schedule;

**19.2.2** Meeting contract performance requirements; or

**19.2.3** At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**19.3** The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

**21. DHS SEAL, LOGO, AND FLAGS**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including those of FEMA or the United States Coast Guard, without specific FEMA pre-approval.

**22. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT** (all prime construction, repair, or alteration contracts in excess of \$2,000 funded under the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program [unless other grant or state/local law require independently])

a. Compliance with the Davis –Bacon Act:

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction), and shall comply with all of the following:

29 CFR 5.5(a):

(1) Minimum wages.

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

(ii)

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

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



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

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

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

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon

the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Owner may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the FEMA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to FEMA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to FEMA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of FEMA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program

for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

b. Compliance with the Copeland "Anti-Kickback" Act (required for all Davis-Bacon contracts, and for contracts for construction or repair of public work financed in whole or part by federal loan or grant):

(1) Contractor. The contractor shall comply with 18 USC 874, 40 USC 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

**23. BONDS** (all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$150,000)

Unless otherwise excepted in writing by Owner, for construction or facility improvement contracts exceeding \$150,000, or any subcontracts thereof in excess of \$150,000, Contractor shall obtain and maintain bonds as follows:

**23.1** A performance bond for 100 percent of the Agreement price, and

**23.2** A payment bond for 100 percent of the Agreement price.

**24. POLITICAL ACTIVITIES**

Contractor understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government without the express prior written approval of DHS.



## **Exhibit 1**

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

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

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, Owner may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

#### **Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

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

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Contractor Signature

---

Date

## **Exhibit 2**

### **CERTIFICATION REGARDING LOBBYING**

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. If any registrant under the Lobbying Disclosure Act of 1995 has made lobbying contacts on behalf of the undersigned with respect to this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
4. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. An imposition of a civil penalty under this subsection does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

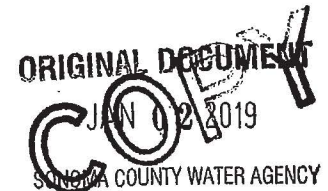
The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801 *et seq.*, apply to this certification and disclosure, if any.

---

Contractor Signature

---

Date



December 19, 2018

Grant Davis  
General Manager  
Sonoma County Water Agency  
404 Aviation Boulevard  
Sonoma, CA 95403

Subject: **Notification of Subapplication Approval**  
Hazard Mitigation Grant Program  
FEMA-4240-DR-CA, Project #PJ0034, FIPS #097-91022

Dear Mr. Davis:

The California Governor's Office of Emergency Services (Cal OES) received notification that the Federal Emergency Management Agency (FEMA) has fully approved your organization's subaward application in the amount of **\$2,979,959.04**. A copy of the FEMA award package is enclosed for your records.

In order to receive payment, all subrecipients must have a current (within the last 3 years), valid Governing Body Resolution and updated Grant Assurances on file with our office (sample copies enclosed). These forms may be downloaded in an electronic format at [www.caloes.ca.gov](http://www.caloes.ca.gov) following the links: *Cal OES Divisions; Recovery; Disaster Mitigation & Technical Support; 404 Hazard Mitigation Grant Program; HM Post Obligation Documents*. An active DUNS Number registration with the federal System for Award Management (SAM) website is also required for obtaining payment. For your convenience, information regarding completing and renewing a SAM registration is included in this package. Please complete the electronic forms as well as the enclosed Supplemental Grant Subaward Information sheet and return them to the address below within 30 days. Payments will be made on a reimbursement basis using the Hazard Mitigation Reimbursement Request Form. A ten percent (10%) retention will be withheld from all reimbursement payments and will be released as part of the subaward closeout process.

Reimbursements can be made only for items listed on the approved subaward application; expenditures for any other work should be separately maintained and are the sole responsibility of the subrecipient. Any funds received in excess of current needs or approved amounts, or those found owed as a result of a final inspection or audit, must be refunded to the State within 30 days of receipt of an invoice from Cal OES.

Please read all enclosed documents prior to initiating the approved project. For further assistance, please contact the Grants Processing Unit at (916) 845-8110.

Grants Processing Unit

Enclosures

c: Applicant's File

To: Hultberg

CF/60-64-20 California Office of Emergency Services (FEMA Grant Application for Water Transmission Pipeline Seismic Hazard Mitigation at the Santa Rosa Creek Crossing) FP-00133 (ID 5668)

\*Cal OES has on file a universal Public Assistance resolution no. 17-0256, which your agency passed on 6/20/17. With your permission, this resolution can be applied to this Hazard Mitigation subaward. Please provide a cover letter with the current names of agents authorized by this resolution.

Mat

U.S. Department of Homeland Security  
Region IX  
1111 Broadway, Suite 1200  
Oakland, CA 94607-4052



**FEMA**

November 26, 2018

Charles Rabamad  
Governor's Authorized Representative  
California Office of Emergency Management  
3650 Schriever Ave.  
Mather, California 95655

**RECEIVED**

N18-1549

NOV 30 2018

Chron Robin

HAZARD MITIGATION

669494

Reference: Project Approval, HMGP #4240-34-23R  
Sonoma County Water Agency, FIPS Code # 097-91022  
Water Transmission Pipeline Seismic Hazard Mitigation at the Santa Rosa Creek  
Crossing  
Supplement #79

Dear Mr. Rabamad:

We have reviewed and approved the above referenced Hazard Mitigation Grant Program (HMGP) subapplication for the Sonoma County Water Agency (subrecipient). The total eligible cost is \$6,208,248. As shown in Supplement #79, we obligated a 48% percent Federal Share of \$2,979,959. These funds are now available in Smartlink (see enclosed report) and this approval is based on the following:

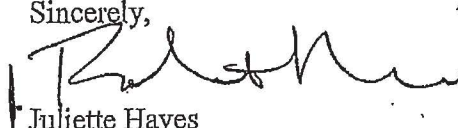
1. **Scope of Work (SOW)** – The approved activity consists of the relocation of a portion of water supply transmission pipeline from the existing stream location to an area under the street location.
2. **Budget Revisions, and Cost Overruns:** The grantee and subgrantee must obtain FEMA's prior written approval for any budget revisions. Cost overruns must be approved by FEMA Region IX before implementation and the subgrant must continue to meet programmatic eligibility requirements, including cost effectiveness and cost share. Additional information can be found in 44 CFR 13.30.
3. **Completion Date** – The completion date is **September 20, 2021** for this project activity. If there is no approved POP time extension, work completed after this date will not be eligible, and Federal funds may be de-obligated for work not completed within schedule.
4. **National Environmental Policy Act (NEPA):** – In accordance with the Code of Federal Regulations (CFR), Title 44, Part 10, Section 8(d)(2)(xvi), and in compliance with National Environmental Policy Act (NEPA), the project is Categorical Excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement, with conditions. A copy of the finding is enclosed for your use. It is important that you review and comply with these conditions.
5. This subgrant is subject to the enclosed *Standard Hazard Mitigation Grant Program Conditions*. Federal funds may be de-obligated for work that does not comply with these conditions.

November 26, 2018

Page 2 of 2

If you have any questions or need further assistance, please contact Katie Grasty, Senior Hazard Mitigation Assistance Specialist at [katie.grasty@fema.dhs.gov](mailto:katie.grasty@fema.dhs.gov).

Sincerely,



Juliette Hayes  
Director  
Mitigation Division  
FEMA, Region IX

cc: Robin Shepard, Cal OES  
Monika Saputra, Cal OES

Enclosures (4):

Supplement #79 Obligation Report  
Project Management Report  
Standard HMGP Conditions  
Record of Environmental Considerations



## HAZARD MITIGATION GRANTS PROGRAM

## Obligation Report w/ Signatures

Disaster No	FEMA Project No	Amendment No	State Application ID	Action No	Supplemental No	State	Recipient
4240	23-R	0	34	1	79	CA Statewide	

Sub-Recipient: SONOMA COUNTY WATER AGENCY  
 Sub-Recipient FIPS Code: 097-22223- 91032

Project Title : SCWA -Water Transmission Pipeline Seismic Hazard Mitigation - Santa Rosa Creek

Total Amount Previously Allocated	Total Amount Previously Obligated	Total Amount Pending Obligation	Total Amount Available for New Obligation
\$2,979,959.04	\$2,979,959.04	\$0.00	\$0.00

Project Amount	Recipient Admin Est	Sub-Recipient Admin Est	Total Obligation	IFMIS Date	IFMIS Status	FY
\$2,979,959.04	\$0.00	\$0.00	\$2,979,959.04	11/26/2018	Accept	2019

Comments

Date: 11/26/2018 User Id: KMOJICA

Comment: Approved Sonoma County Water Agency, Water Transmission Pipeline Seismic Hazard Mitigation for Santa Rosa Creek

Authorization

Preparer Name: KAREN MOJICA

Preparation Date: 11/26/2018

HMO Authorization Name: KATIE GRASTY

HMO Authorization Date: 11/26/2018

  
 \_\_\_\_\_  
 Authorizing Official Signature

HMA BC  
 \_\_\_\_\_  
 Authorizing Official Title

11-26-18  
 \_\_\_\_\_  
 Authorization Date

\_\_\_\_\_  
 Authorizing Official Signature

\_\_\_\_\_  
 Authorizing Official Title

\_\_\_\_\_  
 Authorization Date

## HAZARD MITIGATION GRANT PROGRAM

## Project Management Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Recipient
4240	23-R	0	34	CA	Statewide

Sub-Recipient: SONOMA COUNTY WATER AGENCY

FIPS Code: 097-22223

Project Title : SCWA-Water Transmssion Pipeline Selsmic Hazard Mitigation - Sa

Mitigation Project Description

Amendment Status : Approved

Approval Status: Approved

Project Title : SCWA-Water Transmssion Pipeline Selsmic Hazard Mitigation - Santa Rosa

Recipient : Statewide

Sub-Recipient : SONOMA COUNTY

Recipient County Name : Sonoma

Sub-Recipient County Name : Sonoma

Recipient County Code : 97

Sub-Recipient County Code : 97

Recipient Place Name : Sonoma (County)

Sub-Recipient Place Name : Sonoma (County)

Recipient Place Code : 0

Sub-Recipient Place Code : 99097

Project Closeout Date : 00/00/0000

Work Schedule Status

Amend #	Description	Time Frame	Due Date	Revised Date
0	Perform Environmental Assessment And Obtain Envl	15 months	00/00/0000	00/00/0000
0	Kickoff, 30%, 60%, 90% Design Meetings	17 months	00/00/0000	00/00/0000
0	Survey, Mapping of Project Area, Geotechnical Work	10 months	00/00/0000	00/00/0000
0	Design Drawings and Specifications	18 months	00/00/0000	00/00/0000
0	Acquire Right of Way	16 months	00/00/0000	00/00/0000
0	Obtain Permits	15 months	00/00/0000	00/00/0000
0	Advertise Project	1 month	00/00/0000	00/00/0000
0	Open Bids and Award Contract	1 month	00/00/0000	00/00/0000
0	Issue Notice to Proceed	1 month	00/00/0000	00/00/0000
0	Submittal of Information for Review and Approval	1 month	00/00/0000	00/00/0000
0	Construction Mobilization	1 month	00/00/0000	00/00/0000
0	Construction Underground Structures and Pits	2 months	00/00/0000	00/00/0000
0	Construction Tunneling	1 month	00/00/0000	00/00/0000
0	Construction Trenching	2 months	00/00/0000	00/00/0000
0	Construction Utility Relocations	1 month	00/00/0000	00/00/0000
0	Construction Restore Site	1 month	00/00/0000	00/00/0000
0	Construction Complete Punch list	1 month	00/00/0000	00/00/0000
0	Construction Project Operational and Demobilization	1 month	00/00/0000	00/00/0000
0	Project Closed out and Record Drawings	2 months	00/00/0000	00/00/0000
0	Grant Close out	3 months	00/00/0000	00/00/0000

Approved Amounts

Total Approved Net Eligible	Federal Share Percent	Total Approved Federal Share Amount	Non-Federal Share Percent	Total Approved Non-Fed Share Amount
\$6,208,248	48.000000000	\$2,979,959	52.000000000	3228289



11/26/2018  
4:45 PM

FEDERAL EMERGENCY MANAGEMENT AGENCY  
HAZARD MITIGATION GRANT PROGRAM

HMGP-AP-01

Project Management Report

Disaster Number	FEMA Project Number	Amendment Number	App ID	State	Recipient
4240	23 - R	0	34	CA	Statewide

Sub-Recipient: SONOMA COUNTY WATER AGENCY

FIPS Code: 097-22223

Project Title : SCWA -Water Transmission Pipeline Seismic Hazard Mitigation - Sa

Allocations

Allocation Number	IFMIS Status	IFMIS Date	Submission Date	FY	ES Support Req ID	ES Amend Number	Proj Alloc Amount Fed Share	Recipient Admin Amount	Sub-Recipient Admin Amount
55	A	11/26/2018	11/26/2018	2019	2816506	1	\$2,979,959.04	\$0.00	\$0.00
Total							\$2,979,959.04	\$0.00	\$0.00

Obligations

Action Nr	IFMIS Status	IFMIS Date	Submission Date	FY	ES Support Req ID	ES Amend Number	Suppl Nr	Project Obligated Amt - Fed Share	Recipient Admin Amount	Sub-Recipient Admin Amount
1	A	11/26/2018	11/26/2018	2019	2817706	0	79	\$2,979,959	\$0	\$0
Total								\$2,979,959.04	\$0.00	\$0.00

## **Standard Mitigation Grant Program (HMGP) Conditions**

**FEMA Region IX, August, 2017**

The following list applies to Recipients and Subrecipients accepting HMGP funds from the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security (DHS):

1. **Applicable Federal, State, and Local Laws and Regulations.** The Recipient/Subrecipient must comply with all applicable Federal, State, and Local laws and regulations, regardless of whether they are on this list or other project documents. DHS financial assistance Recipients and Subrecipients are required to follow the provisions of the State HMGP Administrative Plan, applicable Hazard Mitigation Assistance Uniform Guidance, and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located in Title 2 of the Code of Federal Regulations (CFR) Part 200, adopted by DHS in 2 CFR 3002.
2. **Financial Management Systems.** The Recipient and Subrecipient must maintain financial management systems to account for and track funds, as referenced in 2 CFR 200.302.
3. **Match or Cost Share.** Non-federal match or cost share must comply with 2 CFR 200.306, the scope of work (SOW), and any agreements among the Subrecipient, the Recipient, and FEMA.
4. **Budget Changes.** Unanticipated adjustments are permitted within the approved total cost. However, if costs exceed the federal share, the Subrecipient must notify the Governor's Authorized Representative (GAR) of overruns before implementation. The GAR shall submit a written request for approval to FEMA Region IX. The subaward must continue to meet HMGP requirements, including cost effectiveness and cost share. Refer to 2 CFR 200.308 for additional information.
5. **Real Property and Land.** The acquisition, use, and disposition must comply with 2 CFR 200.311.
6. **Equipment.** The acquisition, use, and disposition must comply with 2 CFR 200.313.
7. **Supplies.** Upon project completion, FEMA must be compensated for unused supplies, exceeding \$5,000 (fair market value), and not needed for other federal programs. Refer to 2 CFR 200.314.
8. **Procurement.** Procurement procedures must be in conformance with 2 CFR 200.318-320.
9. **Monitoring and Reporting Program Performance.** The Recipient and Subrecipient must submit quarterly progress reports, as referenced in the 2 CFR 200.328 and State HMGP Administrative Plan.
10. **Records Retention.** In accordance with 2 CFR 200.333, financial/ programmatic records related to expenditures must be maintained at least 3 years after the date of Recipient's final expenditure report.
11. **Enforcement and Termination.** If the Recipient or Subrecipient fails to comply with the award or subaward terms, whether stated in a Federal statute or regulation, the State HMGP Administrative Plan, subapplication, a notice of award, an assurance, or elsewhere, FEMA may take one or more of the actions outlined in 2 CFR 200.338, including termination or partial termination of the award or subaward outlined in 2 CFR 200.339.
12. **Allowable Costs.** Funds are to be used for allowable costs in compliance with 2 CFR 200.403, the approved SOW, and any agreements among the Subrecipient, Recipient, and FEMA.

13. **Non-Federal Audit.** The Recipient and Subrecipient are responsible for obtaining audits in accordance with the Single Audit Act of 1984, in compliance with 2 CFR 200.501.
14. **Debarred and Suspended Parties.** Recipients and Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 CFR 180. These regulations restrict federal financial assistance awards, subawards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in the federal assistance programs or activities.
15. **Equipment Rates.** Rates claimed for use of Subrecipient-owned equipment in excess of the FEMA-approved rates must be approved under State guidelines issued by the State Comptroller's Office or must be certified by the Recipient to include only those costs attributable to equipment usage less any fixed overhead and/or profit.
16. **Duplication of Funding between Public Assistance (PA) and HMGP.** Funding for PA Section 406 and HMGP Section 404 are permitted on the same facility/location, but the activities identified under each program must be distinct with separately accounted funds. At closeout, FEMA may adjust the funding to ensure the Subrecipient was reimbursed for eligible work from only one funding source.
17. **Historic Properties and Cultural Resources.** In compliance with 2 CFR 800, if a potential historic property or cultural resource is discovered during construction, the Subrecipient must cease work in the area and take all reasonable measures to avoid or minimize harm to the discovered property/resource. During construction, the Subrecipient will monitor ground disturbance activity, and if any potential archeological resources are discovered, will immediately cease work in that area, and notify the Recipient and FEMA. Construction in the area may resume with FEMA's written approval after FEMA's consultation, if applicable, with the State Historic Preservation Officer (SHPO).
18. **NEPA and Changes to the Scope of Work (SOW).** To comply with the National Environmental Policy Act (NEPA), and other Laws and Executive Orders, any change to the approved SOW shall be re-evaluated before implementation. Construction associated with a SOW change, prior to FEMA approval, may be ineligible for funding. Acceptance of federal funding requires environmental permits and clearances in compliance with all appropriate federal, state and local laws, and failure to comply may jeopardize funding.

Within their authority, the Recipient and Subrecipient must use of all practicable means, consistent with other essential policies, to create and maintain productive harmony for people and nature, and fulfill the social, economic, and other needs of present and future generations of Americans.



## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project ID: HMGP 4240-34-23R

Title: Water Transmission Pipeline Seismic HM at teh Santa Rosa Creek Crossing

## NEPA DETERMINATION

Non Compliant Flag: No	EA Draft Date:	EA Final Date:
EA Public Notice Date:	EA Foml Date:	Level: CATEX
EIS Notice of Intent Date:	EIS ROD Date:	

Comments: This REC applies to the project activities associated with replacing an existing potable water pipeline that crosses Santa Rosa Creek in Santa Rosa, California. Construction of the new pipeline would involve open trenching and microtunnelling along 550 feet of E Street and 300 feet along Sonoma Avenue. The new pipeline would be installed 10 feet below the bottom of the creek culvert. The existing 850-foot pipeline would be abandoned and filled with cement slurry. - jbock - 04/11/2018 23:42:27 GMT

## CATEX CATEGORIES

Catex Category Code	Description	Selected
*n7	(*n7) Federal Assistance for Structure and Facility Upgrades. Federal assistance for the reconstruction, elevation, retrofitting, upgrading to current codes and standards, and improvements of pre-existing facilities in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use. This category does not include actions within or affecting streams or stream banks or actions seaward of the limit of moderate wave action (or V zone when the limit of moderate wave action has not been identified).	Yes

## EXTRAORDINARY CIRCUMSTANCES

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

## ENVIRONMENTAL LAW / EXECUTIVE ORDER

Environmental Law/ Executive Order	Status	Description	Comments
Clean Air Act (CAA)	Completed	Project is located in a non-attainment area	The project is in Sonoma County, a non-attainment area for the fine particulate matter (PM 2.5) and the 8-hour ozone standards according to the USEPA ( <a href="https://www3.epa.gov/airquality/greenbook/and3.html">https://www3.epa.gov/airquality/greenbook/and3.html</a> , data current as of March 31, 2018). Based on the nature of the proposed activities, the potential emissions are below de minimis thresholds for the General Conformity Rule. Thus, the project is exempt from a conformity determination. - jbock - 04/11/2018 23:52:15 GMT
	Completed	Coordination required with applicable state administering agency - Review concluded	

21:48:44

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project ID: HMGP 4240-34-23R

Title: Water Transmission Pipeline Seismic HM at the Santa Rosa Creek Crossing

Environmental Law/ Executive Order	Status	Description	Comments
Coastal Barrier Resources Act (CBRA)	Completed	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would not affect any water of the U.S. - Review concluded	The new pipeline would be installed 10 feet below the bottom of the Santa Rosa Creek culvert, and construction activities would occur below paved roadways and otherwise avoid disturbing the streambed. - jbock - 04/11/2018 23:48:45 GMT
Coastal Zone Management Act (CZMA)	Completed	Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	The project location is in Zone X, as shown on FIRM panel 06097C0729E (effective 12/2/2008). Zone X is outside of the floodplain, so no further review is required. - jbock - 04/11/2018 23:59:07 GMT
Executive Order 11990 - Wetlands	Completed	No effects on wetlands and project outside wetlands - Review concluded	The project is not in a wetland (according to the USFWS NWI Wetlands Mapper) and would not result in impacts to wetlands. The new pipeline would be installed 10 feet below the bottom of the Santa Rosa Creek culvert, and construction activities would occur below paved roadways and otherwise avoid disturbing the streambed. - jbock - 04/11/2018 23:59:59 GMT
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	Low income or minority population in or near project area	The proposed activities associated with this project will result in no impacts to all populations - jbock - 04/12/2018 00:01:01 GMT
	Completed	No disproportionately high and adverse impact on low income or minority population - Review concluded	
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	Construction activities would occur within a highly urbanized area below paved roadways and would otherwise avoid disturbing the Santa Rosa Creek streambed. Based on the location and nature of the proposed activities, the project does not have the potential to affect listed or proposed species or critical habitat. Formal consultation with the US Fish and Wildlife Service under Section 7 of the Endangered Species Act is not required. See attached No Effect memorandum. - jbock - 04/11/2018 23:46:27 GMT
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project ID: HMGP 4240-34-23R

Title: Water Transmission Pipeline Seismic HM at the Santa Rosa Creek Crossing

Environmental Law/ Executive Order	Status	Description	Comments
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	The new pipeline would be installed 10 feet below the bottom of the Santa Rosa Creek culvert, and construction activities would occur below paved roadways and otherwise avoid disturbing the streambed. - Jbock - 04/11/2018 23:50:49 GMT
Migratory Bird Treaty Act (MBTA)	Completed	Project located within a flyway zone	Based on the location and nature of the proposed activities, the project does not have the potential to take migratory birds. The pipeline replacement activities would occur at or below ground level within paved roadways. - Jbock - 04/11/2018 23:54:46 GMT
	Completed	Project does not have potential to take migratory birds - Review concluded	
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Applicable executed Programmatic Agreement (enter date in comments).	This Undertaking was reviewed under Stipulation II.C. of the 2015 Section 106 Programmatic Agreement among FEMA, the SHPO, and Cal OES executed on October 30, 2015. By letter dated May 15, 2018, FEMA made a determination of No Adverse Effect for this Undertaking, based on implementation of a workers education program and preparation and implementation of an archaeological monitoring and treatment plan. Although the Undertaking would not affect any built resources including the segment of the existing pipeline that was determined not to be eligible for the NRHP, FEMA determined that the Undertaking has potential to affect a previously recorded archaeological site, CA-SON-11/P-49-000076. FEMA consulted the California Native American Heritage Commission and five Indian tribes as part of its consultations: Lytton Rancheria, Middletown Rancheria, Kashia Band of Pomo Indians, Stewart Point Rancheria, and the Federal Indians of Geron Rancheria, and none indicated any concerns or provided any additional information about effects of the Undertaking on tribal or cultural resources. By letter dated July 17, 2018, the SHPO indicated that it did not object to FEMA's determination of No Adverse Effect conditioned on FEMA's submission of the Monitoring and Treatment Plan to the SHPO for review and comments. By email dated October 4, 2018, FEMA indicated to the SHPO its agreement with the additional

## RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project ID: HMGP 4240-34-23R

Title: Water Transmission Pipeline Seismic HM at teh Santa Rosa Creek Crossing

Environmental Law/ Executive Order	Status	Description	Comments
			condition requested by the SHPO, - mnowick - 11/08/2018 21:05:46 GMT
	Completed	Building or structure 50 years or older or listed on the National Register in the project area and activity not exempt from review	
	Completed	Determination of No Historic Properties Affected (FEMA finding/SHPO/THPO concurrence attached) - Review concluded	
	Completed	Project affects undisturbed ground	
	Completed	Project area has potential for presence of archeological resources	
	Completed	Determination of historic properties affected	
	Completed	NR eligible resources present in project area. (FEMA finding/ SHPO/THPO concurrence attached)	
	Completed	No Adverse Effect Determination. (FEMA finding/ SHPO/THPO concurrence attached) - Review concluded	
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

## CONDITIONS

## Special Conditions required on Implementation of Projects:

The Sub-Recipient will engage an archaeologist who meets the Secretary of the Interior's qualifications for archaeology to implement a workers cultural resources training program during project implementation. The archaeologist will invite the tribes previously consulted to participate in the training program.

Source of condition: National Historic Preservation Act (NHPA)

Monitoring Required: Yes

The Sub-Recipient will engage an archaeologist who meets the Secretary of the Interior's qualifications for archaeology to prepare and implement an Archaeological Treatment and Monitoring Plan to address the potential for the Undertaking to affect archaeological resources. The Sub-Recipient will provide the Archaeological Treatment and Monitoring Plan to FEMA for approval and for FEMA to submit to the SHPO for review and comment. At the conclusion of ground disturbance and implementation of the Archaeological Treatment and Monitoring Plan, the Sub-Recipient will submit a Report of the Implementation of the final approved Archaeological Treatment and Monitoring Plan to FEMA.

Source of condition: National Historic Preservation Act (NHPA)

Monitoring Required: Yes

11/08/2018

FEDERAL EMERGENCY MANAGEMENT AGENCY

REC-01

21:48:45

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project ID: HMGP 4240-34-23R

Title: Water Transmission Pipeline Seismic HM at teh Santa Rosa Creek Crossing

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**Standard Conditions:**

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.



## **Exhibit E**

### **Insurance Requirements**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Sonoma Water reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### **1. INSURANCE**

##### **1.1. Workers Compensation and Employers Liability Insurance**

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

##### **1.2. General Liability Insurance**

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water. Consultant is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving Sonoma Water.

- d. Sonoma County Water Agency, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

#### 1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

#### 1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water.
- c. If Consultant’s services include: (1) programming, customization, or maintenance of software: or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
  - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
  - ii. Claims against Consultant arising from the negligence of Consultant, Consultant’s employees and Consultant’s subcontractors.

- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

#### 1.5. Contractors Pollution Liability Insurance

- a. Minimum Limits: \$1,000,000 per pollution Incident; \$1,000,000 Aggregate. If Consultant maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water. Consultant is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving Sonoma Water.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of work.
- d. Coverage shall be continued for one (1) year after completion of the work. If the insurance is on a Claims-Made basis, the continuation coverage may be provided by: (a) renewal of the existing policy; (b) an extended reporting period endorsement; or (c) replacement insurance with a retroactive date no later than the commencement of the Work.
- e. Sonoma County Water Agency, its officers, agents, and employees, shall be additional insureds for liability arising out of operations by or on behalf of Consultant in the performance of this Agreement. The foregoing shall continue to be additional insureds for one (1) year after completion of the work.
- f. Required Evidence of Coverage:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

#### 1.6. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.7. Documentation

- a. The Certificate of Insurance must include the following reference: TW 18/19-082.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with Sonoma Water for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, 1.3, 1.4, or 1.5, above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.8. Policy Obligations

- a. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.9. Material Breach

- a. If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Consultant, Sonoma Water may deduct from sums due to Consultant any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.



PESENV-01

JACKSONNA

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/24/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> License # 0E67768 IOA Insurance Services 3875 Hopyard Road Suite 200 Pleasanton, CA 94588		<b>CONTACT NAME:</b> Naomi Jackson <b>PHONE (A/C, No, Ext):</b> (925) 660-3998 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> Naomi.Jackson@ioausa.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Westchester Surplus Lines Insurance Company	
		<b>INSURER B:</b> Travelers Indemnity Company of Connecticut	
		<b>INSURER C:</b> Travelers Property Casualty Company of America	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

INSURED

PES Environmental, Inc.  
7665 Redwood Boulevard, Suite 200  
Novato, CA 94945

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			G28133418004	6/29/2019	6/29/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA1N447172	6/29/2019	6/29/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			G2813342A004	6/29/2019	6/29/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB7K229943	6/29/2019	6/29/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab.			G28133418004	6/29/2019	6/29/2020	Per Claim 1,000,000
A	Professional Liab.			G28133418004	6/29/2019	6/29/2020	Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All operations of the Named Insured.

Excess/Umbrella: Follows form over the Commercial General Liability, Auto Liability, Pollution Liability, Employers Liability, Professional Liability (Claims Made)

Commercial General Liability: Certificate Holder is included as Additional Insured on Primary & Non-Contributory basis with Waiver of Subrogation included, as required by written contract.

Auto Liability: Certificate Holder is included as Additional Insured with Waiver of Subrogation included, as required by written contract.

Workers' Compensation: Waiver of Subrogation is included in favor of Certificate Holder, as required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

<b>Sonoma County Water Agency</b> 404 Aviation Blvd. Santa Rosa, CA 95403	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b> <i>Leslie Bancroft</i>



Named Insured PES Environmental, Inc.			Endorsement Number
Policy Symbol GLW	Policy Number G28133418 004	Policy Period 6-29-2019 to 6-29-2020	Effective Date of Endorsement 6-29-2019
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT  
OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
CONTRACTOR'S POLLUTION LIABILITY COVERAGE

SCHEDULE:

Name of Person or Organization:

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to **bodily injury** or **property damage** occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



Named Insured PES Environmental, Inc.			Endorsement Number
Policy Symbol GLW	Policy Number G28133418 00 4	Policy Period 6-29-2019 to 6-29-2020	Effective Date of Endorsement 6-29-2019
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED ENDORSEMENT - OWNERS, LESSEES OR CONTRACTORS  
(PRIMARY AND NON-CONTRIBUTORY)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE  
CONTRACTORS POLLUTION LIABILITY COVERAGE

**SCHEDULE:**

**Name of Person or Organization:**

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**SECTION II - WHO IS AN INSURED** is amended to include:

- A. **SECTION II - WHO IS AN INSURED** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to **bodily injury** or **property damage** occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of **your work** out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. The coverage provided hereunder shall be primary and not contributing with any other insurance available to those designated above under any other third party liability policy.



Named Insured PES Environmental, Inc.			Endorsement Number
Policy Symbol GLW	Policy Number G28133418 004	Policy Period 6-29-2019 to 6-29-2020	Effective Date of Endorsement 6-29-2019
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED ENDORSEMENT – PRODUCTS-COMPLETED OPERATIONS HAZARD**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART

**SCHEDULE**

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by **your work** performed for that additional insured and included in the **products-completed operations hazard**.

All other terms and conditions remain the same.





Named Insured PES Environmental, Inc.			Endorsement Number
Policy Symbol GLW	Policy Number G28133418 004	Policy Period 6-29-2019 to 6-29-2020	Effective Date of Endorsement 6-29-2019
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ENDORSEMENT – PRODUCTS-COMPLETED OPERATIONS HAZARD  
PRIMARY & NON-CONTRIBUTORY

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTOR'S POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.
--

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by **your work** performed for that additional insured and included in the **products-completed operations hazard**.

Furthermore, the coverage provided hereunder shall be primary and not contributing with any other insurance available to those designated above under any other third party liability policy.

All other terms and conditions remain the same.



Named Insured PES Environmental, Inc.			Endorsement Number
Policy Symbol GLW	Policy Number G28133418 004	Policy Period 6-29-2019 to 6-29-2020	Effective Date of Endorsement 6-29-2019
Issued By (Name of Insurance Company) Westchester Surplus Lines Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS POLLUTION LIABILITY COVERAGE PART**

**SCHEDULE**

Name of Person or Organization:

Any person or organization that is an owner of real property or personal property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition** is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or **your work** done under a contract with that person or organization and included in the **products-completed operations hazard**. This waiver applies only to the person or organization shown in the Schedule above.

All other terms and conditions remain the same.



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00) - 01

POLICY NUMBER UB7K229943

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.

DATE OF ISSUE: 6-29-2019

ST ASSIGN:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <b>A. BROAD FORM NAMED INSURED</b>                                  | <b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b>  |
| <b>B. BLANKET ADDITIONAL INSURED</b>                                | <b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b> |
| <b>C. EMPLOYEE HIRED AUTO</b>                                       | <b>J. PERSONAL PROPERTY</b>   |
| <b>D. EMPLOYEES AS INSURED</b>                                      | <b>K. AIRBAGS</b>   |
| <b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b>                 | <b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b>                    |
| <b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b> | <b>M. BLANKET WAIVER OF SUBROGATION</b>                               |
| <b>G. WAIVER OF DEDUCTIBLE – GLASS</b>                              | <b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b>                           |

### **PROVISIONS**

#### **A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

#### **B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

#### **C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

- b. For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

### D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

#### **G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

#### **H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

#### **I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

#### **J. PERSONAL PROPERTY**

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

##### **Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

#### **K. AIRBAGS**

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

#### **L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

#### **M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

##### **5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

## COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

### **N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV – BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED – PRIMARY AND  
NON-CONTRIBUTORY WITH OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**PROVISIONS**

1. The following is added to Paragraph A.1.c., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

This includes any person or organization who you are required under a written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to name as an additional insured for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent of that person's or organization's liability for the conduct of another "insured".

2. The following is added to Paragraph B.5., **Other Insurance** of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Regardless of the provisions of paragraph a. and paragraph d. of this part 5. **Other Insurance**, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.