

SONOMA COUNTY WATER AGENCY  
STANDARD TERMS AND CONDITIONS

AGREEMENT BETWEEN SONOMA COUNTY WATER AGENCY ("Sonoma Water")  
AND AUSTIN GAP PARTNERSHIP ("Supplier")  
FOR THE SUPPLY OF LARGE WOODY DEBRIS (LWD) FOR THE  
DRY CREEK HABITAT ENHANCEMENT PROJECT

**1. Statement of Goods and Services.**

1.1 Subject to all terms and conditions provided herein, Supplier agrees to sell, transfer, and convey to Sonoma Water, and Sonoma Water agrees to purchase Large Woody Debris (LWD), as defined by the attached specifications, in the quantity and at the price specified in Section 2.1. The price includes all labor, supplies, materials, fuel, equipment, permits, fees, taxes, insurance, and incidental costs and expenditures necessary to secure entitlements, harvest (if necessary), transport, and off-load the quantity agreed to herein. Delivery of goods shall be completed as described below:

1.1.1 Year 1. Deliver 25% of each LWD type by April 30, 2021. Deliver remaining 75% of each LWD type by June 15, 2021.

1.1.2 Year 2. Deliver 25% of each LWD type by March 30, 2022. Deliver remaining 75% of each LWD type by May 30, 2022.

**2. Payment Terms.**

2.1 Quantity and Price. No changes in price, quantity or merchandise will be recognized by Sonoma Water without written notice of acceptance thereof by the General Manager prior to the shipment of goods or installation of the materials or performance of services. No charge will be allowed for packing, boxing, or cartage, except when otherwise specified in this contract. Sonoma Water is exempt from the payment of federal excise tax. Therefore federal excise tax shall not be included in the price of the goods.

	LWD Type		Species	Quantity		Price per Unit	Total
				2021	2022		
A:	30-35 foot length with root wad attached (16"-24" diameter)		Douglas Fir <i>or</i> Redwood	75	75	\$2,150.00	\$322,500
D:	30-35 foot length without root wad attached (16"-24" diameter)		Douglas Fir	50	10	\$625.00	\$37,500

The total cost for all LWD to be provided under this Agreement shall not exceed \$360,000.

2.2 Cash Discounts. In connection with any cash discount specified in this contract, time will be computed from the date of completed delivery of the goods or the completion of the performance of services as specified, or from the date that correct invoices are received if the latter date is later than the date of delivery and/or performance. For the purpose of earning the discount, payment shall be deemed to have been made on the date of mailing of Sonoma Water warrant or check.

2.3 Invoices. Upon submission of itemized invoices in duplicate, payment shall be made of the prices stipulated herein for goods or materials delivered or services rendered and accepted, less deductions, if

any, as herein provided. Payment on partial deliveries or services may be made whenever amounts due so warrant or when requested by the Supplier and approved by the General Manager.

2.4 As used in this contract, the terms "merchandise," "goods," or "materials," shall mean the Product(s) identified in the Specifications.

### **3. Requirements Concerning Goods.**

#### **3.1 Shipment.**

3.1.1 Delivery. Supplier shall deliver the goods in accordance with the delivery schedule set forth in this contract. If the time for delivery is stated as a number of days, it shall mean calendar days. Goods will not be accepted if shipped C.O.D. Title to the goods purchased hereunder shall pass to Sonoma Water at the F.O.B. point designated on the face hereof, subject to Sonoma Water's right to reject the goods.

3.1.2 Inspection. Sonoma Water shall have the right to inspect the goods prior to shipment, acceptance, and payment. Notwithstanding anything stated to the contrary herein, if on inspection, Sonoma Water determines that the goods do not conform to the contract requirements, Sonoma Water shall have the right to reject the materials at the source.

3.1.3 Risk of Loss. The risk of loss of the goods shall not pass to Sonoma Water until Sonoma Water actually receives and accepts the goods from Supplier.

3.2 Force Majeure. Supplier shall not be liable for any delay or failure to deliver any or all of the goods if that delay or failure is caused by labor disputes, strikes, war, riots, insurrection, civil commotion, fire, flood, accident, storm or any Act of God. Sonoma Water shall not be liable for failure to take delivery of the goods attributable to any of the causes specified in this paragraph if they render it commercially impractical for Sonoma Water to receive the goods. When either Supplier or Sonoma Water claims an excuse for nonperformance under this paragraph, it must give reasonable notice to the other party.

### **4. Performance of Services.**

4.1 Standard of Care. Supplier shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Supplier's trade or profession. Supplier hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Supplier's work by Sonoma Water shall not operate as a waiver or release.

4.2 Assigned Personnel. Supplier 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 Supplier to perform work hereunder, Supplier shall remove such person or persons immediately upon receiving written notice from Sonoma Water.

4.3 Completion. Supplier shall perform the services described in this contract within the time or dates set forth herein.

4.4. Insurance. With respect to performance of Work under this contract, Supplier 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.

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

- a. Required if Supplier has employees.

- b. Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers' Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.
- d. Required Evidence of Coverage:
  - i. Certificate of Insurance

If Supplier currently has no employees, Supplier agrees to obtain the above-specified Workers' Compensation and Employers' Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

#### 4.4.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than 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.
- c. Supplier shall disclose any deductible or self-insured retention in excess of \$25,000 and such deductible or self-insured retention must be approved in advance by Sonoma Water. Supplier is responsible for any deductible or self-insured retention.
- d. Coverage shall be continued for one (1) year after delivery of product(s).
- e. Sonoma County Water Agency shall be additional insureds for liability arising out its distribution of Supplier's products (ISO endorsement CG 20 15 – "Additional Insured/Vendors" – or equivalent). Additional insured status shall continue for (1) year after delivery of product(s).
- f. The insurance provided to Sonoma Water, et al. as additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by them.
- g. 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 ISO form CG 00 01, or equivalent).
- h. The policy shall cover inter-insured suits between Sonoma Water and Supplier and include a "separation of insureds" or "severability" clause which treats each insured separately.
- i. Required Evidence of Coverage:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
  - ii. Certificate of Insurance.

#### 4.4.3. Automobile Liability Insurance

- a. Minimum Limits: \$1,000,000 combined single limit per accident.
- b. Coverage shall apply to all owned, hired and non-owned vehicles.
- c. Required Evidence of Coverage:
  - i. Certificate of Insurance.

#### 4.4.4. Standards for Insurance Companies

Insurers shall have an A.M. Best's rating of at least A:VII.

#### 4.4.5. Documentation

- a. The Certificate of Insurance must include the following reference: TW 20/21-072.
- b. All required Evidence of Coverage shall be submitted prior to the execution of this Agreement. Supplier agrees to maintain current Evidence of Coverage on file with Sonoma Water for the

required period of insurance.

- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, its officers, agents, and employees, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
- d. Required Evidence of Coverage 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. Supplier 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.

#### 4.4.6. Policy Obligations

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

#### 4.4.7. Material Breach

If Supplier fails to maintain insurance coverage 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 Supplier resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance coverage, and without further notice to Supplier, Sonoma Water may deduct from sums due to Supplier any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.

#### 4.5. Representations and Covenants of Supplier.

4.5.1 Status of Supplier. The parties intend that Supplier, 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. Supplier is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this contract, Supplier expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

4.5.2 Taxes. Supplier agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this contract 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.

4.5.3 Records Maintenance. Supplier shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this contract and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. Supplier shall maintain such records for a period of three (3) years following completion of the work hereunder.

4.5.4 Termination. At any time and without cause, Sonoma Water shall have the right, in its sole discretion, to terminate this contract by giving five (5) calendar days written notice to Supplier. In the event of such termination, Supplier shall only be entitled to payment for those goods that have been

delivered and accepted by Sonoma Water or services satisfactorily rendered through the date of termination. Sonoma Water's General Manager is authorized to terminate this contract pursuant to this Section.

4.5.5 Title to Goods, Infringement. Supplier warrants that it has good and legal title to the goods and that they are not subject to a security interest, lien, or other encumbrance. The Supplier shall hold Sonoma Water, its officers, agents, servants and employees, harmless from liability of any nature or kind because of the unauthorized or illegal procurement of goods furnished or used under this contract, and agrees to defend, at Supplier's sole expense, any and all actions brought against Sonoma Water or the Supplier because of the unauthorized or illegal procurement or use of such goods.

4.5.6 *Statutory Compliance/Living Wage Ordinance.* Supplier 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, Supplier 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.

## **5. Warranty.**

5.1 Warranty For Goods. Supplier warrants to Sonoma Water and/or Sonoma Water customers that any and all goods covered by this contract will be legally procured, conform to the drawings, specifications, samples, description and time provisions furnished by Sonoma Water and will be of first-class material and workmanship and free from defect. In the event of a defect, malfunction, or failure of the goods to conform with this warranty, Sonoma Water shall have the right to reject the material at the source. Sonoma Water shall also have the right to reject material delivered which has not been inspected, marked as meeting the specifications, and tagged as such at the source.

5.2 Warranty for Services. Supplier warrants to Sonoma Water that any and all materials furnished under this contract will be of good quality, free from faults and defects and in conformance with the contract. Neither final payment nor inspection of Supplier's services shall constitute an acceptance of services not done in accordance with this contract or relieve Supplier of liability in respect to any express warranties or responsibilities for faulty material or workmanship. Upon request of Sonoma Water, Supplier shall immediately remedy any defects in the services, materials and/or equipment and pay for any damage resulting there from. Sonoma Water shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the Supplier. In the event Sonoma Water elects to have said work performed by the Supplier, the Supplier agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from Sonoma Water; however, in no event shall such period exceed fifteen (15) calendar days. If the Supplier shall fail or refuse to comply with its obligations under this section, Sonoma Water shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

## **6. Indemnification.**

Supplier agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release Sonoma Water, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Supplier, arising out of or in connection with the performance of Supplier hereunder, whether or not there is concurrent negligence on the part of Sonoma Water, but excluding liability due to the sole active negligence or sole willful misconduct of Sonoma Water. 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 Supplier or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. In addition, Supplier shall be liable to Sonoma Water for any loss or damage to Sonoma Water property arising from or in connection with Supplier's performance hereunder.

## **7. Remedies.**

In the event of a default hereunder by the Supplier, Sonoma Water may pursue any one or more of the following remedies:

7.1 Sonoma Water's Right to Cover. In the event any item furnished by the Supplier in the performance of this contract should fail to conform to the specifications therefore, or to the same submitted by the Supplier with its proposal, Sonoma Water may reject the same, and require the Supplier to reclaim and remove the same forthwith, without expense to Sonoma Water, and immediately to replace all such rejected items with others conforming to such specifications or samples; providing that should the Supplier fail, neglect or refuse so to do Sonoma Water shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the Supplier the difference between the prices named in the contract and the actual cost thereof to Sonoma Water. In the event the Supplier shall fail to make prompt delivery, as specified of any item, the same conditions as to the rights of Sonoma Water to purchase in the open market and to reimbursement set forth above shall apply. Cost of inspection of deliveries which do not meet specifications will be for the account of the Supplier.

7.2. Sonoma Water's Right to Terminate this Contract. Every tender of goods must fully comply with all provisions of this contract and nothing in this contract shall be construed as restricting or limiting Sonoma Water's right to demand exact performance with respect to each and every installment delivery. Sonoma Water shall have the right to treat any nonconforming installment shipment as a breach of the entire contract and terminate the contract for any such breach. If Sonoma Water pursues this remedy, Supplier shall not have the right to substitute a conforming tender, whether or not the nonconforming delivery may be seasonably cured.

7.3 Sonoma Water's Right to Incidental Damages. Sonoma Water shall be entitled to recover incidental damages as provided for in the Uniform Commercial Code.

7.4 Remedies Not Exclusive: The rights and remedies of Sonoma Water provided hereunder shall not be exclusive and are in addition to any other rights and remedies provided by the law or under this contract.

## **8. Nondiscrimination.**

Supplier 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, or other prohibited basis. In addition, Supplier agrees to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting

discrimination in housing, employment and services because of AIDS or HIV infection during the term of this contract and any extensions of the term. All nondiscrimination rules or regulations required by law to be included in this contract are incorporated by this reference.

#### **9. General Provisions.**

9.1 Assignment. No right or interest in this contract may be assigned by Supplier without the written permission of Sonoma Water, and no delegation of any obligation owed by Supplier may be made without the written permission of Sonoma Water. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes.

9.2 No Waiver of Breach. The failure of Sonoma Water to object to the manner of performance of any of the terms of this contract shall not be considered a waiver of any rights or remedies, past, present, or future. The failure of Sonoma Water to object to a nonconforming performance shall not be construed as an acceptance of or acquiescence in the performance. Sonoma Water reserves the right to insist upon strict compliance with this contract at all times.

9.3 Applicable Law and Forum. This contract shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this contract or for the breach thereof shall be brought and tried in the County of Sonoma.

9.4 Merger; Modifications. The parties intend this writing to be the final expression of their agreement and it is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even when the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. No modification of this contract shall be effective unless and until such modification is evidenced by a writing signed by the Supplier and the General Manager. In the event of a conflict between these standard terms and conditions and any additional terms and conditions, the provisions of these standard terms and conditions shall prevail over an identified conflicting provision of these standard terms and conditions.

9.5 Construction. To the fullest extent allowed by law, the provisions of this contract 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 contract 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.

9.6 Term. This contract shall remain in effect until terminated by Sonoma Water or for 2 years after the date of its execution, whichever is earlier.

Reviewed as to funds:

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

Reviewed as to form:

By: \_\_\_\_\_  
\_\_\_\_\_[Name], Deputy County Counsel

**Austin Gap Partnership**

By: \_\_\_\_\_  
Steve Canelis [confirm that Steve is  
\_\_\_\_\_]

Title: [insert title] \_\_\_\_\_

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

Insurance Documentation is on file with Sonoma  
Water

\_\_\_\_\_  
(Date)

**Sonoma County Water Agency**

By: \_\_\_\_\_  
Grant Davis  
General Manager, Sonoma County Water  
Agency  
Authorized per Sonoma County Water  
Agency's Board of Directors' Action on  
\_\_\_\_\_(date)

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