

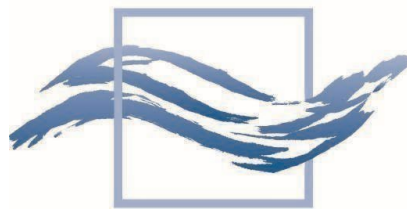
SPECIFICATION NO. 24-01

CONTRACT NO. 2024 24-01
BID, CONTRACT AND SPECIFICATIONS

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION TUOLUMNE RIVER

STANISLAUS COUNTY CALIFORNIA

TUOLUMNE RIVER TRUST



Tuolumne River Trust

2024 TUOLUMNE RIVER TRUST

January 2024

**NOTICE INVITING BIDS
FOR
BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER**

NOTICE IS HEREBY GIVEN that the Tuolumne River Trust (Trust) invites sealed Bids for the **Basso La Grange Phase 1 Floodplain Restoration, Tuolumne River**, more specifically defined in the Contract Documents, which generally consists of:

The Project restoration objectives have an ecological and geomorphic perspective that is focused on adjusting the river to function normally under contemporary flow and sediment regimes to benefit fall-run Chinook Salmon and *O. mykiss*.

The actions of the Project are expected to include, but not be limited to, demolishing, removing, and disposing of existing concrete and steel bridge remnant infrastructure, salvaging angular bank rock protection and vegetation, extracting and processing gravel from excavation areas, constructing in-channel features such as mainstem channel meander complexes, riffles, gravel bars, and boulder clusters, filling gravel pits, constructing floodplain habitat features such as side channels, low floodplains, and high floodplains, installing rootwads, installing toe boulders, native vegetation planting, and stockpiling, removing, and/or disposing of excess materials.

Project Schedule:

Date:	Description:
February 6, 2024	Invitation for Bids Issued
February 21, 2024	Inspection Trip (Site Visit)
March 7, 2024	Bids Due
March 8, 2024	Bid Opening
March 22, 2024	Written Notice of Award Contract
March 29, 2024	Deadline to Sign Agreement
June 15, 2024	Earliest Start Date
October 15, 2024	Deadline to Complete In-Water Work
December 20, 2024	Deadline to Complete All Work

This project is being competitively bid pursuant to the terms of the California Public Contract Code applicable to state agencies.

All general contractors who wish to submit a bid for this project may attend **an optional pre-bid inspection trip at the project site at 11:00 a.m. on February 21, 2024, at 37.663821, -120.471897 ([Google Map link here](#))**.

Bidders must submit any questions regarding this Notice Inviting Bids in writing to TRT restoration program director Julia Stephens, at julia@tuolumne.org no later than **Friday March 1st, 2024**. Responses to all questions will be posted and available on the project page at <https://www.tuolumne.org/basso-la-grange-salmon-restoration-project> three (3) Working Days before the bid opening.

General contractors wishing to submit a bid for the project should visit project web page at <https://www.tuolumne.org/basso-la-grange-salmon-restoration-project> to get a copy of the plans, specifications, and contract documents for the project. For more information, you may email Julia Stephens at julia@tuolumne.org.

All bids shall be accompanied by cash or a cashier's check or certified check payable to the order of the Tuolumne River Trust, amounting to (10%) percent of the Bid, or by a bidder's bond executed by an admitted surety insurer in said amount and payable to the Tuolumne River Trust (hereinafter "Security"). If the Bidder fails, within ten (10) Working Days after written notice that the Contract has been awarded to the Bidder, to enter a Contract with the Trust, the Trust may award the Contract to the second lowest bidder. In such event, the amount of Bidder's Security shall be applied by the Trust to the difference between the Bidder's Bid and the second lowest Bid, and the surplus of the Security, if any, shall be returned to the Bidder if cash or check is used, or to the surety on Bidder's bond if a bond is used.

The Bids must be on forms obtained as set forth above and must be delivered to the Trust at P.O. Box 3727 Sonora, CA 95370 in a sealed envelope marked "**Bid For Basso La Grange Phase 1 Floodplain Restoration, Tuolumne River,**" **up to but not later than end of day on Thursday, March 7, 2024**. Bids will be publicly opened, examined, and read aloud on Friday March 8th at 9am, at 251 West Jackson Street, Sonora CA 95370. The bid opening can also be viewed live at that time via Zoom (<https://us02web.zoom.us/j/86997775113>). The Trust's Board of Directors reserves the right to reject any and all Bids.

In accordance with the provisions of California Public Contract Code Section 3300, the Trust has determined that the Contractor shall possess, as a minimum, a valid Class A License. In accordance with the provisions of California Business and Professions Code Section 7028.15, a bid submitted to the Trust by a Contractor who is not licensed in accordance with Chapter 9 of the California Business and Professions Code shall be considered non-responsive and shall be rejected by the Trust.

No bidder may withdraw its bid for a period of sixty (60) days after the date set for the opening thereof.

1. BID PROTEST: Any Bid Protest must be submitted in writing to Julia Stephens at P.O. Box 3727 Sonora, CA 95370, before 5:00 pm of the fifth (5th) Business Day following transmission and posting of the Trust's Notice of Intent to Award. The Notice will be posted <https://www.tuolumne.org/basso-la-grange-salmon-restoration-project>. The Trust will use reasonable efforts to deliver by e-mail a copy of the Notice of Intent to Award to all Bidders who submitted Bids no later than the Business Day after issuance, although any delay or failure to do so will not extend the Bid Protest deadline described above.

Payment of prevailing wages as determined by the State of California, Director of Industrial Relations is required for this project, a copy of which is available at the Trust offices and which can be obtained from <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. This is a public works project subject to registration and reporting requirements to the Department of Industrial Relations.

INSTRUCTIONS TO BIDDERS

1. OBTAINING COPIES OF CONTRACT DOCUMENTS

General contractors wishing to submit a bid for the project should visit the project web page at <https://www.tuolumne.org/basso-la-grange-salmon-restoration-project> to get a copy of the plans, specifications, and contract documents for the project. For more information, you may email Julia Stephens at julia@tuolumne.org.

2. FORM OF BID

All Bids must be made on regular Bid Forms which are made a part of these Contract Documents and must be enclosed in a sealed envelope, marked as required in the "Notice Inviting Bids." The Bid must be signed by the individual or by the proper officials of the firm or corporation by which the Bid is made. The right is reserved to reject any and all Bids and to waive technical defects as the interests of the Trust require.

3. INTERPRETATION OR CORRECTION OF CONTRACT DOCUMENTS

a. Bidder shall, before submitting its Bid, carefully study and compare the components of the Contract Documents and shall examine the Project Site, the conditions under which the Work is to be performed, and the local conditions.

b. In the event Bidder has any question as to the meaning of any part of the Contract Documents, or Bidder finds any error, inconsistency, or ambiguity in the Contract Documents, Bidder shall make a written Request for Clarification prior to submitting its Bid. Requests for Clarification or interpretation of the Contract Documents shall be addressed only to Julia Stephens at julia@tuolumne.org. The Bidder must submit any request no less than five (5) Working Days prior to the bid opening, in order to allow for the Trust to issue a written Addenda if necessary.

c. If necessary, the Trust shall make clarifications, interpretations, corrections, and changes to the Contract Documents by Addenda issued as provided below. Purported clarifications, interpretations, corrections, and changes to the Contract Documents made in any other manner shall not be binding on the Trust and Bidders shall not rely upon them.

4. ADDENDA

a. The Trust will make Addenda available online at the following website: <https://www.tuolumne.org/basso-la-grange-salmon-restoration-project>. It is Bidder's responsibility to check the website and review Addenda prior to submitting a Bid.

b. Addenda withdrawing the Invitation for Bids or postponing the Bid Deadline may be issued any time prior to the Bid Deadline. However, if any Addenda issued later than seventy-two (72) hours prior to the bid closing results in a material change to the

Contract Documents, the Bid Deadline shall be extended by the Trust by not less than seventy-two (72) hours, pursuant to Public Contract Code section 4104.5.

c. Each Bidder shall be responsible for ascertaining, prior to submitting its Bid, that it has received all issued Addenda. Each Bidder shall acknowledge receipt of all Addenda on the Bid Form. Failure to acknowledge receipt of Addenda may render the Bid non-responsive.

5. EXAMINATION OF SITE AND PLAN

a. The Bidders must satisfy themselves as to the location of the Work, transportation facilities, soil conditions, underground conditions, groundwater, and all other matters, which may influence their Bids. It will be assumed that the Bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantity of work to be performed and the material, equipment, and other devices to be furnished and as to the requirements of these Contract Documents.

b. Any information derived from the Trust, or any of its employees or from any records of the Trust will not relieve the Contractor from risks of the responsibility of fulfilling the terms of the Contract.

6. OPTIONAL PRE-BID MEETING

All general contractors who wish to submit a bid for this project must attend a mandatory pre-bid job walk through at the project site at **11:00 a.m. on February 21, 2024**, at **37.663821, -120.471897** ([Google Map link here](#)).

7. FILLING IN BID FORMS BY BIDDERS

a. Bids shall be submitted on the Bid Forms included with the Contract Documents. Bidder shall submit, concurrently with its Bid:

- i. Proposal
- ii. Department of Industrial Relations Registration Form
- iii. Debarment Certification
- iv. Bid Schedule
- v. Non-Collusion Affidavit
- vi. Designation of Subcontractors
- vii. Contractor's License Information
- viii. References
- ix. Bidder's Responsibility Statement
- x. Signature Page
- xi. Bid Bond/Bid Guarantee
- xii. All other information requested by these Contract Documents.

b. All blanks on the Bid Forms shall be filled in by typewriter or printed legibly in ink.

- c. The Bidder must individually initial all interlineations, alterations, and erasures.
- d. Bidder shall acknowledge receipt of all Addenda on the Bid.
- e. Bidder shall not modify or qualify the Bid Forms in any manner.
- f. The Bid Forms shall be signed by a person or persons legally authorized to bind Bidder to the Contract. The individuals signing each document shall warrant that they are authorized to bind the legal entity of the Bidder.

8. BID GUARANTEE

a. All Bids shall be accompanied by cash or a cashier's or certified check payable to the order of the Tuolumne River Trust, amounting to ten percent (10%) of the bid, or by a bidder's bond in said amount executed by an admitted surety insurer and payable to the Tuolumne River Trust (hereinafter "Security"). If the Bidder fails, within ten (10) workdays after written notice that the Contract has been awarded to it, to enter a Contract with the Trust, the Trust may award the Contract to the second lowest Bidder. In such event, the amount of Bidder's Security shall be applied by the Trust to the difference between the Bidder's Bid and the second lowest Bid, and the surplus, if any, shall be returned to the Bidder if cash or a check is used, or to the surety on Bidder's bond if a bond is used.

b. The Bid Security of the successful Bidder will be returned once a satisfactory Contract accompanied by the proper bonds is executed. The Bid Security of other Bidders will be returned to them upon the award of the Contract to the successful Bidder, except that of the next higher Bidder which shall be returned upon the execution of a satisfactory Contract accompanied by the proper bonds by the lowest Bidder, or in case of a default, the surety of the next higher Bidder will be held until they execute a satisfactory Contract accompanied by the proper bonds.

9. WITHDRAWAL OF BID

Any Bid may be withdrawn at any time prior to 8:00 a.m. of the day identified in the "Notice Inviting Bids" for the opening of the Bids, provided that a request in writing executed by the Bidder or his authorized agent for such withdrawal is filed with the Trust. The withdrawal of any Bid shall not prejudice the right of a Bidder to file a new Bid prior to the established deadline for submission of bids.

10. RESPONSIBILITY OF BIDDER

a. The Trust has absolute discretion to determine the lowest responsive, responsible Bidder. The Contract will not be awarded to any Bidder who cannot give satisfactory assurance of their ability to perform the Contract if it is awarded to it. Each Bidder may be required to furnish satisfactory evidence that it has sufficient means and

facilities and has had ample experience in the type of work contemplated herein to deliver the materials and complete the work in accordance with the specifications and within the time limit guaranteed.

b. In determining whether or not a Bidder is “responsible,” the Trust may consider the following factors in relation to the Work to be performed for this Project:

- i. Demonstrated financial strength including, but not limited to, resources available, bonding capacity, and available insurance.
- ii. Demonstrated safety record including, but not limited to, Experience Modification Rate.
- iii. Successful completion of a minimum two projects of a similar nature that included in-channel work and revegetation of riparian and floodplain areas in the past ten years. In reviewing this factor, the Trust may consider elements including, but not limited to, contract amount of completed projects, experience on similar public works projects, experience implementing prevailing wage certified payroll requirements, timeliness of performance, and, if necessary, evaluation of Bidder’s work by previous agencies, clients, design professionals, or subcontractors. Bidder shall provide names and phone numbers of references for similar projects.
- iv. Sufficiency of contract administration and construction management systems including, but not limited to, proposed scheduling tools, proposed subcontract forms, proposed progress payment applications, and proposed certification of payroll documents.
- v. History of claims, litigation, poor performance, late project completions, warranty issues and termination or disqualification from projects.

The Trust will make its determination of responsibility based upon information submitted by Bidders contained in the “Bidders Statement of Responsibility,” included in the Contract Documents and, if necessary, interviews with previous clients, design professionals, or subcontractors with whom the Bidder has worked.

If a Bidder otherwise determined to be the lowest responsive Bidder is determined to be non-responsible by the Trust, that Bidder will be given written notice of each finding by the Trust and shall have five (5) Working Days to present additional relevant evidence to the Trust. The Trust shall make a recommendation to its Board of Directors, which shall make a finding on the issue of non-responsibility as part of the process of Award of Contract.

c. The Contractor shall possess a valid **California Class A Contractors License** at the time of award of the Contract. Bids will not be accepted from a Contractor who is not licensed in accordance with the laws of the State of California.

11. PROGRESS SCHEDULE – MATERIAL AND EQUIPMENT LISTS

The Contractor shall submit a progress schedule satisfactory to the Trust, within ten (10) Working Days after issuance of the Notice of Award to the Contractor showing thereof the time they propose to spend in executing the various major divisions of the work and his proposed sequence or order of operation. The schedule shall be updated monthly by the contractor. At a minimum the contractor shall provide what is described in Section 3.8 of the General Conditions.

12. CONTRACT BONDS

The Contractor shall furnish bonds, at its own expense, to the extent required by law or as set forth in the Contract Documents.

13. INSURANCE

The Contractor shall provide, at its own expense, all insurance required by law or as set forth in the General Conditions or the Contract.

14. AWARD OF CONTRACT

The Trust reserves the right to reject any or all Bids. The award of the Contract, if it is to be awarded, will be made to the lowest responsible Bidder whose Bid complied with all the prescribed requirements, and if awarded, after it has been approved by the Trust's Board of Directors. The Trust reserves the sole right to reject any and all bids and waive any informality in a bid and may award a contract as the interests of the Trust may dictate. Contractors will not be reimbursed for the cost of bid preparation.

15. EXECUTION OF CONTRACT

The Contract shall be executed and signed by the Contractor and returned with the prescribed executed bonds and evidence of insurance within five (5) Working Days after receipt by Contractor of the Notice of Award. Failure to return the signed and executed Contract with the prescribed executed bonds and insurance within the five (5) Business Day limit shall be just cause for the annulment of the award and the forfeiture of that portion of the Bid Security equal to the difference between Contractor's Bid amount and the amount submitted by the second lowest responsible Bidder.

16. SUBCONTRACTORS

Each Bidder must comply with California Public Contract Code sections 4100 - 4114 and following (Subletting and Subcontracting Fair Practices Act) and must submit with

its Bid on the form attached to the Bid Forms the name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each proposed subcontractor who will perform work or labor or render services to the Contractor in excess of one-half percent of the total, and shall state the portion of the work which will be done by each subcontractor.

17. COMMENCEMENT OF WORK

The Work shall be commenced within seven (7) Days after receipt of the Notice to Proceed and must be completed within the time allowed after the date specified in the Notice to Proceed, or if no starting date is specified, within the time limit allowed from the date on which work started.

18. TAXES

The Bid price set forth in the Bid form shall include all Federal, State, and local taxes applicable to the Work or materials furnished and no claims for additional costs of any such tax shall be made.

19. SCHEDULE OF PRICES

The Contractor may be required to submit, upon award of Contract, a breakdown or schedule of unit prices which is satisfactory to the Trust to be used for monthly estimates.

20. COMPLIANCE WITH LABOR LAWS

a. **In General.** For purposes of California labor law, this is a public works contract subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720, et seq.). In accordance with Labor Code Section 1771, Contractor and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR") to all workers employed on this project. In accordance with Labor Code Section 1815, Contractor and all subcontractors shall pay all workers employed on this project 1 1/2 the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Contract is subject to compliance monitoring and enforcement by DIR.

b. **Registration.** Contractor and all subcontractors shall not engage in the performance of any work under this Contract unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. Contractor represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subcontractors as required, to the Trust.

c. **Report on Prevailing Rate of Wages.** The Trust has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at the Trust's Offices, located at 251 West Jackson Street, Sonoma, CA, 95370, and shall be made available to any interested party upon request. Further, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work for each craft, classification, or type of worker needed to execute the Contract is available from the Director of the Department of Industrial Relations at: <http://www.dir.ca.gov/oprl/PWD/index.htm>.

d. The Trust will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rates on file as aforesaid. The possibility of a wage increase is one of the elements to be considered by the Contractor in determining his/her or its bid and will not, under any circumstances, be considered as the basis of a claim against the Trust on the Contract.

21. DISCREPANCIES IN BIDS

Where there is any discrepancy in the written or numerical quotation of unit bids or the extension of the quantities and unit prices, the products of the written quotation of unit price and the estimated quantity for the item will be the bid considered correct by the Trust.

22. SUBSTITUTION OF "OR EQUAL" BID ITEMS

In accordance with California Public Contract Code Section 3400, where the technical specifications or Project plans list products by manufacturer's name, brand or model number such information indicates that no substitution will be accepted because listed product is necessary to match others in use on a particular public improvement either completed or in the course of completion.

The Bidder may propose substitution of manufacturer to provide the same level of service, utility and quality if the product Specifications requiring a particular brand product include the words "or equal". The contractor shall not install the specified material if the proposed "equal" is not approved by the Trust.

23. COMPLIANCE WITH BIDDING PROCESS

The Trust reserves the right to accept or reject any submitted Bid which fails to comply with any of the requirements as set forth herein.

PROPOSAL DOCUMENTS
BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

Bidder's Name:	
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TO TUOLUMNE RIVER TRUST:

In accordance with Trust's Notice Inviting Bids, the undersigned Bidder hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the above stated project as set forth in the Contract Documents, and to perform all work in the manner and time prescribed.

Bidder declares that this proposal is based upon careful examination of the work site, Project Plans, and other Contract Documents, including the Notice Inviting Bids, this Proposal, Contract Agreement Documents, Special Provisions, Technical Provisions, General Conditions, Appendices, and Standard Plans & Specifications. If this proposal is accepted for award, Bidder agrees to enter into a contract with the Trust at the unit and/or lump sum prices set forth in the following Bid Schedule. Bidder understands that failure to enter into a contract in the manner and time prescribed will result in forfeiture to the Trust of the Bid Bond accompanying this proposal.

Bidder understands that a bid is required for the entire work that the estimated quantities set forth in the Bid Schedules are solely for the purpose of comparing bids, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, federal, state and local taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts.

Bidder agrees and acknowledges that it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Bidder will comply with such provisions of that code before commencing the performance of this Contract if awarded it.

Bidder certifies to be properly licensed by the State of California as a contractor to perform work of this specialty. The undersigned agrees to furnish Trust satisfactory proof of ability to perform the work, as well as records of performance of similar jobs completed recently, if and when requested to do so by the Trust.

Bidder agrees that the applicable insurance and bonding requirements can and will be fulfilled.

Bidder declares that the only persons or parties interested in this proposal as principals are those named herein; that no officer, agent, or employee of Trust is personally interested, directly or indirectly, in this proposal; that this proposal is made without

connection to any other individual, firm, or corporation making a bid for the same work; and that this proposal is in all respects fair and without collusion or fraud.

Bidder certifies that in all previous contracts or subcontracts, all reports which may have been due under the requirements of any agency, State, or Federal equal employment opportunity orders have been satisfactorily filed, and that no such reports are currently outstanding.

Bidder certifies to have verified that it and all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for both itself and all subcontractors to Trust.

Bidder agrees that it and all subcontractors used on the public work project shall furnish payroll records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

Bidder shall guarantee all work for a period of one year from project acceptance.

Bidder has carefully checked all of the figures in the Bid Schedule and understands that Trust shall not be responsible for any errors or omissions on Bidder's part in making up this bid. Bidder agree that this bid may not be withdrawn for a period of sixty (60) calendar days from the date of the bid opening and that Trust reserves the right to reject any or all bids, waive any informality in bids received, and may at its option make the award that in the judgment of Trust is to the best interest of Trust.

The following documents have been completed and executed, and are hereby made a part of this Contract by reference:

- ❑ DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION
- ❑ DEBARMENT CERTIFICATION
- ❑ BID SCHEDULE & ADDENDA ACKNOWLEDGEMENT
- ❑ NON-COLLUSION AFFIDAVIT
- ❑ DESIGNATION OF SUBCONTRACTORS
- ❑ CONTRACTOR LICENSE INFORMATION
- ❑ REFERENCES
- ❑ BIDDER'S SIGNATURE PAGE
- ❑ BIDDER'S BOND

DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

The Tuolumne River Trust has the obligation to report this contract to the Department of Industrial Relations (DIR) and provide various information including that specified below. For the purposes of this document, you are referred to as "Contractor." In addition to filling out this form for the Trust, you have the obligation to submit certified payroll records directly to DIR.

<p><u>Project:</u></p> <p>BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER</p>

Contractor Name:			
Contractor Mailing Address:			
Contractor E-mail Address:			
Contractor Telephone:			
Contractor License Number:			
DIR Registration Number:			
Classification(s) or type(s) of workers that will be employed by the contractor for this project:			
Subcontractors:	License Number:	DIR Number:	Worker Classifications:

I certify that the information set forth above is correct and that I am authorized to provide this information on behalf of the contractor named in the first line above.

_____ (Signature)	_____ Date
_____ (Printed Name)	

DEBARMENT CERTIFICATION

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

By submitting its bid, the bidder certifies in accordance with California Public Contract Code Section 6109 that neither the bidder nor any subcontractor included on the list of proposed subcontractors submitted with the bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109, contractors and subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on, public works projects.

BID SCHEDULE

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

Bid Item No.	Description	Quantity	Unit	Contractor's Bid
1	Site access, mobilization, and demobilization	1	LS	\$ -
2	Signage	1	LS	\$ -
3	Plans per project specifications	1	LS	\$ -
4	Meetings per project specifications	1	LS	\$ -
5	Post-implementation report per project specifications	1	LS	\$ -
6	SWPPP development and implementation	1	LS	\$ -
7	Clearing and grubbing	3.12	AC	\$ -
8	Removal of abandoned haul road bridge remnants and salvage angular bank rock protection	1	LS	\$ -
9	Build new spawning habitat (~2.7 acres)	4384	CY	\$ -
10	Fill in-channel gravel pits (~2 acres)	9023	CY	\$ -
11	Excavate new floodplain habitat (~3.1 acres)	31937	CY	\$ -
12	Overexcavate floodplain to extract available gravel	563	CY	\$ -
13	Floodplain backfill	563	CY	\$ -
14	Sort excavated sediment for spawning gravel	23477	CY	\$ -
15	Export excess fines	18077	CY	\$ -
16	Stockpile	1016	CY	\$ -
17	Revegetation	1	LS	\$ -
18	Install boulder clusters	1	LS	\$ -
	TOTAL			\$ -

Total Bid in Writing (BASIS OF AWARD):

In the case of any discrepancy between the extended prices for any bid item bid, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices of all items, the sum of the extended prices of all items shall prevail. In cases of discrepancy between the total in writing and the total in figures, the total in writing will prevail. If erasures or other changes appear on this proposal, each such erasure or change must be initialed by the person signing the bid. Bidders must, upon request, furnish evidence of their financial responsibility and ability to perform the work herein described.

The Trust reserves the right to reject any and all proposals and/or waive any irregularity in any proposal received.

Unless otherwise required by law, no bidder may withdraw its proposal for a period of sixty (60) calendar days after the date set for receipt thereof.

BASIS OF AWARD

The award, if made, will be awarded to the responsible bidder submitting the lowest Total Bid for the Bid Schedule. In accordance with the contract documents and other applicable law, the Trust may add or deduct items of work after the lowest responsible bidder is determined.

ADDENDUM ACKNOWLEDGEMENT

**WE HEREBY ACKNOWLEDGE ADDENDA NOS. _____, _____ & _____
AND HAVE REFLECTED THESE CHANGES IN OUR PROPOSAL.**

Signature of Bidder

NON-COLLUSION AFFIDAVIT

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

To be Executed by Bidder and Submitted with Bid

State of California
County of _____

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state]."

	Contractor

(Attach appropriate notary acknowledgments)

DESIGNATION OF SUBCONTRACTORS

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

The undersigned is required to fill in the following blanks in accordance with the provisions of Section 4104 of the Public Contract Code of the State of California.

Sub-Contractor Name	License Number	DIR Registration Number	Location of the Place of Business	Specific Description of Subcontract Work	\$ Amount of the Sub-Contractor Work

Subcontractors listed must be properly licensed under the laws of the State of California for the type of work which they are to perform. Do not list *alternate* subcontractors for the same work. The undersigned agrees to furnish proof that all contractors and

subcontractors performing any work related to this improvement are complying with all the requirements of Social Security Legislation, both State and Federal, and also agrees to conform with the provisions of Sections 4100 to 4113, inclusive, of the Public Contract Code, as amended, concerning subcontractors and subcontracts.

CONTRACTOR LICENSE INFORMATION

**BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION,
TUOLUMNE RIVER**

The Bidder acknowledges that the appropriate license is required for performance of the Work for this Project

The Bidder holds the following California Contractors License(s):

- 1. License No. _____, Class _____, Expiration Date _____
- 2. License No. _____, Class _____, Expiration Date _____
- 3. License No. _____, Class _____, Expiration Date _____
- 4. License No. _____, Class _____, Expiration Date _____
- 5. License No. _____, Class _____, Expiration Date _____

Bidder's Taxpayer Identification No.

REFERENCES

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

The following are the names, addresses, and phone numbers for three public agencies for which Bidder has performed at least two projects of a similar nature that included in-channel work and revegetation of riparian and floodplain areas within the past ten years:

1.	
2.	
3.	

BIDDER'S RESPONSIBILITY STATEMENT

1. SCOPE OF THIS STATEMENT

To allow the Trust to evaluate the Bidder's responsibility, the Bidder shall provide the following information as a part of its Bid. The Trust shall consider the information contained in this Statement as personal and proprietary to the Bidder, and the Trust shall use the information for the sole purpose of determining the Bidder's responsibility. If additional pages are required to respond to any of the questions set forth in this Statement, the Bidder shall describe and list the additional pages in Section 9, below.

2. EXPERIENCE

- a. How many years has the Bidder been performing work as a contractor under the present business name for the kind of work required for this project?

_____ years.

- b. Prospective bidders shall demonstrate a minimum of four years' experience in constructing projects of a similar size and nature.
- c. If any of the experience listed in this document refers to work performed under a different name, list the different business names, and describe the relationship to the present business name on a separate page (list the additional pages in Section 9 below).

3. COMPLETED WORK

Provide the requested information set forth below for at least two projects of a similar nature that included in-channel work and revegetation of riparian and floodplain areas within the past ten years.

- a. Project Name:

Project Description:

Contract Amount:

Date Completed:

Contact Person:

Contact Person's Phone:

b. Project Name:

Project Description:

Contract Amount:

Date Completed:

Contact Person:

Contact Person's Phone:

c. Project Name:

Project Description:

Contract Amount:

Date Completed:

Contact Person:

Contact Person's Phone:

4. CLAIMS HISTORY

- a. Has any claim (whether mediated, arbitrated, or litigated) been made against your company in the past five years? _____
- b. Has your company made any claim (whether mediated, arbitrated, or litigated) against any contracting agency/organization in the past five years?

- c. If you answered "yes" to subsections 4.a. or 4.b. above, describe the claim(s) using the format below: (use additional sheets if necessary).

Project Name:

Claim Amount:

Other Party Contact:

Name and Phone:

Describe the claim(s) on a separate sheet (see Section 8, below).

5. CONTRACT TERMINATION

Has your company ever been terminated by a or client, or rejected from bidding on a public works or other competitively bid project in the last five (5) years?
_____. If yes, provide an explanation below:

Project Name:

Client Contact
Name and Phone:

Date of Termination/Rejection:

Explanation:

If more than one (1), describe on additional sheet (see Section 7 below).

6. COMPLETION BY SURETY

Has your company every failed to satisfactorily complete a construction contract, or has a surety ever completed any portion of a construction contract of your company within the last five (5) years? _____. If yes, provide an explanation below:

Project Name:

Surety Contact
Name and Phone:

Date of Surety Took Over:

Explanation:

If more than one (1), describe on additional sheet (see Section 9, below).

7. Has your company, any officer of your company, or any employee of your company who has a proprietary interest in your company ever been disqualified, removed, or otherwise prevented from bidding on, or completing, a federal, state, or local government project because of a violation of law or a safety regulation? _____. If yes, please provide an explanation:

8. Has more than one final, unappealable finding of contempt of court by a federal court been issued against your company within the immediately preceding two (2)-year period because of your failure to comply with an order of a federal court which orders you to comply with an order of the National Labor Relations Board. A finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because you have complied with the order which was the basis for the finding.

9. ADDITIONAL PAGES

The Bidder declares that the pages listed in this Subsection were added and included with these Bid Documents to accurately respond to the Bidding Requirements.

_____ (List Pages)

10. PENALTY OF PERJURY

Bidder hereby declares and certifies under penalty of perjury that the information contained herein is true, correct, and complete.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity and authority to sign this document on behalf of the Bidder, and have caused this document to be executed by setting hereto their names, titles, and signatures.

BIDDER:

Signature(s)

DATE: _____

(Name and Title of Signatories)

(Legal Name of Bidder)

(Address)

(Phone Number)

BIDDER'S SIGNATURE PAGE

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

The undersigned hereby declares that the cost of all necessary items for completion of this project are included in the unit prices quoted, all incidentals have been taken into consideration even though said incidentals are not specifically listed in the specifications or shown on the plans. The undersigned is likewise aware of the fact that distances, quantities, and other estimated figures appearing on the plans or mentioned in the specifications or on the Proposal are only approximate and declares that the unit prices shown above for the various items of work are based on distances and quantities calculated as the result of actual measures performed at the site project.

Respectfully Submitted,			Date:		
Firm Name:					
Signature:					
Address:					
Business Phone:				Residence Phone:	
Is Bidder Currently Certified DBE? YES <input type="checkbox"/> NO <input type="checkbox"/>					
Contractor's License No.				Class	Expiration Date:
Bidder is a*		If a partnership, names of partners. If a corporation, names of President or Vice President, and the Secretary or Asst. Secretary.			
Name			Address		

I (we) hereby state and declare, under the penalty of perjury under the laws of California, that the representatives made herein are true and correct.

Executed			at		California.
Date			Location		

* By:		* By:	
-------	--	-------	--

Title:		Title:	
--------	--	--------	--

*Please state whether the bidder is an individual, a partnership, a corporation, or an individual doing business under a fictitious name. If the bidder is a corporation, affix corporate seal.

BIDDER'S BOND
BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

KNOW ALL BY THESE PRESENTS: That _____				
As Principal (herein called "Principal") and _____				
As Surety (herein called "Surety") are held and firmly bound unto the Tuolumne River Trust, a California Nonprofit Corporation (herein called "Obligee"), in just and full sum of (\$ _____) lawful money of the United States of America, (said sum being equal to 10% of the estimated total amount of the bid) of Principal for the herein described work of improvement, for the payment of which, well and truly to be made, we hereby bind ourselves and our, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.				
THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That WHEREAS , Principal who is bidding, or is about to bid, for the following described work of improvement, all in accordance with the Notice Inviting Bids, Proposal, Plans, Specifications, and Standard Contractual Requirements of Obligee therefore.				
NOW, THEREFORE , if Obligee shall make an award to Principal for said work of improvement according to the terms of such bid, and Principal shall duly execute, or cause to be executed, and delivered to Obligee the Contract, bonds, and evidence of insurance coverage as, and within the time required by the Standard Contractual Requirements, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.				
No extension of time granted to the Principal and no change or alteration in any of the terms of the bid or the bid requirements, whether made after notice or note, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change, or alteration. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal with proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute this bond.				
In the event suit is brought upon this bond by the Obligee and judgment is recovered by the Obligee, court costs, including reasonable attorney's fees, shall be an additional obligation of this bond for which Principal and Surety shall be liable.				
Signed and Sealed this		day of		20 .

Contractor as Principal (Corp. Seal)		Surety (Corp. Seal)	
Company Name		Company Name	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Street Address		Street Address	
City, State, Zip Code		City, State, Zip Code	

Note: Signatures of those executing for Surety must be properly notarized. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

CONTRACT

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

THIS CONTRACT is made and entered into this ___ day of _____, 20___, by and between the Tuolumne River Trust, hereinafter referred to as "Trust," and [contractor name], a California [insert business type], hereinafter referred to as "Contractor," for the work described herein.

WITNESSETH, in this consideration of their covenants, the parties hereto agree as follows:

- 1) **Contract Award.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On [date], Trust awarded this Contract to Contractor.
- 2) **Contract Documents.** The Contract Documents for this Agreement shall consist of the following:
 - i) Notice Inviting Bids & Instructions to Bidders
 - ii) Contract
 - iii) General Conditions
 - iv) Bidder's Proposal Documents
 - v) Contract Specifications
 - vi) Drawings
 - vii) Notice to Proceed
 - viii) Bonds
 - ix) Evidence of Insurance
 - x) Any Addenda
 - xi) Any Change Orders
 - xii) Additional documents:

All of the provisions of said Contract Documents are made a part hereof as though fully set forth herein.

- 3) **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

- 4) **Payment.** As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, Trust will pay Contractor [amount in words] United States Dollars (\$[amount in numerals]) (“Contract Price”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds, and all overhead costs, in accordance with the payment provisions in the General Conditions.

- 5) **Bonds and Insurance.** Concurrently with the execution of this Contract, Contractor shall file with the Trust the bonds and evidence of insurance specified in said General Conditions and subject to adjustment provided therein.

- 6) **Time for Completion.** Contractor will fully complete the Work for the Project by end of the calendar year, but abiding by Schedule Restrictions outlined in the Technical Specifications on Table 1, page 9, from the commencement date given in the Notice to Proceed (“Contract Time”). By signing below, Contractor expressly waives any claim for delayed early completion.

- 7) **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, Trust will assess liquidated damages in the amount of \$900 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from Trust’s payments due or to become due to Contractor under this Contract.

- 8) **Notice.** All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery; the date of delivery confirmed by a reputable overnight delivery service; on the fifth (5th) calendar day after deposit in the United States Mail postage prepaid, registered or certified. The parties shall also provide courtesy notice via email, though notice shall only be effective if given in a manner as provided in the preceding sentence.:

To the Tuolumne River Trust:
 c/o Julia Stephens, Restoration Program Director
 P.O. Box 3727
 Sonora, CA 95370
 Email: julia@tuolumne.org

To the Contractor:
 Contractor Name: _____
 Contractor Address: _____
 Contractor Email: _____

9) **General Provisions.**

- a) **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without Trust's written consent. This Contract is binding on Contractor's and Trust's lawful heirs, successors, and permitted assigns.
- b) **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions.
- c) **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Stanislaus County, and no other place.
- d) **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- e) **Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between Trust and Contractor.
- f) **Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- g) **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

TUOLUMNE RIVER TRUST:

s/ _____

Patrick Koepfle
Executive Director, Tuolumne River Trust

Date: _____

CONTRACTOR: _____
Business Name

s/ _____ Corporate Seal:

Name/Title

Date: _____

Second Signature (if Corporation):

s/ _____

Name/Title

Date: _____

GENERAL CONDITIONS

BASSO LA GRANGE PHASE 1 FLOODPLAIN RESTORATION, TUOLUMNE RIVER

1. DEFINITIONS:

The following terms as used in any agreement of which these General Conditions are a part are defined as follows:

- 1.1 **Architect or Engineer:** The person or persons so specified on the title sheet of the Technical Specifications and/or Project Plans.
- 1.2 **Construction Manager:** The Trust's authorized representative for administration and overall management of the Project agreement and Work. The Construction Manager is the official point of contact between the Trust staff, the Architect and/or Engineer, and the Contractor.
- 1.3 **Contract:** The contract between the Trust and Contractor concerning the Project, as evidenced by and comprised of the Contract Documents
- 1.4 **Contract Documents:** All those documents listed in the Contract as comprising the entire agreement between the Trust and the Contractor.
- 1.5 **Contract Price:** The amount the Trust has agreed to pay and the Contractor has agreed to accept for the Work, as set forth in the Contract.
- 1.6 **Contractor:** The successful bidder for the Project and party to the Project Agreement with the Trust as specified in the Project Agreement.
- 1.7 **Days:** Unless otherwise specified in the Contract Documents, days mean Working Days.
- 1.8 **Funding Agency:** The California Department of Water Resources.
- 1.9 **Landowner:** The Owner of the land on which the Project is located.
- 1.10 **Project:** The Project named in the Contract Documents.
- 1.11 **Project Plans:** The primarily graphic detailed requirements concerning the Project and any addenda to the Project Plans signed by authorized Trust representatives and issued prior to bid opening, Equal Product Proposals accepted by the Trust and signed by authorized Trust representatives prior to bid opening, and change orders and other amendments to the Project Plans signed by authorized representatives of the Trust and the Contractor in accordance with the requirements of the Contract Documents.
- 1.12 **Project Inspector:** The party or parties charged by the Trust with inspecting the Work for compliance with the requirements of the Contract

Documents and applicable laws and regulations. The Project Inspector shall coordinate with the Construction Manager and Architect as directed by the Trust in accordance with the Contract Documents.

1.13 **State:** The State of California.

1.14 **Subcontractor:** A person, firm, or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Conditions, Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.

1.15 **Technical Specifications:** The detailed Project requirements and any addenda to the Technical Specifications signed by authorized Trust representatives and issued prior to bid opening, Equal Product Proposals accepted by the Trust and signed by authorized Trust representatives prior to bid opening, and change orders and other amendments to the Technical Specifications signed by authorized representatives of the Trust and the Contractor in accordance with the requirements of the Contract Documents.

1.16 **Time for Completion:** The time within which the Work is to be diligently prosecuted to completion after receipt of the Notice of Proceed, as defined in the Instructions to Bidders.

1.17 **Work:** The furnishing of all equipment, tools, apparatus, facilities, material, labor, and skill necessary to perform and complete in a good and workmanlike manner the Project as shown in the Technical Specifications and Project Plans in accordance with the Contract Documents and applicable law.

1.18 **Working Day:** A working day is defined as any day, except as follows:

a. Saturdays, Sundays, and Legal Holidays.

b. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the "current controlling operation or operations," as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations. The "current controlling operation or operations" are defined to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer, which if delayed or prolonged, will delay the time of completion of the Work.

1.19 **Written Notice:** Notice provided pursuant to the terms of the Contract.

2. SCOPE OF WORK

2.1 **Documents Furnished by Trust.** The Trust will furnish to the Contractor, free of charge, five (5) sets of full-size prints of the Project Plans and Technical Specifications for execution of the Work. Throughout the performance of the Work, the Contractor must keep one copy of the Project Plans and Technical Specifications in good order and available for review by the Construction Manager, the Engineer, the Architect, and any other Trust contractors or representatives.

2.2 **Ownership of Documents Furnished by Trust.** All documents furnished by the Trust, including, but not limited to, the Technical Specifications, Project Plans, and any copies, are the property of the Trust. Documents furnished by the Trust may not to be used on any other work. All documents furnished by the Trust must be returned to the Trust upon completion of the Work.

2.3 **Technical Specifications and Project Plans.**

- a. The Technical Specifications and Project Plans are complementary and intended to mutually describe the Work necessary to complete the Project in accordance with the Contract Documents.
- b. In general, the Project Plans indicate dimensions, position, and kind of construction, and the Technical Specifications indicate qualities and methods. Any Work indicated on the Project Plans and not mentioned in the Technical Specifications or vice versa must be furnished as though fully set forth in both. Work that is not particularly detailed, marked, or specified shall be the same as similar Work that is detailed, marked, or specified. The Contractor must furnish items necessary for the operation of equipment depicted in the Project Plans or specified in the Technical Specifications that are suitable to allow such equipment to function properly at no extra charge.
- c. The Contractor must notify the Construction Manager and the Engineer as soon as possible of any apparent errors or inconsistencies including, but not limited to, typographical or notational errors in the Project Plans, Technical Specifications, and/or in work done by others affecting the Work. The Construction Manager will issue instructions concerning any such apparent errors or inconsistencies. If the Contractor proceeds with Work impacted by apparent errors or inconsistencies without instructions from the Construction Manager, the Contractor shall do so at its sole risk and shall have all of the obligations and the Trust shall have all of the rights and remedies specified in Section 11 (Remedies and Disputes) concerning any resulting damage or defect.

d. The General Conditions apply with equal force to all of the Work, including extra work authorized by the Construction Manager in accordance with the Contract Documents. The Contractor must submit any required shop diagrams and/or drawings by the times and in the quantities indicated in the Technical Specifications. Any such shop diagrams and/or drawings must show completely the Work to be done, expanding on the Project Plans concerning details not previously shown, field conditions, and the condition of the Work. Architect or Engineer review of such shop diagrams and/or drawings will concern conformance with the requirements of the Contract Documents only. The Architect or Engineer assumes no responsibility for the correctness or accuracy of the dimensions or any other contents of any shop diagrams and/or drawings submitted by the Contractor. The Contractor must check all dimensions at the Work site. Shop diagrams and/or drawings must be clearly marked with the name of the Project and the name of the Contractor, subcontractor, or supplier making the submittal, and must be stamped and signed by the Contractor and submitted under a signed transmittal letter from the Contractor certifying that all dimensions have been checked at the Work site. These requirements are mandatory. The Architect or Engineer will not review shop diagrams and/or drawings that do not satisfy these requirements. The Contractor will be responsible for any and all discrepancies between dimensions of the actual Project site and/or Work and those shown on shop diagram and/or drawings submitted by the Contractor, and for any other errors contained in or resulting from such shop diagrams and/or drawings including, but not limited to, errors in material and/or equipment quantities and any resulting errors, delays, or additional cost in the performance of the Work. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes) concerning any discrepancies or errors in shop diagrams and/or drawings submitted by the Contractor, and concerning any resulting errors, delays, or additional costs in the performance of the Work.

2.4 **For Reference Only.** Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that the Trust or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify the Trust of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.

3. CONTROL OF WORK AND MATERIAL

3.1 Construction Manager's Status. The Construction Manager will administer the Project in accordance with the Contract Documents. After execution of the agreement and issuance of the Notice to Proceed, all correspondence and/or instructions concerning the Project between the Contractor and/or Trust shall be forwarded through the Construction Manager. Except as otherwise provided in the Contract Documents, the Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, or procedures or for safety precautions in connection with the Work. The Construction Manager, however, will have authority to reject materials and/or workmanship that do not conform to the requirements of the Contract Documents. The Construction Manager will also have the authority to require inspection or testing of the Work.

3.2 Architect's or Engineer's Status. The Architect or Engineer will advise the Construction Manager concerning decisions on all claims of the Contractor and all other matters relating to the execution and progress of the Work or the interpretation of the Contract Documents. The Architect or Engineer will also advise the Construction Manager concerning Work that does not conform to the Contract Documents. Whenever, in the Architect's or Engineer's opinion, it is necessary or advisable in accordance with the Contract Documents, the Architect or Engineer may recommend to the Construction Manager inspection or testing of the Work, whether or not such Work is then fabricated, installed or completed.

3.3 Inspection and Testing of Work and Material.

a. The Trust, the Construction Manager, the Architect, or Engineer and their representatives, as well as representatives of the State of California (Trust's funder for the Project) will have access to the Work at all times wherever it is in preparation or progress. The Contractor must provide proper facilities for such access and for inspection. Contractor shall include terms similar to this Section 3.3(a) in any subcontract.

b. The Contractor must inspect all materials as delivered and promptly return all defective materials without waiting for their rejection by the Construction Manager or Architect or Engineer.

c. If the Construction Manager, the Technical Specifications, or any laws, ordinances, or any public authority require any Work to be tested or approved, the Contractor must give the Construction Manager timely notice of the Contractor's readiness for inspection. Inspections will be promptly made, and where practicable, at the source of supply. Any work subject to such testing that is covered up without timely notice to the Construction Manager or without the approval or consent of the Construction Manager must, if required by the Construction Manager, be uncovered for examination at the Contractor's expense. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes)

concerning any work subject to testing that is covered up without timely notice to the Construction Manager and that is not uncovered for examination at the Contractor's Expense if required by the Construction Manager.

d. Tests of materials or qualification tests required by the Contract Documents must be made in accordance with the Technical Specifications and the requirements of the California Building Standards Code as adopted by the Trust and other applicable law. Copies of all testing reports shall be distributed as required in the Technical Specifications.

e. The Trust or its representatives may order re-examination of questioned Work. If ordered to do so, the Contractor must uncover such Work. If such Work is found to be according to the Contract Documents, the Trust shall pay the cost of uncovering and restoring the Work, unless such Work was subject to testing and covered up without timely notice to or approval of the Construction Manager. If re-examined Work is found not in accordance with the Contract Documents, the Contractor must pay the cost of uncovering and restoring the Work. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes) concerning any re-examined Work not in accordance with the Contract Documents that the Contractor fails to uncover and restore at the Contractor's expense.

f. The Contractor must replace or correct without charge any material or workmanship found not to conform to the requirements of the Contract Documents, unless the Trust consents to accept such material or workmanship with an appropriate adjustment in the Contract Price. The Contractor must promptly segregate and remove non-conforming material from the Work site. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes) concerning any failure by the Contractor to replace or correct without charge any material or workmanship that does not conform to the requirements of the Contract Documents and that the Trust has not consented to accept.

3.4 Samples Furnished by the Contractor. The Contractor must furnish all samples for approval as directed in sufficient time to permit the Architect or Engineer to examine, approve, and select samples before they are required by the progress of the Work. Portions of the Work for which samples are required and for which the Architect or Engineer has selected samples must be in accordance with such approved samples. Samples must be sent prepaid to the office of the Construction Manager or to such place as the Construction Manager may direct.

3.5 Materials and Substitutions.

a. Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials.

b. If the Contractor submitted complete information to the Trust for products proposed as equals in accordance with the Contract Documents, and the Trust approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand, or model number in the Technical Specifications or Project Plans. The Trust retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the Trust to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand, or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the Trust does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

c. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the Trust, or with the use of existing facilities on the property where the Work is being done. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the Work site due to weather or other causes. The Contractor must promptly remove from the Work site all materials rejected by the Trust or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the Trust or its representatives so direct, the Contractor must promptly replace and re-execute Work performed by the Contractor and order the replacement and re-execution of Work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the Trust. The Contractor will bear the expense of making good all Work destroyed or damaged by such removal. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes) concerning any failure by the Contractor to replace or re-execute Work using non-conforming

materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

3.6 **Audit and Examination of Records.**

a. Contractor shall maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices.

b. The Trust may examine and audit at no additional cost to the Trust, all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the Work site, and at any other location where such Project related data may be kept until four (4) years after final payment under the Contract.

c. This Agreement shall be subject to the examination and audit of the State Auditor or the Funding Agency, at the request of the Trust, or as part of any audit of the Trust, for a period of four (4) years after final payment under the Contract.

d. This subsection 3.6 shall survive termination of this Contract.

3.7 **Advertising.** No advertising signs of any kind may be displayed on the Work site, or on fences, offices, or elsewhere adjacent to the Work site.

3.8 **Project Schedule.** Within ten (10) days of the Notice to Proceed, the Contractor shall submit a bar chart schedule showing each task of Work, the sequence of each task, the number of days required to complete each task, and the critical path controlling the completion of the entire Work. The schedule shall allow for the completion of the entire Work within the Time for Completion.

a. Trust Review of Schedule. The Trust may review the Contractor's submitted schedule and may note any exceptions. The Contractor shall correct any exceptions noted by the Trust within five (5) working days of being notified of the exceptions.

b. Update of Schedule. After submission of a schedule to which the Trust has taken no exceptions, the Contractor shall submit an updated

schedule on a biweekly basis until completion of the Work. The updated schedule shall show the progress of Work as of the date specified in the updated schedule.

c. Float. The schedule shall show early and late completion dates for each task. The number of days between these dates shall be designated as "Float." The Float shall be designated to the Project and shall be available to both the Trust and the Contractor as needed.

d. Failure to Submit Schedule. If the Contractor fails to submit the schedule within the time period specified in this Section 3.8, or the updated schedule as specified in Section 3.8(b), or submit a schedule to which the Trust has taken uncorrected exceptions, the Trust shall be entitled to withhold payment for the next application for payment submitted after the schedule or updated schedule becomes late.

e. Responsibility for Schedule. The Contractor shall have sole and exclusive responsibility for creating the schedule and properly updating it. The Trust has no authority to approve the schedule. The Trust may note exceptions to any schedule submitted by the Contractor. However, it shall be the Contractor's sole responsibility to determine the proper method to address exceptions and the Trust's review of the schedule shall not serve to place any such obligation on the Trust.

4. CHANGES IN WORK

4.1 **Trust-Directed Change Orders.** The Trust may at any time during the progress of the Work direct any amendments to the Work or any of the Contract Documents, including, but not limited to the Technical Specifications, or Project Plans. Such amendments will in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule, or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment, and based upon the actual costs of the change order, in accordance with this Section 4.

4.2 **Writing Requirement.** Change orders and other amendments to the Technical Specifications, the Project Plans, or other Contract Documents may be made only by a writing executed by authorized representatives of the Trust and the Contractor.

4.3 **Contractor-Proposed Change Orders.** Unless the Construction Manager otherwise authorizes or the Trust and the Contractor otherwise agree, change order proposals submitted by the Contractor must be submitted to the Construction Manager no later than the time of the proposed change.

4.4 **All Change Orders.** All change order proposals must be submitted on completed Change Order forms provided by the Trust. All such change order proposals must itemize all cost impacts of the proposed change order and

include a total price for that change order and the amended Contract Price that would become effective upon execution of the change order. All change order proposals must specify any change in the Project schedule, or in any project milestone including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect. Contractor shall maintain accurate daily records of actual costs incurred whether by Contractor or any subcontractor, in accordance with Section 3.6. Payment for authorized change orders shall be based upon actual costs incurred by Contractor. In no event shall Contractor be permitted to rely upon cost estimates submitted with a change order proposal as a basis for compensation.

4.5 Change Order Pricing. Change order pricing will be governed by the following:

- a. Unit prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify unit prices.
- b. Cost impacts involving items for which no unit prices are specified will be calculated by adding the itemized actual direct cost that would be added or reduced under the change order and an allowance for indirect costs in accordance with this Section. Itemization for direct costs for required labor must include the classifications of labor required, the total hours required for each classification, the hourly rate for each classification and other labor related costs such as liability and workers compensation insurance, social security, retirement and unemployment insurance. All other cost impacts for which no unit prices are specified must be itemized as appropriate, including the cost of tools, vehicles, phones and other equipment, and the cost of all required materials or supplies. Indirect costs added under a change order may not exceed an allowance of fifteen percent (15%) of the total of combined Contractor and subcontractor direct costs added under the change order. Such allowance covers Contractor overhead and profit under the change order and includes the cost of insurance in addition to that required pursuant to Section 8.8 (Insurance), bond premiums, superintendent labor, clerical labor, home office expenses, worksite office expenses, and utility costs under the change order. Such costs may not be itemized as direct costs under a change order. Indirect costs deducted under a change order will be calculated in exactly the same way as indirect costs added under a change order, except indirect costs deducted under a change order may not exceed an allowance of seven and a half percent (7.5%) of the total of combined Contractor and subcontractor direct costs deducted under the change order.

4.6 Liability Under Unapproved Change Orders. The Contractor shall be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that are incurred pursuant to Contractor-proposed change orders prior to issuance of an approved change order executed in accordance with this Section 4. The Contractor will have all of the obligations and the Trust will have all of the rights and remedies that are specified in Section 11 (Remedies and Disputes) concerning any work or resulting losses, costs, or liabilities pursuant to a Contractor proposed change order before issuance of an approved change order executed in accordance with this Section 4.

4.7 Changes Subject to Contract Documents. Any changes in the Work and/or the Contract Documents pursuant to change orders and any other amendments issued in accordance with the Contract Documents, including this Section 4, will in all respects be subject to all provisions of the Contract Documents, including, but not limited to, the Technical Specifications and the Project Plans, except as modified by such change orders or amendments.

4.8 Change Order Disputes.

a. Disputed Trust-Directed Change Orders. If the Contractor disputes a Trust-directed change order following a reasonable effort by the Trust and the Contractor to resolve the dispute including, at a minimum, a meeting between appropriate representatives of the Contractor and the Trust, the Contractor must commence performing the Work consistent with the disputed change order within five (5) Working Days of the last meeting between representatives of the Contractor and the Trust to resolve the dispute, or within the time specified in the disputed Trust-directed change order, whichever is later. In performing Work consistent with a disputed Trust-directed change order pursuant to this provision the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

b. Disputed Contractor-Proposed Change Orders. If the Trust disputes a Contractor proposed change order, the Trust and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the Trust. Regardless of and throughout any such efforts to resolve the dispute the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the Trust and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding

such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

5. EXCAVATIONS OF FIVE FEET OR MORE.

In accordance with California Labor Code Section 6705, contractors performing contracts exceeding \$25,000 in cost and involving excavation five (5) or more feet deep must submit for the Trust's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during excavation. The shoring system plan must be prepared and stamped by a registered civil or structural engineer.

6. PROJECT LOCATION

6.1 Work Site Access.

a. The project site is that area within the Project Limits shown on the Drawings. The project site is owned by Stanislaus County and California Department of Fish and Wildlife.

b. The Contractor's use of the project site is limited by the Landowner's right to perform work on its property. Access to the site is over public and private roads. Contractor must exercise care in the use of such roads and repair any damage to the satisfaction of the Landowner or agency having jurisdiction over the road. Contractor shall not track mud onto roads.

c. The Contractor shall plan and schedule access to the work site during normal working hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. If the Contractor requests access to the work site during the hours outside the hours specified above, the Contractor shall request such exception from the Trust at least 24 hours in advance, and shall proceed only upon approval. The Contractor must comply with all local noise and other ordinances.

7. PROSECUTION AND PROGRESS

7.1 Liquidated Damages. Time is of the essence in the Contract. The Trust and the Contractor agree that it will be difficult and/or impossible to determine the actual damage which the Trust will sustain in the event of the Contractor's failure to fully perform the Work or to fully perform all of the Contractor's obligations that have accrued pursuant to the Contract by the Time for Completion. Accordingly, the Trust and the Contractor agree that the Contractor will forfeit and pay to the Trust liquidated damages in the sum of \$900 per day for each and every calendar day completion of the Work and/or performance of all of the Contractor's obligations that have accrued pursuant to the Contract is delayed

beyond the Time for Completion. The Trust and the Contractor further agree that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the Contract was made, and that the Trust may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the Contract.

7.2 No Damage for Delay Beyond Trust and Contractor Control. The Contractor will not be held responsible for delays in performance of the Work caused by delay beyond the control of both the Trust and Contractor, such as by strikes, lockouts, or labor disturbances that are not within the control of the Contractor to resolve, lack or failure of transportation, or acts of other government entities. This provision will not apply where the delay would not have occurred but for a previous Contractor-caused delay in the prosecution of the Work. The Trust will not be liable to the Contractor, any subcontractor or other entity engaged in the performance of the Work, any supplier, or any other person or organization, or to any surety or employee or agent of any of them, for damages arising out of or resulting from (i) delays beyond the control of the Trust and the Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, earthquakes, and acts of God or acts or neglect by utility owners or other contractors performing other work, or (ii) delays caused by the Trust, its officers, employees, agents, or volunteers, or delays caused by the Construction Manager or the Architect or Engineer, which delays are reasonable under the circumstances involved and/or are within the contemplation of the Trust and the Contractor. An extension of the Time for Performance in an amount equal to the time loss due to such delay(s) will be the Contractor's sole and exclusive remedy for such delay(s).

7.3 No Damage for Contractor-Caused Delay. Contractor shall not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs, or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents. Contractor may be eligible for additional compensation in excess of the Contract Price for delays caused by the Trust and/or its privities, as provided in Section 7.5.

7.4 No Damage for Other Delay. Contractor will not be entitled to damages for delay to the Work caused by the following:

- a. Exercise of the Trust's right to sequence the Work in a manner that would avoid disruption to the Trust and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the Trust or any other governmental

agency of competent jurisdiction of any government act or regulation, or enforcement by the Trust of any provisions of the Contract.

b. Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the Trust or its representatives in a reasonable time in accordance with the Contract Documents.

7.5 Delays Caused by the Trust and/or Its Privities. Either the Trust or the Contractor may propose a change in the Time for Completion for delays that are purported to be caused by the Trust and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the Trust and the Contractor. Such proposed changes in the Time for Completion will constitute change order proposals subject to Section 4 (Changes in Work). In accordance with Section 4, the Trust and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing is in anticipation of cost impacts that may, but have not yet occurred, the Trust will be obligated to pay the Contractor for such anticipated impacts in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated cost impacts. Notwithstanding anything to the contrary in Section 4.5(b), the Trust and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the Trust and/or its privities subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the Trust will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

7.6 Weather Delays. When determined by the Project Inspector, extensions of the Time for Completion will be allowed for weather conditions that prevent the Contractor from proceeding with the current controlling operation or operations with at least seventy-five percent (75%) of the normal labor and equipment force engaged on that operation or operations for at least sixty percent (60%) of the total daily time being currently spent on the controlling operation or operations. The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Inspector and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract. The inspector will provide the Contractor with a weekly statement of working days. Should the Contractor disagree with the Project Inspector's determination, the Contractor shall notify the Construction Manager within five (5) Working Days of receiving the Inspector's weekly statement of working days.

7.7 Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) Working Days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

7.8 Contractor Coordination of the Work.

a. The Trust reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor shall at all times conduct the Work so as to impose no hardship on the Trust, others engaged in the Work, or other contractors working at the Work site. The Contractor will adjust, correct, and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the Work site.

b. If any part of the Work depends for proper execution or results upon the work of the Trust or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the Trust any apparent discrepancies or defects in such other Work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the Trust's or other contractor's Work as fit and proper.

c. The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade shall be part of the Work except where stated otherwise.

d. The Contractor will provide proper facilities at all times for access of the Trust, the Construction Manager, Architect, or Engineer, and other authorized Trust representatives to conveniently examine and inspect the Work.

8. CONTRACTOR RESPONSIBILITIES

8.1 Eligibility. By executing the Contract, the Contractor certifies that the Contractor is not ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), contractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform the Work. The Contractor shall hold harmless and indemnify the Trust from and against any and all damages, costs, and liability arising from or as a consequence of any violation of Public Contract Code Section 6109.

a. **DIR Registration.** This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the Trust, Contractor is certifying that it has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the Trust. If the entire project cost does not exceed \$25,000 for construction, alteration, demolition, installation, or repair work or \$15,000 for maintenance work ("Small Project Exemption"), the Contractor and subcontractors are not subject to these registration requirements.

8.2 **Supervision of the Work.** The Contractor will be solely responsible for the performance of the Work, including portions of the Work to be performed by subcontractors. The Contractor is charged with ensuring that all orders or instructions from the Trust, Construction Manager, or Architect are disseminated to and followed by all subcontractors engaged in performance of the Work. The Contractor will supervise the Work using the Contractor's best skill and attention. At any time during the progress of the Work, the Trust, the Construction Manager, or the Architect may require the Contractor and/or subcontractors engaged in performance of the Work to attend a project meeting and the Contractor will attend, and ensure the attendance of any subcontractors whose attendance is required by the Trust and/or advisable in light of the matters to be addressed at the meeting.

8.3 **Contractor's Superintendent.** The Contractor will keep on the Work, throughout its progress, a competent superintendent and any necessary assistants, all satisfactory to the Trust. The superintendent may not be changed without the consent of the Trust. The superintendent will represent the Contractor and all directions given by the Trust to the superintendent will bind the Contractor in accordance with the Contract. Superintendent time included in Contractor's completed bid schedule and/or in approved change orders, if any, must be included in Contractor's approved overhead rate and may not be charged as a direct cost.

8.4 **Competent Employees.** The Contractor must at all times enforce strict discipline and good order among the Contractor's employees and may not employ on the Work any unfit person or anyone not skilled in the Work assigned, or anyone incompetent or unfit for the duties of that person. When the Trust determines that a Contractor employee does not satisfy the requirements of this provision, upon notice from the Trust, the Contractor must ensure that employee performs no further Work and is no longer present at the Work site. Any such

Contractor employee may not again be employed on the Work without the Trust's approval.

8.5 Items Necessary for Proper Completion of the Work. Except as otherwise noted in the Contract Documents, the Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, and services necessary for the proper execution and timely completion of the Work in accordance with the Contract Documents.

8.6 Construction Reports. The Contractor must submit daily construction reports detailing the daily progress of the Work to the Construction Manager on a weekly basis.

8.7 Subcontracting.

a. By executing the Contract, the Contractor certifies that no subcontractor included on the list of proposed subcontractors submitted with the Contractor's bid is ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7. In accordance with California Public Contract Code Section 6109(a), subcontractors who are ineligible to perform work on public works projects pursuant to California Labor Code Sections 1777.1 or 1777.7 may neither bid on, be awarded or perform as a subcontractor on the Work. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. The Contractor will ensure that no debarred subcontractor receives any public money for performing the Work, and any public money that may have been paid to a debarred subcontractor for the Work is returned to the Trust. The Contractor will be responsible for payment of wages to workers of a debarred subcontractor who has been allowed to perform the Work

b. Pursuant to California Public Contract Code Section 4100 and following, if the Contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of the Work in excess of one-half of one percent (0.5%) of the Contractor's total bid, the Contractor agrees that the Contractor is fully qualified to perform that portion of the Work with the Contractor's own forces, and that the Contractor will perform that portion of the Work with the Contractor's own forces. If after award of the Contract the Contractor subcontracts, except as provided for in California Public Contract Code Sections 4107 or 4109, any such portion of the Work, the Contractor will be subject to the penalties set forth in California Public Contract Code Sections 4110 and 4111, including cancellation of the Contract, assessment of a penalty of up to ten percent (10%) of the amount of the subcontract, and disciplinary action by the Contractors State License Board.

- c. No contractual relationship exists between the Trust and any subcontractor engaged in performance of the Work.
- d. Incorporation of Contract Documents. The Contractor must incorporate the Contract Documents in each contract with a subcontractor engaged in the performance of the Work and require that all subcontractors comply with the terms of this Agreement. The Contractor shall be solely responsible for any delay or additional costs incurred as a result of its failure to provide adequate or accurate project information to a subcontractor that results in improper submittals and/or work, or time or other impacts is the sole responsibility of the Contractor. The Contractor will have all of the obligations and the Trust will have all of the remedies that are specified in Section 11 (Remedies and Disputes).
- e. Coordination of Subcontract Work. The Contractor is responsible for scheduling the Work of subcontractors so as to avoid delay or injury to either Work or materials.

8.8 Insurance.

Before beginning any Work called for by any term of this Contract, Contractor, at its own cost and expense, shall carry, maintain for the duration of the Contract, and provide proof thereof that is acceptable to the Trust, the following insurance as specified herein.

- a. Insurance Minimums.
 - i. Statutory Worker's Compensation Insurance and Employer's Liability Insurance coverage: \$1,000,000 (Minimum per each accident for injury or death)
 - ii. Commercial General Liability Insurance: \$2,000,000 (Minimum per occurrence), \$4,000,000 Aggregate
 - iii. Automobile Liability Insurance, including owned, non-owned and hired vehicles: \$1,000,000 per occurrence
 - iv. Contractors' Pollution Legal Liability: If this box is checked, this provision applies, and Contractors' Pollution Legal Liability insurance is required:

The Trust may require Contractor to maintain Contractors' Pollution Legal Liability insurance with limits of no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." If applicable, the policy shall provide coverage

for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

b. Workers' Compensation Requirements. Contractor must provide statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor, as required by the California Labor Code. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Trust for all Work performed by Contractor, its employees, agents, and subcontractors

c. Commercial General Liability and Automobile Liability Requirements.

i. Contractor, at Contractor's own cost and expense, shall maintain Commercial General and Business Automobile Liability insurance for the period covered by this Contract in an amount not less than the amount set forth above, combined single limit coverage for risks associated with the work contemplated by this Contract. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Contract or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Contract, including the use of hired, owned and non-owned automobiles. Coverage shall be at least as broad as the latest edition of the Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.

ii. A policy endorsement must be delivered to the Trust demonstrating that the Trust, the State, and Landowner, and their officers, employees, agents, and volunteers are to be covered as additional insured as respects each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Trust, the State, or Landowner, and their officers, employees, agents, or volunteers.

iii. The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.

iv. An endorsement must state that coverage is primary insurance and that no other insurance affected by the Trust, the State, or Landowner will be called upon to contribute to a loss under the coverage.

v. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Trust, the State, or Landowner and their officers, employees, agents, and volunteers.

d. Insurers. Insurance is to be placed with California-admitted insurers with an A.M. Best rating of A:VII or greater.

e. Deductibles and Self-Insured Retentions. Contractor shall disclose the self-insured retentions and deductibles before beginning any of the Work called for by any term of this Contract. Any self-insured retention or deductible is subject to approval of the Trust. During the period covered by this Contract, upon express written authorization of the Trust, Contractor may increase such deductibles or self-insured retentions with respect to the Trust, its officers, employees, agents, and volunteers. The Trust may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Contractor procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

f. Notice of Reduction in Coverage. In the event that any coverage required under the Contract is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to the Trust at Contractor's earliest possible opportunity and in no case later than thirty (30) days prior to the change in coverage.

g. Remedies. In addition to any other remedies the Trust may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the Trust may, at its sole option:

i. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Contract;

ii. Order Contractor to stop work under this Contract or withhold any payment which becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof;

- iii. Terminate this Contract.

Exercise of any of the above remedies, however, is an alternative to other remedies the Trust may have and is not the exclusive remedy for Contractor's failure to maintain insurance or secure appropriate endorsements

- h. Contractor will include all costs for insurance in its bid.

- i. If Contractor maintains broader coverage and/or higher insurance limits than the minimums required above, the Trust requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Trust.

8.9 **Indemnities.**

- a. The Tuolumne River Trust and all officers, employees, and agents thereof connected with the Work, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence, or sole willful misconduct, of the Trust's officers or employees.

- b. To the fullest extent permitted by law the Contractor will indemnify, defend (with counsel approved by the Trust), and hold harmless the Trust, its officers, employees, agents, volunteers, and consultants ("indemnified parties") from and against any or all loss, liability, expense, claims, penalties, costs (including costs, attorneys' fees and expert fees of defense), suits, and damages of every kind, nature, and description directly or indirectly arising from or in any way connected to the performance of the Work ("Claims"), regardless of Contractor's fault or negligence, including any of the same resulting from the alleged or actual negligent act or omission of an indemnified party; except that said indemnity shall not be applicable to Claims arising from the sole negligence, active negligence, or sole willful misconduct of an indemnified party. In instances where the active negligence of an indemnified party accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion of the percentage of liability not attributable to the active negligence of the indemnified party.

- c. The Contractor will indemnify, defend, and hold harmless the Trust, the Trust's officers, employees, volunteers, agents, and the Construction Manager and Architect for all liability on account of any patent rights, copyrights, trade names, or other intellectual property rights that may

apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the Trust that any such charges have been paid.

d. Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this Section 8.9. The Contractor will defend, with legal counsel reasonably acceptable to the Trust, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorneys' fees incurred. The Contractor will promptly pay any judgment rendered against the Trust, its officers, employees, agents, volunteers, or consultants for any Claims. In the event the Trust, its officers, employees, agents, volunteers, or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the Trust, its officers, employees, agents, volunteers, and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.

e. In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the Trust for defects in design furnished by the Trust.

f. This indemnification and duty to defend shall extend to claims asserted after termination of this Agreement for whatever reason.

g. The Trust and Contractor shall timely notify each other of the receipt of any third-party claim relating to the Contract.

8.10 **Bonds.**

a. Trust will not issue a Notice to Proceed until Contractor has furnished a bonds in favor of the Trust as follows:

i. A performance bond in favor of the Trust, individually or as a co-obligee, in the following amounts: for faithful performance, one hundred percent (100%) of the Contract Price. The bond shall provide that Contractor shall well and truly perform the "contract," rather than "work contracted to be done." If the latter is used, the bond may be rejected.

ii. A payment bond in favor of the Trust, individually or as a co-obligee, for labor and materials, for one hundred percent (100%) of the Contract Price.

b. Any bond issued pursuant to this Section 8.10 must be issued by a California-admitted surety.

c. The Trust shall not disburse to the Contractor payment for obligations incurred by Contractor or subcontractor of the Contractor until the Contractor submits to the Trust a lien release corresponding to the work invoiced (and complies with other prerequisites to payment under this Contract).

8.11 Licenses/Permits.

a. The Contractor must, without additional expense to the Trust, obtain all licenses, permits, and other approvals required for the performance of the Work. Contractor's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Contractor submits its bid to the Trust and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors' State License Board. Contractor and all subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

b. Not all required permits to undertake the project have been obtained. The Trust is unable to affirm that the required permits will be obtained or, if obtained, that permits will be obtained in time to warrant an award of contract.

i. The following permits and biological consultations have already been secured by the Trust. Please see Technical Exhibit 6.4 in the Technical Specifications for Project Permits:

(1) California Regional Water Quality Control Board- Section 401 Water Quality Certification and Waste Discharge Requirements for Restorations Projects Statewide- Notice of Applicability (NOA).

ii. The Trust has applied for the following permits:

- (1) CDFW Lake and Streambed Alteration Agreement
- (2) US Army Corps of Engineers Pre-Construction Notification Under Regional General Permit 16
- (3) Central Valley Flood Protection Board (CVFPB) Encroachment Permit
- (4) NMFS Programmatic Biological Opinion (PBO)
- (5) USFWS Programmatic Biological Opinion (PBO)

iii. The Trust plans to apply for the following permits:

- (1) Mining Permit Exemption
- (2) Grading Permit

c. Contractor shall submit a Notice of Intent (NOI) to the State Water Resources Control Board (SWRCB) to obtain coverage under the SWRCB General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (NPDES General Permit) pursuant to Section 8.12 (Environmental Protection).

8.12 Environmental Protection.

a. This Section 8.12 describes the requirements for the conservation and protection of environmental resources at the work site during and as the result of construction activities, except as otherwise specified. State and federal environmental statutes, rules, regulations, and policies have been enacted to protect the environmental resources to ensure that significant environmental impacts of projects are identified and adequate mitigation measures are incorporated in the project. Protection of the environmental resources affects several resource areas, including biological resources, cultural resources, air quality, and water quality. These potential impacts may be through the generation of noise, emissions, discharges of pollutants, disturbances to terrestrial and aquatic areas, transportation, public safety and impacts on visual resources. Construction activities shall be in accordance with environmental and regulatory permits issued for the project, and the Contractor may be held responsible for any violations as prescribed by law.

b. The Trust is required by the regulatory agencies to suspend work and recertify the Contractor's employees if there are environmental noncompliance infractions. If the Contractor's actions cause infractions, then the Trust may suspend work.

- c. The Contractor shall be responsible for the sequence and control of construction activities, selection and maintenance of equipment, and the conduct of the Contractor's employees at the work site to ensure that specific mitigation measures to reduce or eliminate identified environmental impacts are implemented.
- d. The Contractor shall minimize construction activities causing disturbances to vegetation, wildlife or cultural resources. Construction activities may be restricted in various ways that include, but are not limited to, the environmental protection and mitigation measures specified.
- e. The Contractor shall adhere to all mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP), Technical Exhibit 6.5 in the Technical Specifications.
- f. The Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances, and statutes specified in Section 11017 of the California Government Code.

8.13 California Labor Code Requirements.

- a. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under the Contract.
- b. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Work is limited to eight (8) hours during any one (1) calendar day, and forty (40) hours during any one (1) calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one (1) calendar week is permitted upon compensation for all hours worked in excess of eight (8) hours during any one (1) calendar day and forty (40) hours during any one calendar week at not less than one-and-one-half (1.5) times the basic rate of pay.
- c. The Contractor and its subcontractors will forfeit as a penalty to the Trust \$25 for each worker employed in the performance of the Work for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one (1) calendar day, or more than forty (40) hours in any one (1) calendar week, in violation of the provisions of California Labor Code Section 1810 et seq.
- d. In accordance with California Labor Code Section 1773.2, the Trust has determined the general prevailing wages in the locality in which the Work is to be performed for each craft or type of work needed to be as

published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.

e. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the Work must comply Labor Code Section 1775 which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

i. The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

ii. The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

iii. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.

iv. Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.

v. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name,

address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the Trust and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776.

vi. Contractor and their subcontractors shall furnish records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4.

f. If the entire project cost does not exceed \$25,000 for construction, alteration, demolition, installation, or repair work or \$15,000 for maintenance work ("Small Project Exemption"), the contractor and subcontractors are not required to furnish their payroll records to the Labor Commissioner, but shall maintain those same records.

g. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

h. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate

thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

i. Contractor shall post at the job site the determination of the director of the prevailing rate of per diem wages together with all job site notices that are required by regulations of the Department of Industrial Relations.

8.14 Guaranty. The Contractor guarantees all of the Work for one (1) year from the date the Trust accepts the Work. Upon receiving Written Notice of a need for repairs which are directly attributable to defective materials or workmanship, the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the Trust. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the Trust may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor. The Contractor shall remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the Trust.

8.15 Safety.

a. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the Trust nor its officials, officers, employees, agents, volunteers, or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities, or other entities engaged in the performance of the Work.

b. Review and inspection by the Trust, the Construction Manager, the Architect, or Engineer, and/or other representatives of the Trust of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the Work site is maintained and the Work is performed in a safe manner.

c. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the Work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.

d. Within ten (10) working days following notice of award, the Contractor must submit to the Trust a copy of the Contractor's Safety Plan.

e. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the Work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

8.16 Assignment of Unfair Business Practice Claims. In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the Trust all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time the Trust tenders final payment to the Contractor, without further acknowledgement by the parties.

8.17 Contractor Not Agent. Except as the Trust may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of the Trust in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind the Trust to any obligation whatsoever.

8.18 Nondiscrimination

a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital or domestic partner status, and denial of medial and family care leave or pregnancy disability leave. Contractor and its subcontractors shall ensure

that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and its subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code, § 12900. Et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Contract by reference. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. Contractor shall include the nondiscrimination and compliance provisions of this Section 8.18 in all subcontracts to perform work under the Contract.

c. As provided in Labor Code section 1735, a violation of this provision is subject to all penalties imposed for a violation of Division, 2, Part 7, Chapter 1 of the Labor Code.

8.19 Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against the Trust for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. The Trust shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to the Trust any payments due by the Trust as a result of such determination, so that the Trust's total expenses under this Agreement are not greater than they would have been had the determination not been made.

9. MEASUREMENT AND PAYMENT

9.1 **F.O.B.** All shipments must be F.O.B. ("Free on Board") destination to the Work site and/or other sites indicated in the Contract Documents (meaning the seller of the goods bears risk of loss until delivery at the Work site or other indicated site). The Contract Price is all-inclusive (including sales tax). The Trust will not pay additional compensation for containers, packing, unpacking, drayage, or insurance.

9.2 Payment

a. Estimates:

i. On or before the 15th of each month the Contractor shall submit to the Trust for verification an estimate of the value of work done to the time of such estimate, including work done under an executed change order, as follows:

(1) Under unit price items.

(2) If requested by Contractor, Trust may allow reasonable allocation for a lump sum or composite unit price item for components of work, such as various phases of work at work site or manufacture of materials and equipment offsite. There will be no separate price allocation of preliminary or incidental activities including, but not limited to, administration and overhead, design, formwork, and similar items, but these may be distributed over the appropriate components of work.

(3) Unused materials and equipment furnished and either paid for in full or for which Contractor has title in writing and that are subject to or under the control of Trust at the time of such estimate. Contractor shall furnish copies of paid vendors' invoices or other documentation of ownership and evidence that such materials and equipment are stored subject to or under the control of Trust.

b. Such estimate may include work done under an order for change. Estimate for such work will be based on records furnished pursuant to Section 4 (Changes in Work). The value of such work will be based on actual necessary costs in accordance with Section 4 (Changes in Work).

c. At Trust's request, the Contractor shall furnish an itemized listing of the amounts and values of work done or materials and equipment furnished to be included in each estimate.

9.3 Progress Payments:

a. This Contract is funded in whole or in part through an agreement with State funding agencies, which pay in arrears for work completed.

b. Contractor shall furnish an itemized Application for Payment containing an estimate of work done and materials furnished to Trust by the 15th of each month. Applications shall include an estimate, describing the nature of the work performed and shall be itemized by task and by

category of expense as outlined in the Bid Schedule, together with all receipts.

c. The Trust will review applications for payment as soon as practicable after receipt. Any application or part of an application that is determined to be improper will be returned to the Contractor as soon as practicable, but no later than seven (7) days after receipt by the Trust, along with a written description of the reasons why the application is improper. The Contractor's failure to submit a schedule in the time specified in Section 3.8 (Project Schedule), or its submission of a schedule to which the Trust has taken any uncorrected exception, shall serve as a basis for returning an application for payment in its entirety.

d. Upon verification of all information contained in the Application and attached estimate, Trust shall submit Contractor's Payment Application to the Funding Agency. The Trust shall submit the Payment Application to the Funding Agency by the 30th of each month for release of funds. Contractor agrees to receive payment when Trust receives funds from Funding Agency. Contractors should take this into consideration in their bid proposals. Trust agrees to pay progress payment to Contractor within 14 days of receipt of said funds.

e. The progress payments will be the estimated value of such work, materials and equipment, less the amount of prior progress payments, liquidated damages and other amounts to be deducted or retained under the contract or pursuant to law. Payment applications shall include the following supporting information:

i. The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

ii. The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

iii. The balance that will be due to each of such entities after said payment is made;

iv. The Trust approved additions to and subtractions from Contract Price and Time (Change Orders);

v. A summary of the retentions from all prior applications, the amount to be retained from the current Application, and the total amount retained (each Application shall provide for retention);

vi. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Trust may require from time to time;

vii. The percentage of completion of the Contractor's Work by line item; and

viii. A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment. Such Applications shall not include requests for payment of amounts the Contractor does not intend to pay to subcontractors or others because of a dispute or other reason.

f. An estimate or progress payment shall not be considered acceptance of work, materials, or equipment. Estimated amounts and values of work done and materials and equipment furnished will be adjusted to actual amounts and values, as they become available, in subsequent estimates and the final estimate. Progress payments will be subject to correction in subsequent estimates and the final estimate.

g. To be eligible for payment, the Contractor's applications for payment must include certified payroll reports prepared in accordance with California Labor Code Section 1776 and the Contract for each employee of the Contractor and any subcontractors engaged in the performance of the Work during the preceding months. Applications for payment will not be processed without certified payroll reports.

h. Progress payments for mobilization shall not exceed that authorized in Section 10264 of the California Public Contract Code.

9.4 No Progress Payments.

a. No progress payment need be made when Trust determines that Contractor is not prosecuting work in accordance with the contract, there may be cause for termination for default or when the payment would be less than \$1,000.

b. Trust may withhold all or part of a progress payment when Contractor has failed to furnish submittals specified in Section 9.3.

9.5 Contractor Payments to Subcontractors. Contractor shall pay subcontractors within 10 (ten) days of receipt of each progress payment, as provided in Section 10262 of the Public Contract Code.

9.6 Retention from Progress Payments.

a. DWR will withhold from payments made under this Section 9 ten percent (10%) of the value of the submitted invoices until it is satisfied that the portion of the project being financed by withheld funds is being completed. It is understood that such retentions will not be disbursed by Funding Agency to the Trust and paid by Trust to Contractor until Trust has completed and filed with the Funding Agency a report summarizing project results and the Funding Agency has found it satisfactory.

9.7 Additionally, the Trust or its agent may, in accordance with the Contract Documents and applicable law, withhold any payment of monies due or that may become due the Contractor because of:

- a. Defective work not remedied or uncompleted work.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure to properly pay subcontractors or to pay for material or labor.
- d. Reasonable doubt that the Work can be completed for the balance then unpaid.
- e. Damage to another contractor.
- f. Damage to the Trust.
- g. Damage to a third party.
- h. Delay in the progress of the Work, which, in the Trust's judgment, is due to the failure of the Contractor to properly expedite the Work.
- i. Liquidated damages or other charges that apply to the Contractor under the Contract.
- j. Any other lawful basis for withholding payment under the contract.

9.8 Final Payment.

a. The Trust will pay the Contractor's final invoice in accordance with applicable law and this Section 9 following acceptance of the Work provided that:

- i. The Contractor has furnished evidence satisfactory to the Trust that all claims for labor and material have been paid, or the time for filing valid stop notices has passed and no stop notices have been filed, or all stop notices filed have been released by valid release or release bond acceptable to the Trust.

- ii. No claim has been presented to the Trust by any person based upon any acts or omissions of the Contractor or any subcontractor engaged in the performance of the Work.
- iii. No other claim or dispute exists under the Contract or applicable law concerning payment of the Contractor's final invoice and/or release of the Contract retention.
- iv. The Contractor's application for final payment contains a written waiver of all claims against the Trust of which the Contractor may not yet asserted at the time of the submission of the application for final payment.
- v. The Trust has received funds for the payment from DWR.

9.9 Non-Allowable Direct Charges. The following costs are not allowable direct charges under the Contract. The following costs may only be paid under the Contract, if at all, as part of any allowance for contractor overhead and/or profit established under the Contract.

- a. Labor costs in excess of applicable prevailing wages pursuant to the Contract and applicable law, liability and workers compensation insurance, social security, retirement and unemployment insurance, and other employee compensation and benefits pursuant to bona fide compensation plans in effect at the time specified for the opening of Project bids for contractor and subcontractor employees engaged in the performance of the Work. However, in no event will allowable direct labor charges under the agreement include employee bonuses, employee vehicles or vehicle allowances, employee telephones or telephone allowances, or employee housing or housing allowances, whether or not such benefits are part of a bona fide compensation plan in effect at the time specified for the opening of Project bids.
- b. Superintendent labor and clerical labor.
- c. Bond premiums.
- d. Insurance in excess of that required under Section 8.8.
- e. Utility costs.
- f. Work Site office expenses.
- g. Home office expenses.

10. PROJECT ACCEPTANCE AND CLOSEOUT

10.1 **Occupancy.** The Trust or Landowner reserves the right to occupy or use any part or parts or the entire of the Work before the Work is fully performed. Subject to applicable law, exercising this right will in no way constitute acceptance of any part of the Work so occupied or used or acceptance of the entire Work, nor will such occupancy or use in any way affect the times when payments will become due the Contractor, nor will such occupancy or use in any way prejudice the Trust's rights under the Contract, any Agreement bonds, or at law or equity. Occupancy or use shall not waive the Trust's rights to assess liquidated damages in accordance with Section 7.1 (Liquidated Damages) after the date of such occupancy or use.

10.2 **Work Completion and Final Inspection.** When the Contractor considers the Work is completed, the Contractor will submit written certification to the Construction Manager specifying that: the Contract Documents have been reviewed; the Work has been inspected for compliance with the Contract Documents; the Work has been completed in accordance with the Contract Documents; and that equipment and systems have been tested in the presence of the Trust's representative and are operational. The Trust and/or the Trust's authorized representatives will make an inspection to verify that the Work is complete and will notify the Contractor in writing of any incomplete or deficient Work. The Contractor will take immediate steps to remedy the stated deficiencies and give notice of correction to the Construction Manager. Upon receiving a notice of correction, the Trust or the Trust's authorized representatives will re-inspect the Work. The Contractor must correct all punch list items within fifteen (15) working days after the issuance of the punch list. Before acceptance of the Work, the Contractor must submit: one set of "camera ready" red-lined Project Record Drawings (As-Builts), and any equipment operating and maintenance instructions and data, warranties.

10.3 **Work Acceptance.**

- a. All finished Work will be subject to inspection and acceptance or rejection by the Trust, the Construction Manager, and the Architect or Engineer and other government agencies having jurisdiction over the Work. Final acceptance of the Work will be at the discretion of the Trust.
- b. The Trust will accept the Work in writing only when the Work has been completed to the Trust's reasonable satisfaction. Progress payments will in no way be construed as acceptance of any part of the Work.
- c. In evaluating the Work, no allowance will be made for deviations from the Technical Specifications, Project Plans, or other Contract Documents unless previously approved in writing in accordance with the requirements of Section 4 (Changes in Work), above.

d. The fact that the Work and materials have been inspected from time to time and that progress payments have been made does not relieve the Contractor of the responsibility of replacing and making good any defective or omitted work or materials in accordance with the requirements of the Contract Documents.

11. REMEDIES AND DISPUTES

11.1 Claims.

a. If any dispute shall arise between the Trust and Contractor regarding performance of the Work, or any alleged change in the Work, Contractor shall give notice to the Trust at least forty-eight (48) hours prior to the time that the Contractor commences performance of the work giving rise to the potential claim for additional compensation. The written notice of potential claims shall set forth the reasons for which the Contractor believes additional compensation will or may be due; the nature of the costs involved; and, insofar as possible, the amount of the potential claim. If such notice is not given, the Contractor shall be barred from making any such claim for extra compensation.

b. The Trust will, within a reasonable time after submission of the Contractor's claim, make decisions in writing on all claims of the Contractor. All such decisions of the Trust shall be final unless the Contractor shall within ten (10) days after receipt of the Trust's decision, file with the Trust a written protest, stating clearly and in detail the basis thereof. Such protest will be forwarded promptly to Julia Stephens, who will inform Garrett Grebe (Chief Operating Officer) if the potential dispute amount exceeds \$10,000 and receive approval from COO within 24 hours. The COO will issue a decision upon each protest, and the COO's decision will be final. Pending such decision, the Contractor shall proceed with its work in accordance with the determination or instructions of the Trust. It is hereby agreed that the Contractor's failure to protest the Trust's determination or instructions, within ten (10) days from and after the Trust's determinations or instructions, shall constitute a waiver by the Contractor of all rights to further protest, judicial or otherwise.

c. It is the intention of this Section 11.2 that the differences between the parties, arising under and by virtue of the Contract, be brought to the attention of the Trust at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that it shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was timely filed.

d. In an emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special or instruction or authorization from the Trust, is hereby permitted to act at the Contractor's discretion to prevent such threatened loss or injury, and it shall so at without appeal if so instructed or authorized, Any compensation claimed by the Contractor on account of emergency work shall be determined as specified herein. Should the Trust deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Trust. The decision of the Trust in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified herein.

11.2 Failure to Correct Work. Within ten (10) Working Days of receiving Written Notice from the Trust describing Work that is defective or that is otherwise not in accordance with the requirements of the Contract and/or applicable law and directing that such Work be corrected, the Contractor and/or the Contractor's sureties must give the Trust Written Notice of the intent of the Contractor and/or the Contractor's sureties to correct such Work and commence correction of such Work in accordance with the Trust's notice and the Contract. If the Contractor and/or the Contractor's sureties do not give the Trust Written Notice of intent to correct such Work and commence correction of such Work within ten (10) working days of receipt of the Trust's notice, then the Trust may correct such work and/or have such work corrected for the account and at the expense of the Contractor and/or its sureties, and the Contractor and/or its sureties will be liable to the Trust for any resulting excess cost. The Trust may, in addition to all other remedies that the Trust may have under the Contract and at law or equity, deduct any such excess cost of completing the Work from amounts that are due or that may become due the contractor.

11.3 Termination.

a. Should Contractor fail within ten (10) Working Days from receipt of the Trust's written notice to correct any contractual deficiencies, including but not limited to failure to perform the Work in accordance with the Contract Documents, failure to comply with the directions of the Trust, or failure to pay its creditors, the Trust may terminate this Contract for default. Following a termination for default, the Trust shall have the right to take whatever steps it deems necessary to correct and complete the work and charge the cost thereof to Contractor, who shall be liable for the full cost of the Trust's corrective action, including reasonable overhead, administrative costs, and attorneys' fees. Upon any Contractor default, the Trust shall not only have the right to immediately suspend or terminate the Contract, but may also contract with another party to perform this Contract and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

b. The Trust may at any time terminate the Contract at the Trust's convenience upon ten (10) days written notice to Contractor; in the event of termination for convenience, Contractor shall recover only the amount due under the Contract for Work completed to the date of termination in accordance with the Contract Documents, less amounts paid to date. Contractor shall not be entitled to any claim or lien against the Trust for any additional compensation or damages in the event of such termination.

c. If the Trust terminates the Contract for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Section 11.3, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

11.4 Disputes.

a. The Parties shall make a good faith effort to settle any dispute or claim arising under this Contract. If the Parties fail to resolve such disputes or claims, they shall submit them to nonbinding mediation in California at shared expense of the Parties for at least eight (8) hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all Parties, or litigation may be pursued. In the event any dispute resolution processes are involved, each party shall bear its own costs and attorneys' fees.

b. If any litigation is commenced between Parties to this Contract concerning any provision hereof or the rights and duties of any person in relation thereto, except as otherwise provided in this Contract, each party shall bear its own attorneys' fees and costs.

12. DRUG-FREE WORKPLACE CERTIFICATION

12.1 By entering this Contract, Contractor certifies, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Cal. Gov. 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 California Government Code section 8355.

b. Establish a Drug-Free Awareness Program, as required by California Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

- i. The dangers of drug abuse in the workplace,
 - ii. Contractor's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation, and employee assistance programs, and
 - iv. Penalties may be imposed upon employees and subcontractors for drug abuse violations.
- c. Provide, as required by California Government Code section 8355, that every employee and subcontractor who works under this Grant Agreement:
- i. Will receive a copy of the Contractor's drug-free policy statement, and
 - ii. Will agree to abide by the terms of the Contractor's condition of employment, contract, or subcontract.

12.2 Contractor shall include the terms of this Section 12 in any subcontract pursuant to this Contract.

13. MISCELLANEOUS PROVISIONS

13.1 **Notice of Non-Renewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the Trust will request that work product provided by Contractor under this Agreement be supplemented or continued by Contractor under a new agreement following expiration or termination of this Agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by the Trust to continue to request or retain all or any portion of the work product from Contractor following the expiration or termination of this Agreement.

13.2 **Waiver.** Neither the acceptance of work or payment for work pursuant to this Agreement shall constitute a waiver of any rights or obligations arising under this Agreement. The failure by the Trust to enforce any of Contractor's obligations or to exercise the Trust's rights shall in no event be deemed a waiver of the right to do so thereafter.

14. ORDER OF PRECEDENCE.

In the event of any inconsistency between the sections, attachment, specifications, or provisions which constitute the Contract Documents, the following order of precedence shall apply:

1. Any modifications or amendments to the Project Agreement, in reverse chronological order, and in the same order as the specific portions of the Contract Documents they modify or amend
2. The Contract
3. Special Conditions or Provisions
4. General Conditions
5. The Notice Inviting Bids, Instructions to Bidders, and Proposal Documents
6. Technical Specifications
7. Project Plans and Drawings

Any conflict between the Project Plans and Drawings and the Technical Specifications will be resolved in favor of the document with the latest date (e.g., the more recent document). If the dates are not determinable, the conflict will be resolved in favor of the Technical Specifications.

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS: That

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Contractor, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

Tuolumne River Trust
P.O. Box 3727
Sonora, CA, 95370

hereinafter called the Trust, in the penal sum of

_____ Dollars, in lawful
money of the United States, for the payment of which sum well and truly to be made, we bind ourselves,
successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Contractor entered into a certain
contract with the Trust, dated _____ day of _____ 2024, for work
on the Basso La Grange Phase 1 Floodplain Restoration Tuolumne River Project. The contract is
incorporated by reference into this Performance Bond.

NOW, THEREFORE, if the Contractor shall well, truly and faithfully perform its duties, all the
undertaking, covenants, terms, conditions, and agreements of said contract during the original term
thereof, and any extensions thereof which may be granted by the Trust, with or without notice to the
Surety and during one year (minimum) guaranty period, and if Contractor shall satisfy all claims and
demands incurred under such contract, and shall fully indemnify and save harmless the Trust from all
costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the
Trust all outlay and expense which the Trust may incur in making good any default, then this obligation
shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the contract or to the work to be
performed thereunder or the specifications accompanying the same shall in any wise affect its
obligation on this bond, and it does hereby waive notice of any such change, extension of time,
alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Trust and the Contractor shall abridge
the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed this _____ day of
_____ 2024.

ATTEST:

Contractor

(Contractor) Secretary

(SEAL) By: _____
Address: _____

Witness as to Contractor _____

(Address) _____
ATTEST: _____

Surety _____

_____ By: _____

Witness as to Surety Attorney-in-Fact _____
Address: _____

(Address) _____

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond. Bond must be notarized.

PAYMENT BOND

KNOW ALL BY THESE PRESENTS: That

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Contractor, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

Tuolumne River Trust
P.O. Box 3727
Sonora, CA, 95370

hereinafter called the Trust, in the penal sum of _____ Dollars, in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Contractor entered into a certain contract with the Trust, dated _____ day of _____ 2024, for work on the Basso La Grange Phase 1 Floodplain Restoration Tuolumne River Project. The contract is incorporated by reference into this Payment Bond.

NOW, THEREFORE, if the Contractor shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, fuel, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums of said work, and for all wages and fringe benefits of labor, performed in such work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulated and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Trust and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 2024.

ATTEST:

Contractor

(Contractor) Secretary

(SEAL) By: _____

Address: _____

Witness as to Contractor

(Address)
ATTEST:

Surety

Witness as to Surety Attorney-in-Fact By: _____

(Address) Address: _____

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond. Bond must be notarized.