



Upper Mokelumne River Watershed Authority

Supplemental Agenda Materials Packet - April 24, 2020 -

Table of Contents

Agenda Item #	Agenda Item Title	Document Name (Approx. # of pages)
3	Mattley Meadow Restoration Project	Proposed Mitigated Negative Declaration (14 pages)
4	Bid Awards for Culvert & Drainage Improvements Project	Draft Construction Agreement with KW Emerson (42 pages)

Members

Alpine County • Alpine County Water Agency • Amador County • Amador Water Agency • Calaveras County • Calaveras County Water District • Calaveras Public Utility District • East Bay Municipal Utility District • Jackson Valley Irrigation District

Proposed Mitigated Negative Declaration

Project: Mattley Meadow Restoration Project

Lead Agency: Upper Mokelumne River Water Authority (UMRWA)

Availability of Documents: The Initial Study for this Proposed Mitigated Negative Declaration is available for review at:

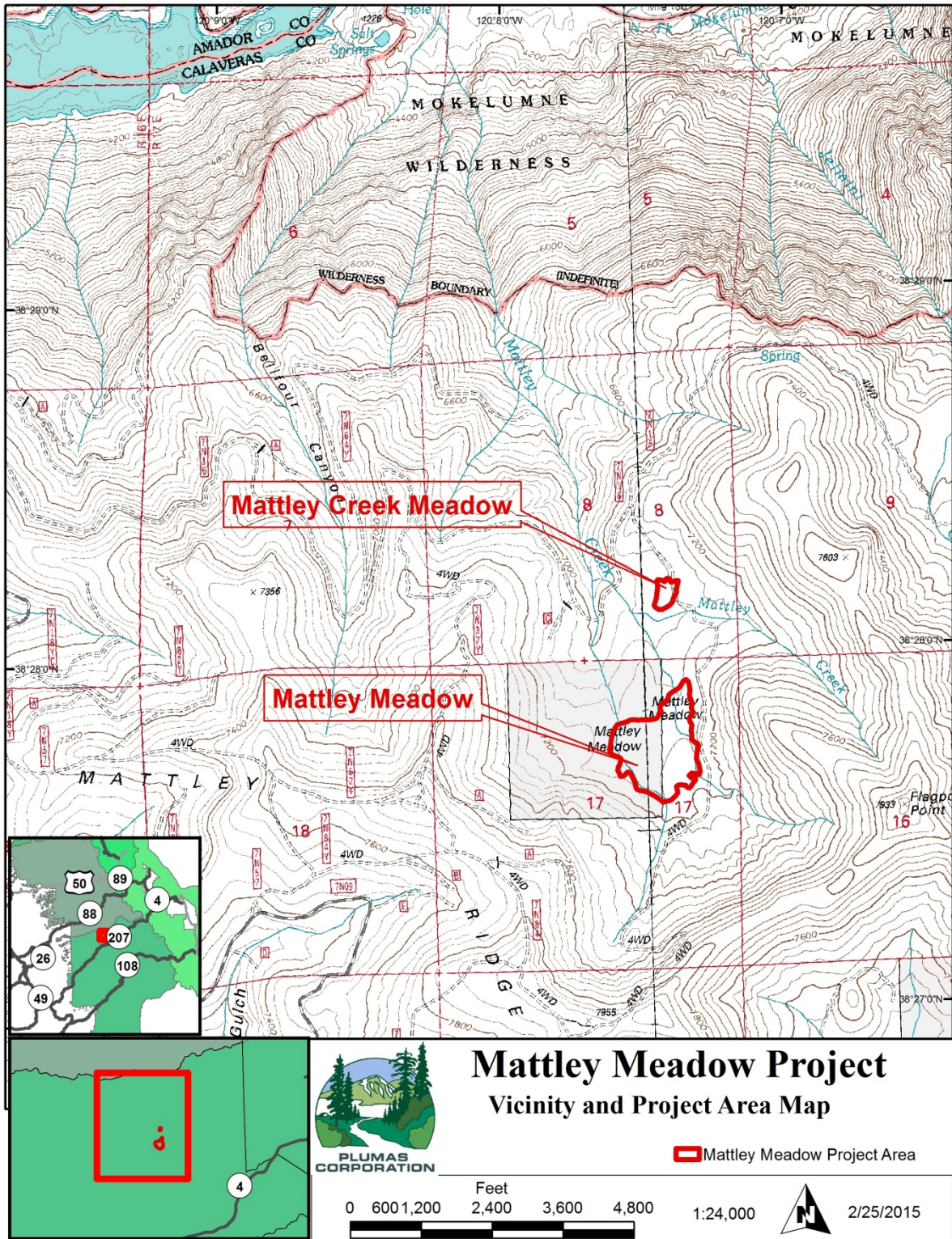
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Questions or comments regarding this Proposed Mitigated Negative Declaration (MND) and Initial Study may be addressed to:

Richard Sykes
Executive Officer
rsykes@sbcglobal.net
(510)390-4035

Project Location: The Mattley Meadow project is located in Calaveras County in the headwaters of Mattley Creek, tributary to the North Fork Mokelumne River on public lands managed by the U.S. Forest Service, Stanislaus National Forest, Calaveras Ranger District, and private lands owned by Stan Dell'Orto in T70N, R17E, Sections 8 and 17 MDBM.. , (Figure 1).

Figure 1. Vicinity Map for Mattley Meadow Restoration Project



Project Description: USFS and project stakeholders propose to:

- Restore the natural hydrologic functions of the Mattley Meadow complex using a partial or near complete channel fill restoration technique (i.e. plug and pond method) in Mattley Meadow and Mattley Creek Meadow.
- Revegetate and stabilize all disturbed areas within the meadow, including access routes, borrow pond margins, and gully fill/plugs.
- Reroute a 0.1-mile segment of motorized trail 17EV16 that crosses Mattley Creek Meadow around the meadow.
- Reconstruct range fencing on the north property boundary and east edge of Mattley Meadow and construct temporary fencing around the restored area in Mattley Creek Meadow to restrict and manage livestock grazing.

Findings: An Initial Study was prepared to assess the proposed project’s potential effects on the environment and the significance of those impacts. Based on the Initial Study, UMRWA has determined that the proposed project would not have a significant impact on the environment because mitigation measures would be implemented to reduce impacts to less-than-significant levels. This conclusion is supported by the following findings:

1. The proposed project would have no impact on:
 - Agricultural and forest resources.
 - Energy.
 - Land use and planning.
 - Mineral resources.
 - Noise
 - Paleontology.
 - Population and housing.
 - Public services.
 - Recreation.
 - Transportation and traffic
 - Utilities and service systems.
 - Wildfire.
2. The proposed project would result in a less-than-significant impact on:
 - Aesthetics.
 - Greenhouse gas emissions.
3. Mitigation measures have been adopted to reduce potentially significant impacts to less-than-significant levels on:

- Air quality.
- Biological resources.
- Cultural resources.
- Geology and soils
- Hazards and hazardous materials
- Hydrology and water quality.
- Tribal cultural resources.

Mitigation Measures

The following mitigation measures will be implemented by the U.S. Forest Service and implementing partners to avoid, minimize, and mitigate environmental impacts resulting from implementation of the proposed project. Implementation of these mitigation measures would reduce the environmental impacts of the proposed project to a less-than-significant level. A Mitigation Monitoring and Reporting Program for these measures is included in the Initial Study.

Air Quality

- Construction fill and cut areas would be watered as necessary to prevent visible emissions from extending more than 100 feet beyond the active work areas unless the area is inaccessible to watering vehicles due to slope conditions or other safety factors.
- Disturbed surface areas would be watered in sufficient quantity and frequency to suppress dust and maintain a stabilized surface.
- At least 80 percent of all inactive disturbed surface areas would be watered on a daily basis when there is evidence of wind driven fugitive dust, excluding any areas which are inaccessible due to excessive slope or other safety conditions.
- All unpaved roads used for any vehicular traffic would be watered at least once per every two hours of active operations.

Biological Resources – Wildlife Species

- The project activities will conform to the conservation measures and terms and conditions requirements in the Biological Opinion (USFWS, to be obtained prior to implementation), and Lake and Streambed Alteration Agreement (CDFW, to be obtained prior to implementation), which appends this to those documents.
- Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This shall require the placement of silt fencing or sediment barrier cloth along the boundary of the project area so that silt and/or other deleterious materials are not allowed to pass to adjacent or downstream reaches. Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good

operating condition throughout the construction period and the entire stretch of barrier shall be monitored daily prior to commencement of construction activities to ensure wildlife species have not become trapped or displaced by the barrier. All sediment contained along the barrier shall be removed and disposed of where it will not re-enter a watercourse. All non-biodegradable silt barriers (such as plastic silt fencing) after the disturbed areas have been stabilized with erosion control vegetation shall be removed. Upon CDFW determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective CDFW approved control devices are installed or abatement procedures are initiated

- Prior to commencement of construction, grading, vegetation removal, equipment staging or other project-related activities, a focused survey for sensitive species (such as but not limited to fish, plants, reptiles, and amphibians) that are listed under the California Endangered Species Act (CESA) or Federal Endangered Species Act (ESA) shall be conducted by a Designated Biologist (i.e. Forest Service- or USFWS and CDFW-approved biologist) within a 200 foot radius of the project area by a designated individual that is educated and familiar with all life stages of local fish, plants and amphibians, within three (3) days prior to the beginning of project-related activities and prior to beginning work on a daily basis.
- If any CESA or ESA listed species are encountered during the conduct of project activity, including maintenance and restoration activities, work shall be suspended, the USFWS and CDFW notified, and conservation measures shall be developed in agreement with respective regulatory authorities prior to initiating the activity. Work may not re-initiate until respective regulatory authorities (USFWS and CDFW) have been consulted and avoidance measures implemented.

Terrestrial Wildlife

- The Stanislaus NF District Biologist will conduct pre-construction surveys for California spotted owl and northern goshawk in August, at least two weeks prior to project construction, to determine presence and status of these species within the project area. If California spotted owl or northern goshawk nesting is detected, a limited operating period (LOP) for the detected species may be observed through September 15, when nesting activities are complete. The LOP may not be necessary depending on where the nest/reproductive activity is taking place, in relation to project activities, and will be assessed by the biologist to protect reproduction as necessary. If deemed necessary, the LOP would restrict project activities no more than 0.25 mile from the located nesting/reproductive activity center. Project construction outside the 0.25-mile buffer may continue during the specified LOP.
- If construction is scheduled during the bird breeding season (February 15th to August 31st), a Designated Biologist (i.e. Forest Service- or USFWS and CDFW-approved biologist) shall conduct a breeding bird survey no more than 15 days prior to the start of construction. All active bird nests will be marked following the survey to avoid destruction by equipment.

If nesting raptors or migratory birds are identified within the area, a non-disturbance buffer and any other restrictions will be determined, before project activities commence, through consultation with the CDFW following completion of the survey.

Aquatic Wildlife

- During restoration work within Mattley Meadow, a Forest Service- or USFWS and CDFW-approved biologist must be on site during all activities. Survey the immediate work area for listed amphibians before commencement of daily work and following work stoppages exceeding one hour.
- Maintain an 82-foot limited operating area around the SNYLF occupied western channel in Mattley Meadow where mechanical operation for conifer removal is prohibited.
- If Sierra Nevada yellow-legged frogs are detected within the work area, the following procedures will be followed: Each Sierra Nevada yellow-legged frog or Yosemite toad encounter shall be treated on a case-by-case, but the general procedure is as follows: (1) Leave the non-injured animal alone if it is not in danger; or (2) move the animal to a nearby safe location if it is in danger. These two actions are further described below:
 - When a Sierra Nevada yellow-legged frog or Yosemite toad is encountered within the project site, the first priority is to stop all activities in the surrounding area that may have the potential to result in the harassment, injury, or death of the individual. Then, the situation shall be assessed by a Forest Service- or USFWS-approved biologist in order to select a course of action that will minimize adverse effects to the individual.
 - Individuals of the three listed species shall be captured and moved by hand only when it is necessary to prevent harassment, injury, or death. A Forest Service- or USFWS-approved biologist shall inspect the animal and the area to evaluate the necessity of fencing, signage, or other measures to protect the animal. If suitable habitat is located immediately adjacent to the capture location, then the preferred option is relocation to that site. An individual shall not be moved outside of the radius it would have traveled on its own.
 - Only Forest Service- or USFWS-approved biologists may capture the three listed amphibians. Nets or bare hands may be used to capture the animals. Soaps, oils, creams, lotions, repellents, or solvents of any sort cannot be used on hands within two hours before and during periods when the biologist is capturing and relocating individuals. If the animal is held for any length of time in captivity, they shall be kept in a cool, dark, moist environment with proper airflow, such as a clean and disinfected bucket or plastic container with a damp sponge. Containers used for holding or transporting shall not contain any standing water, or objects (except sponges), or chemicals.
- Existing waterholes and other aquatic sites including ponds, lakes and streams used for water drafting would be surveyed for Aquatic State and federal TES species and flow levels taken prior to use. In the event State and/or federal TES species are found to occur at

drafting sites; sites will not be used and future surveys would be conducted by an aquatic specialist to determine presence of potential populations.

- The use of low velocity water pumps and screening devices for pumps (per S&G 110) will be utilized during drafting for project treatments to prevent mortality of eggs, tadpoles, juveniles, and adult SNYLF. A drafting box measuring 2 feet on all sides covered in a maximum of 0.25-inch screening is required.
- Mechanical operation would be prohibited on days where >0.5 inches of rain are predicted and within 24 hours of such rain events.

Biological Resources — Plant Species

- Any new occurrences of sensitive, rare, or other listed plants identified within the project area would be flagged and avoided when necessary.
- All off-road equipment would be cleaned to insure it is free of soil, seeds, vegetative matter or other debris that could contain seeds before entering the project area.
- Infestations of invasive plants that are discovered during project implementation would be documented and locations mapped. New sites would be reported to the Forest Service botanist.
- Onsite sand, gravel, rock, or organic matter would be used where possible.
- Any seed used for restoration or erosion control would be native species known to occur in the meadow complex purchased from a reputable local native seed supplier.

Cultural Resources

- Four cultural sites in the project area will be flagged with a buffer of at least ten meters prior to project implementation. All contractors will be informed of this location, and no ground disturbing activities will occur within the flagged area. The flagging will be removed post project implementation.

Geology and Soils

- Construction would occur during the low flow period, and coincides with the most favorable moisture conditions to the depth of borrow site excavation. The subsurface soil material excavated is used to plug the channel incision. This material requires enough moisture to allow for compaction to background condition of the adjacent native soil. (The purpose of compaction is to preclude subsidence of the plug material during saturated conditions. Subsidence can lead to the initiation of erosion on the plugs.) Utilization of onsite fill material allows the best match of soil types at the least cost. Material too wet to efficiently transport and work would be avoided. The subsurface (compacted) portions of the plug are constructed using the 'layer lift' method, which entails spreading the material in a thin veneer over the general area of the plug with each delivered bucket load of material. This repeated action, with occasional re-cutting of the working surface allows for efficient

wheel compaction without supplemental equipment.

- Topsoil, and any organic material, in the area of excavation will be removed to a depth of approximately one foot and stockpiled adjacent to the plugs. When the plugs have been constructed to the design elevation, the plug surface will be cross-rippled to a depth of 12” to restore a deep infiltration capacity. Stockpiled topsoil with associated organics and native seed bank will be spread across the plug with a low ground-pressure track loader. The final pass with equipment is to dress and roughen the topsoil surface for microclimate roughness and to fully incorporate the topsoil with the surface of the subsoil.
- Equipment travel into the project area will be restricted to existing open or closed OHV roads and recent timber harvest skid trails and landings. During construction, routes from the borrow sites to plug areas with compaction resulting from construction will be scarified perpendicular to expected surface water flow and dressed with scattered organic material.
- Staging areas and temporary haul routes used during the project will be minimized to lessen soil compaction and disturbance to the greatest extent possible. After construction, they will be sub-soiled, perpendicular to surface flow directions, to the full depth of compaction to restore soil porosity. Areas with residual meadow sod will only be lightly scarified to preserve sod integrity. The emphasis is on the least soil disruption while loosening the soil. Extensive mixing or plowing can have a negative effect on soil microorganisms. This technique has been successful in loosening the soil, restoring soil porosity, providing a high infiltration capacity, and thereby reducing cumulative watershed effects.
- The project will require re-vegetation. Access routes are expected to have residual sod, and thus not require seeding, but may receive mulching and possibly seed, depending on the condition of the sod. Revegetation will consist of the following measures:
 - All desirable plant material that would be excavated or buried in plugs, such as sod mats and willow wads, would be removed and transplanted to plugs, pond margins, and at key locations in the remnant channel. Locations of transplants are prioritized according to need for maximum soil protection in bare areas and areas of potentially high stress. Sod would be placed with heavy equipment and could be secured using live willow stakes. Willow wads also would be excavated and replanted using heavy equipment.
 - Following project completion in the fall, purchased native seed would be dispersed into plugs, around ponds, and other heavily disturbed areas.
 - All revegetation areas would be monitored for three years following project completion. Successful revegetation would consist of 70% survival of willow cuttings and transplanted sod and willow wads. Seeded areas would have at least 50% cover of native vegetation. Any areas that do not meet the survival or cover criteria would be reseeded or replanted.
- Erosion control would be accomplished using locally collected materials (wood chips, duff,

pine needles, etc.). Straw would not be used.

- Meadow restoration projects include rest from grazing in disturbed areas for up to three years after construction in order to allow the newly planted vegetation to become established. The project area would be fenced to protect disturbed areas from livestock for 2-3 years. Off-site water may also be developed to lessen livestock impacts on riparian areas after grazing is re-established in the project area.

Hazards and Hazardous Materials

- Equipment will be re-fueled and serviced at the designated staging area, which is outside of the riparian area and meadow. No fuel will be stored on-site. In the event of an accidental spill, hazmat materials for quick on-site clean-up will be kept at the project sites during all construction activities, and in each piece of equipment.
- For fire prevention, a trash pump and/or water truck will be on-site at all times.

Hydrology and Water Quality

Erosion Control Plan (BMP 2.13 Erosion Control Plans)

- The erosion control plan will consist of the BMPs incorporated into the project design criteria as well as any additional measures required by regulating agencies as part of the project permitting process (e.g., 404/401 permits, Streambed Alteration Agreement, etc.)
- Implementation of BMPs will be documented in a BMP checklist that will be prepared prior to project implementation.
- Construction would be supervised on-site by at least one person who has worked on at least one previous partial fill (pond and plug) meadow floodplain restoration project.

Meadow Restoration (BMP 1.19 Streamcourse and Aquatic Protection; BMP 7.1 Watershed Restoration)

- Required permits would be obtained including the 404 permit from the U.S. Army Corps of Engineers, 401 Permit from the Central Valley Regional Water Quality Control Board, and a 1600 Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife.
- Construction activities in Mattley Meadow(s) would occur during the time of year when the flow of Mattley Creek is at its lowest. This typically occurs between August 1 and October 30. Anticipated implementation is September 1-30, 2021.
- Equipment access would be on existing and temporary routes. Temporary routes would be restored at the end of project implementation.
- Erosion of disturbed areas would be reduced utilizing one or more of the following techniques: placement of large and small woody debris; soil scarification; scattering of fine organic debris (such as wood straw or chips, pine needles, etc.); other practices as needed or required by permits.
- To promote revegetation, topsoil would be removed and stockpiled during pond excavation and then used to top dress the completed plugs. Live plant material such as sod mats and

willows excavated during construction may be transplanted to plugs or other areas. Locally collected seed, plant stakes, or live plants may be used where needed.

- Grazing would be excluded from restoration areas using temporary fencing until the site has sufficiently revegetated and stabilized, generally a minimum of 2 – 3 years.

Equipment Refueling and Servicing (BMP 2.11 Equipment Refueling and Servicing; 7.4 Forest and Hazardous Substance Spill Prevention Control and Countermeasure Plan; 1.19 Streamcourse and Aquatic Protection)

- Allow equipment refueling and servicing only at approved locations, which are well away from waterbodies. Servicing and refueling activities would be located a minimum of 100 feet away from the meadow edge. Site specific locations for equipment fueling would be identified prior to or during project implementation. A non-porous mat or equivalent would be used for the refueling at the staging area.
- Report spills and initiate appropriate clean-up action in accordance with applicable State and Federal laws, rules and regulations. A Spill Prevention Control and Countermeasure (SPCC) plan would be implemented when a total oil product at a site exceeds 1,320 gallons or any single container exceeds 660 gallons. The Forest has a SPCC spill plan designed to guide the emergency response to spills during construction.
- Clean equipment used for instream work prior to entering the water body: Remove external oil, grease, dirt and mud from the equipment and repair leaks prior to arriving at the project site. Inspect all equipment before unloading at site. Inspect equipment daily for leaks or accumulations of grease, and correct identified problems before entering streams or areas that drain directly to waterbodies. Remove all dirt and plant parts to ensure that noxious weeds and aquatic invasive species are not brought to the site.

Water Sources (2.5 Water Source Development and Utilization)

- Use of water sources would be in accordance with the conditions (e.g., minimum instream flows, etc.) specified in BMP 2.5 (Water Source Development and Utilization). Water may be needed to assist in construction of structures. Approved drafting sites designated by the District hydrologist would be utilized.

Monitoring (BMP 7.6 Water Quality Monitoring)

- Visual and photo point monitoring of the meadow restoration area would be conducted for several years after implementation to ensure restoration actions are functioning as intended and meeting project objectives. BMP effectiveness monitoring using the national protocol may also be conducted. Corrective actions consisting of any of the tools and techniques as described for the proposed action may be implemented where needed.
- Implement all monitoring and reporting required by terms of the 401, 404, and 1600 permits.

Tribal Cultural Resources

- All cultural sites in the vicinity of the project area will be flagged with a buffer of at least ten meters prior to project implementation. All contractors will be informed of site locations, and no ground disturbing activities will occur within the flagged areas. The flagging will be removed post project implementation.
- A consultant and construction worker tribal cultural resources awareness brochure will be distributed to all personnel involved in project implementation before any stages of project implementation and construction activities begin on the project site. The brochure will include relevant information regarding sensitive tribal cultural resources, including applicable regulations, protocols for avoidance, and consequences of violating State laws and regulations. The brochure will also describe appropriate avoidance and minimization measures for resources that have the potential to be located on the project site and will outline what to do and whom to contact if any potential archaeological resources or artifacts are encountered. The brochure will also underscore the requirement for confidentiality and culturally-appropriate treatment of any find of significance to Native Americans and behaviors, consistent with Native American Tribal values.
- The following mitigation measure is intended to address inadvertent discoveries made by construction personnel, agencies, or consultants at the work site when no archaeological or tribal monitor is present during ground disturbing activities.

If potential tribal cultural resources (TCRs) or archaeological resources are discovered during ground disturbing construction activities, all work shall cease within 100 feet (or an appropriate distance based on the apparent distribution of the TCR) of the find. A qualified cultural resources specialist meeting the *Secretary of Interior's Standards and Qualifications for Archaeology*, as well as Native American Representatives from traditionally and culturally affiliated Native American Tribes will assess the significance of the find. To avoid or minimize adverse impacts when tribal cultural resources, archaeological resources, or other cultural resources are discovered, Native American Representatives may make recommendations for further evaluation and treatment as necessary. Culturally appropriate treatment may include, but is not limited to, processing materials for reburial, minimizing handling of cultural objects, leaving objects in place within the landscape, or returning objects to a location within the Project area where they will not be subject to future impacts. The United Auburn Indian Community (UAIC) of the Auburn Rancheria does not consider curation of TCRs to be appropriate or respectful and request that materials not be permanently curated, unless requested by the Tribe.

The types of treatment preferred by UAIC that protects, preserves or restores the integrity of a TCR may include Tribal Monitoring, or recovery of cultural objects, and reburial of cultural objects or cultural soil that is done in a culturally appropriate manner. Recommendations of the treatment of a TCR will be documented in the project record. For any recommendations made by traditionally and culturally affiliated Native American Tribes that are not implemented, a justification for why the recommendation was not followed will be provided in the project record.

If articulated or disarticulated human remains are discovered during ground disturbing construction activities or ground disturbing activities, all work shall cease within 100 feet of the find and all ground disturbing activities shall not resume until the requirements of Health and Safety Code section 7050.5 and, if applicable, Public Resources Code 5097.98 are met.

Monitoring & Reporting

Monitoring is a means to determine if conditions in Mattley Meadow are meeting or moving toward the desired conditions. Extensive surveys have been conducted to document the existing conditions within the meadow and stream channel(s). Additional monitoring would take place immediately after the project is implemented and annually for two years to document the effectiveness of the project. This monitoring would be conducted by Calaveras Ranger District staff and project partners, and includes: ground water, surface water, sediment transport, planted vegetation success or mortality, wetland condition (CRAM), noxious weed presence, the integrity of the restoration, and the presence of new headcuts (see Table 1 for details).

During construction, Plumas Corporation and SNF staff would be on-site continuously, and responsible for ensuring that Best Management Practices are followed, mitigations measures are implemented, and water quality leaving the project area is sampled (in the event of surface water during construction). Once the project is completed, a report on construction is sent to the funding agency, as well to the permitting agencies (Regional Water Quality Control Board and US Army Corps of Engineers). The report will certify compliance with mitigation measures.

Project Monitoring

The Mattley Meadow Restoration Project is expected to benefit multiple resources by restoring the hydrological and ecological functions of the meadow floodplain system. The purpose of project monitoring is to measure project effectiveness on water quality, timing of flows, and enhancement of wildlife and aquatic habitats. Monitoring parameters and methods that would be utilized are outlined in **Table 1**.

Table 1. Project Effectiveness Monitoring of the Proposed Action

Monitoring Parameter	Method	Responsible Party
Water Temperature	Water temperature data loggers installed above and below project area May-Sept*	Plumas Corporation**
Aquatic Habitat	California Rapid Assessment Method (CRAM)	Plumas Corporation
Groundwater	6 groundwater wells (approximately 6 to 12 ft in depth) made of 3/4" galvanized perforated pipe, measured monthly*	Plumas Corporation**; USFS as time allows
Stream Flow	Staff gage and pressure transducer installed at the bottom of project area; monthly* manual calibration flow measurements; quarterly* collection of oxygen isotope samples and measurement of electrical conductivity (EC) from inflows, springs, and wells	Plumas Corporation**
Sediment Supply	Channel cross-section surveys; CRAM	Plumas Corporation

Monitoring Parameter	Method	Responsible Party
Meadow Vegetation	All revegetation areas would be monitored for three years following project completion. Monitoring will quantify willow survival and percent cover of native meadow vegetation.	USFS
Sierra Nevada yellow-legged frog Population	Existing SNYLF population in the untreated “West” channel would be monitored annually, as well as the remnant channel and borrow ponds in the restored area of Mattley Meadow for potential SNYLF dispersal.	USFS

**As access permits*

***Plumas Corporation has secured funding for monitoring through 2020. Additionally, Plumas Corporation is working with the ACCG so that this group can continue monitoring outside of the existing funding window.*

MANDATORY FINDINGS OF SIGNIFICANCE

- No substantial evidence exists that the proposed project would have a negative or adverse effect on the environment.
- The project would not substantially degrade the quality of the environment, significantly reduce the habitat for fish and wildlife species, result in fish or wildlife populations below a self- sustaining level, reduce the number or restrict the range of a special-status species, or eliminate important examples of California history or prehistory.
- The project would not have environmental effects that would cause substantial direct or indirect adverse effects on humans.
- The project would not have environmental effects that are individually limited but cumulatively considerable.

As the UMRWA decision-making body for this project, I have reviewed and considered the information contained in the Final Mitigated Negative Declaration, which includes the Initial Study, Proposed Mitigated Negative Declaration, and comments received during the public review process, prior to approval of the project.

In accordance with Section 21082.1 of the California Environmental Quality Act (CEQA), I find that UMRWA has independently reviewed and analyzed the Initial Study and Proposed Mitigated Negative Declaration for the proposed project and that the Initial Study and Proposed Mitigated Negative Declaration reflect UMRWA’s independent judgment and analysis. I find that although the proposed project could have a significant effect on the environment, there would not be a significant effect in this case because revisions to the project have been made by the project proponents, USFS and implementing partners, as described in the Proposed Mitigated Negative Declaration.

Therefore, on the basis of the whole record before UMRWA, I find that there is no substantial evidence that the project will have a significant effect on the environment. I therefore adopt this Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15074.

Richard Sykes
Executive Officer
Upper Mokelumne River Watershed Authority

Date

UPPER MOKELUMNE RIVER WATERSHED AUTHORITY

UMRWA POWER FIRE CULVERT IMPROVEMENT AND EROSION CONTROL PROJECT, BEAR RIVER AND PANTHER CREEK SUB-WATERSHEDS

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (this “Contract”) is made this ____ day of ____, 2020 by and between K.W. EMERSON, INC. (“Contractor”), whose place of business is located at 413 W. Saint Charles Street, San Andreas, CA 95249; and the UPPER MOKELUMNE RIVER WATERSHED AUTHORITY, a joint powers agency formed pursuant to the laws of the State of California (“UMRWA”).

WHEREAS, UMRWA awarded to Contractor the following contract:

Bid Nos.: 20-01 and 20-02

Job Title: UMRWA POWER FIRE CULVERT IMPROVEMENT AND EROSION CONTROL PROJECT, BEAR RIVER SUB-WATERSHED AND PANTHER CREEK SUB-WATERSHED

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and UMRWA agree as follows:

ARTICLE I. THE WORK

- 1.1 Contractor shall provide, furnish and perform all necessary permitting and support services, construction, cleanup, and all other services of any type, provide and furnish all necessary supplies, materials and equipment (except those to be provided by UMRWA, if any) and all necessary supervision, labor, and services required for the complete construction and all necessary installation, start-up and testing required for Bid Nos. 20-01 and 20-02 for UMRWA POWER FIRE CULVERT IMPROVEMENT AND EROSION CONTROL PROJECT, BEAR RIVER SUB-WATERSHED AND PANTHER CREEK SUB-WATERSHED, as more particularly described in the Contract Documents (hereinafter, the all-inclusive obligations of Contractor set forth in this sentence shall be referred to as the “Work”). The Work shall be done and the materials furnished in accordance with the Plans, Drawings and Specifications (defined below).
- 1.2 Contractor has reviewed the Scope of Work, Plans and Specifications represents that:
 - a. If the Work is performed in accordance therewith, the Work shall have been constructed in accordance with all applicable state, county, and municipal laws, codes, and regulations, including but not limited to, all applicable building codes; and
 - b. The Specifications are sufficiently complete and detailed to permit Contractor to perform the entire Work on the basis of the Specifications and matters reasonably inferable therefrom for the Guaranteed Maximum Price (defined below).
- 1.3 If at any time during the process of the Work UMRWA desires to add to, alter, deviate from, or make omissions from the work to be performed under the Drawings and Specifications, UMRWA shall be at liberty to do so and the same shall in no way affect or make void this Contract. Such adjustments will be made by change order. Any such alterations, deviations, or omissions that decrease the cost of the Work shall be evaluated on a lump-sum basis calculated by multiplying the changed quantities by the rates from Contractor’s Bids Schedule of Items (Included herein) and this amount shall be deducted from the Guaranteed Maximum Price. Any such additions, alterations, deviations, or omissions that increase the cost of the Work shall be evaluated on a lump-sum basis calculated by multiplying the changed quantities

by the rates from Contractor's Bids Schedule of Items (Included herein), the amount thereof to be agreed on in writing before execution of that portion of the Work, and the amount thereof shall be added to the Guaranteed Maximum Price. Any increase or decrease in Contract Time due to such additions, alterations, deviations, or omissions shall be added to or subtracted from the Completion Date (defined below). This Contract shall be held to be completed when the Work is finished in accordance with the original Plans, Drawings and Specifications, as amended by such changes.

ARTICLE II. CONTRACT TIME

- 2.1 Contractor shall begin the Work within thirty (30) calendar days after receipt of a Notice to Proceed from UMRWA's Project Manager, and shall diligently prosecute the Work to completion in strict accordance with Contract Documents.
- 2.2 Contractor shall carry out the Work at all times with the greatest possible dispatch and complete the entire Work under this Contract within one hundred fifty three (153) calendar days (the "Completion Date").
- 2.3 If Contractor fails to complete the Work by the applicable Completion Date, then Contractor shall pay to UMRWA the cash sum of five hundred dollars (\$500.00) per day for each day beyond the Completion Date that the Work remains uncompleted.

ARTICLE III. CONTRACT PRICE

- 3.1 UMRWA shall pay Contractor for performance of the Work the maximum lump sum of **Nine Hundred Fifty One Thousand Fifty Nine Dollars and Fifty Cents (\$951,059.50)**, subject to additions and deductions as provided in this Contract. Such fixed lump sum is referred to as "Guaranteed Maximum Price" or "GMP" and shall constitute the Contract Price.
- 3.2 The Contract Price is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, architects, engineers, and vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Contract; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities. No payment at premium rates for overtime, Sunday, or holiday work shall be included in Contractor's bills to UMRWA unless specifically authorized in advance in writing by UMRWA.
- 3.3 Progress payments on account of the GMP shall be made as follows:
 - a. UMRWA shall make progress payments approximately every thirty (30) days as the work proceeds, on estimates made by UMRWA of the percentage of the Work accomplished that meets the standards of quality established under the Contract, as approved by the Project Manager.
 - b. Before the first progress payment, Contractor shall furnish, in such detail as requested by the Project Manager, a breakdown of the GMP showing the amount for each principal category of the work, in order to provide a basis for determining progress payments. The breakdown shall be approved by the Project Manager. If the contract covers more than one project, Contractor shall furnish a separate breakdown for each.
 - c. UMRWA shall retain **five (5%)** percent of the amount of progress payments until completion and acceptance of all work under the Contract.
 - d. All material and work covered by progress payments made shall, at the time of payment become the sole property of UMRWA, but this shall not be construed as (1) relieving Contractor from the

sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of UMRWA to require the fulfillment of all of the terms of the Contract.

- e. UMRWA shall make the final payment to Contractor under this Contract after (1) completion and final acceptance of all Work, and (2) presentation of release of all claims against UMRWA arising by virtue of this Contract, other than claims, in stated amounts, that Contractor has specifically excepted from the operation of the release, in the form attached as **Attachment "A"**.
- f. Prior to making any payment, the Project Manager may require Contractor to furnish lien releases, receipts or other evidence of payment from all persons performing work and supplying material to Contractor. If so required, Contractor shall use the lien release forms provided by the UMRWA attached hereto as **Attachment "B-1" through "B-6"**.

3.4 Pursuant to Public Contract Code section 22300, at the request and expense of Contractor, securities equivalent to the amount withheld may be deposited by Contractor with the UMRWA, State Treasurer or with a state or federally chartered bank as the escrow agent, who shall release such securities to Contractor upon satisfactory completion of the Contract. Alternatively, Contractor may request, pursuant to Public Contract Code section 22300, that payment of retentions be made directly to the escrow agent. Contractor shall receive the interest earned on the investments upon the same terms provided for in section 22300 for securities deposited by the Contractor. Upon satisfactory completion of the Contract, Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the UMRWA.

ARTICLE IV. PROJECT MANAGER

The Project Manager shall be delegated by UMRWA's Executive Officer or his or her designee. The Project Manager shall have the authority to stop work immediately on the job if hazardous or detrimental conditions are suspected, and shall represent UMRWA in all matters pertaining to this Contract except where approval by the Board of Directors is specifically required.

ARTICLE V. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce UMRWA to enter into this Contract, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the sites and/or viewed site videos and has examined thoroughly and understood the nature and extent of the Work, locality, actual conditions, as built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has considered the physical conditions at or contiguous to the sites or otherwise that may affect the cost, progress, performance or furnishing of the Work, as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of Contract Documents.

ARTICLE VI. CONTRACT DOCUMENTS

6.1 The Contract Documents comprise the entire agreement between UMRWA and Contractor concerning the Work, and consist of the following, each of which is on file in the office of the Secretary of UMRWA, 15083 Camanche Parkway South, Valley Springs, CA. All Contract Documents relating to this project are hereby made a part of and incorporated herein by reference into this Contract. The Contract Documents include:

- a. Contractor's Bids in Response to Invitation to Bid No. 20-01 and Invitation to Bid No. 20-02,

including all bid forms and completed Schedules of Items

- b. Construction Contract
- c. Drawings for UMRWA Power Fire Culvert Improvement and Erosion Control Project, Bear River Sub-Watershed and Panther Creek Sub-Watershed
- d. Agreement and Release of Claims - Attachment A.
- e. Unconditional Waiver and Release Upon Progress Payment - Attachment B1.
- f. Unconditional Waiver and Release Upon Final Payment - Attachment B2.
- g. Conditional Waiver and Release Upon Progress Payment - Attachment B3.
- h. Conditional Waiver and Release Upon Final Payment - Attachment B4.
- i. Reduction of Stop Notice - Attachment B5.
- j. Release of Stop Notice - Attachment B6.
- k. The following specifications pertaining to the Work:
 - a. Supplemental Specifications to Standard Specifications for Construction Of Roads and Bridges on Federal Highway Projects-2014 (separate document);
 - b. Standard Specifications for Construction of Roads And Bridges on Federal Highway Projects (Fp-14) (separate document);
 - c. Fire Plan for Construction and Service Contracts, dated 08/02/2012 – Attachment F
 - d. Additional Specifications Noted on Drawings
- l. Construction Performance Bond - Attachment C.
- m. Construction Labor and Material Payment Bond - Attachment D.
- n. Byrd Anti-Lobbying Amendment Certification - Attachment E.

6.2 There are no Contract Documents other than those listed above in this Article VI. The Contract Documents may only be amended, modified or supplemented by the Board of Directors.

ARTICLE VII. WARRANTY OF THE WORK

All Work that is unsatisfactory to UMRWA in UMRWA's reasonable judgment shall be immediately repaired, removed, and replaced with Work of a quality approved by UMRWA, without additional compensation to Contractor. Contractor guarantees that the Work will be free from faulty materials or workmanship. Upon receiving notification from UMRWA, Contractor agrees to remedy, repair, or replace, immediately, without cost to UMRWA and to UMRWA's satisfaction, all defects, damages, or imperfections appearing in the work within a period of **twelve (12)** months after the date of final completion and acceptance by Project Manager of the Work. Contractor will continuously clean the jobsite and grounds around the jobsite, and keep it in a safe, orderly, and neat condition. At the completion of the Work, the jobsite will be left in a broom-clean condition.

ARTICLE VIII. INSURANCE

8. **INSURANCE.** Contractor shall procure and maintain for the duration of the contract insurance against

claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Within **five (5)** business days of award of the Bids to Contractor, Contractor shall furnish to UMRWA satisfactory proof that Contractor has the following insurance:

8.1 Minimum Scope and Limit of Insurance: Coverage shall be at least as broad as:

8.1.1 Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

8.1.2 Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

8.1.3 Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(If Contractor has no employees a Certificate of Exemption from Worker’s Compensation Laws must be completed using the UMRWA’s form and submitted with all other insurance documents).

8.1.4 Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor’s profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

Broader Coverage/Higher Limits: If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the UMRWA requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the UMRWA.

8.2 **The insurance policies are to contain, or be endorsed to contain, the following provisions:**

8.2.1 Additional Insured Status: The UMRWA, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

8.2.2 Primary Coverage: For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects UMRWA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by UMRWA, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

8.2.3 Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the UMRWA.

8.2.4 Waiver of Subrogation: Contractor hereby grants to UMRWA a waiver of any right to

subrogation which any insurer of said Contractor may acquire against the UMRWA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the UMRWA has received a waiver of subrogation endorsement from the insurer.

- 8.3 Self-Insured Retentions: Self-insured retentions must be declared to and approved by UMRWA. UMRWA may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or UMRWA.
- 8.4 Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the UMRWA.
- 8.5 Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- 8.5.1 The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- 8.5.2 Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- 8.5.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 8.6 Verification of Coverage: Contractor shall furnish the UMRWA with Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to UMRWA before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The UMRWA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. ***Certificates and endorsements shall refer to the Project or Work. Certificates of Insurance shall list the Certificate Holder as: UMRWA, Attn: Contract Administrator. Contractor shall provide all insurance documentation to the Contract Administrator.***
- 8.7 Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that UMRWA is an additional insured on insurance required from subcontractors.
- 8.8 Special Risks or Circumstances: UMRWA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

ARTICLE IX. BONDS

- 9.1 Contractor shall be required to furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract price and, if contract price exceeds \$25,000.00 dollars a Payment Bond in an amount equal to one hundred percent (100%) of the Contract price.
- 9.2 Within **ten (10)** business days following award of the Bids to Contractor, Contractor must file with

UMRWA the following bonds:

- a. Corporate surety bond, in the form of **Attachment “C”** to this Contract, in a sum not less than 100% of the Contract Price, to guarantee faithful performance of Contract (“Performance Bond”).
 - b. Corporate surety bond, in the form of **Attachment “D”** to this Contract, in a sum not less than 100% of the Contract Price, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract (“Labor and Material Bond”).
- 9.3 Corporate sureties on these bonds and on bonds accompanying Proposals must possess a minimum rating from A. M. Best Company of A-VII; be listed as an acceptable surety on federal bonds by the United States Department of the Treasury, subject to the maximum amount shown in the listing; and be an admitted carrier in California with a valid surety license.
- 9.4 The Contract Price, as used to determine amounts of bonds, shall be the total amount fixed in the Contract for performance of the Work (or corrected total if errors are found).
- 9.5 For increases in the Contract Price by Change Orders, or otherwise, which in the aggregate equal or exceed ten percent (10%) of the Contract Price, and for all such subsequent increases in the Contract Price thereafter, Contractor shall submit to UMRWA evidence of additional bond coverage for such increases in the Contract Price. Contractor shall be compensated for such additional bond coverage.
- 9.6 If the successful bidder fails to sign the Contract, return it to UMRWA’s Project Manager, and furnish the bonds in the sums specified in the Contract Documents with a surety satisfactory to UMRWA Risk Manager within **ten (10)** days following the award of the Bids, UMRWA may, at its option, determine that the bidder has abandoned the Contract, and thereupon the bids and the acceptance thereof shall be null and void, and the security accompanying the bid or the Contract shall be forfeited and become the property of UMRWA.
- 9.7 During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent or unable, in the opinion of UMRWA, to pay promptly the amount of such bonds to the extent to which surety might be liable, Contractor, within thirty (30) days after receiving written notice, shall provide supplemental bonds or otherwise substitute another and sufficient surety approved by UMRWA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such thirty (30)-day period to substitute another and sufficient surety, Contractor shall, if UMRWA so elects, be deemed to be in default in the performance of its obligations hereunder and upon its bids and performance bonds, and UMRWA, in addition to any and all other remedies, may terminate the Contract, bring suit or other proceedings against Contractor and the sureties, or may take such other actions as UMRWA may deem necessary to protect itself against any potential default by the surety.

ARTICLE X. WORK STOPPAGE; TERMINATION

- 10.1 If Contractor at any time during the progress of the work refuses or neglects, without the fault of UMRWA, to supply sufficient materials or workers to continue or complete the Work for a period of more than **two (2) business** days after having been notified in writing by UMRWA to furnish them, UMRWA shall have the power to terminate this Contract or furnish and provide such materials and workers as are necessary to finish the work, and the reasonable expense thereof shall be deducted from the GMP.
- 10.2 UMRWA shall have the right at any time, when in its reasonable opinion Contractor is not in good faith carrying out the terms of this Contract, by a written notice delivered to Contractor, to require contractor to discontinue all Work under this Contract, and Contractor shall then discontinue the Work and UMRWA shall have the power to contract for completion of the work or to complete the Work itself, and to charge the cost and expense to Contractor. The expense so charged shall be deducted and paid by UMRWA out of money that either may be due or may at any time thereafter become due to Contractor under this Contract. UMRWA shall pay Contractor the lesser of the reasonable value of the Work completed by

Contractor to the date of the notice to discontinue the work or the portion of the GMP allocable thereto.

- 10.3 UMRWA shall have the right at any time, for its own convenience, to discontinue permanently the Work being done under this Contract by sending a written notice to Contractor to do so, and Contractor shall then discontinue the Work. In this event, UMRWA shall pay to Contractor the full amount (including retention) to which Contractor shall be entitled for all Work done by Contractor up to the time of such discontinuance.

ARTICLE XI. MISCELLANEOUS

- 11.1 It is understood and agreed that in no instance is any party, signing this Contract for or on behalf of UMRWA or acting as an employee or representative of UMRWA, liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of UMRWA is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

- 11.2 During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,

regulations, and orders.

- g. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- 11.3 Alcohol-Free and Drug-Free Workplace. While performing any services pursuant to the Agreement, being present on any UMRWA property, or using UMRWA equipment, the Contractor, its employees, subcontractors and agents (1) shall not be in any way impaired because of being under the influence of alcohol or a drug; (2) shall not possess, consume, or be under the influence of alcohol and/or an illegal drug; and (3) shall not sell, offer, or provide alcohol or an illegal drug to another person.

- 11.3.1 If Contractor, or any employees, sub-contractors, or agents violate any of the above provisions, UMRWA may terminate the Agreement immediately.

- 11.4 All material resulting from removal work, except as specified otherwise, shall become the property of Contractor and shall be disposed of in accordance with Federal, State and local regulations and the Contract Documents.
- 11.5 This Contract shall not be assigned nor shall any work to be performed herein by Contractor or Subcontractor or money due or to become due be assigned without express written consent by the Board of Directors of UMRWA.
- 11.6 Contractor shall indemnify, defend (upon the request of UMRWA) and hold harmless UMRWA and UMRWA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees of UMRWA Counsel and counsel retained by UMRWA, expert fees, costs and staff time, and investigation costs) of whatever kind or nature (collectively "Claims"), that arise out of or are in any way connected with the performance of this Contract by Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors, or authorized representatives, except where caused by the sole negligence, active negligence or willful misconduct of UMRWA. Without limiting the generality of the foregoing, the same shall include injury, or death to any person or persons, damage to any property, regardless of where located, including the property of UMRWA, and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Contract on behalf of Contractor by any person or entity.
- 11.7 In entering into a public contract or a subcontract to supply goods, services or materials pursuant to a public contract, Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act, (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time UMRWA tenders final payment to Contractor, without further acknowledgment by the parties.
- 11.8 Compliance with the Davis-Bacon Act.
- 11.8.1 All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 11.8.2 Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 11.8.3 Additionally, contractors are required to pay wages not less than once a week.
- 11.9 Compliance with the Copeland "Anti-Kickback" Act.
- 11.9.1 Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 11.9.2 The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as UMRWA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 11.9.3 Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

11.10 Contract Work Hours and Safety Standards Act.

11.10.1 Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

11.10.2 Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in section 11.10.1 the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in section 11.10.1 in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in section 11.10.1.

11.10.3 Withholding for unpaid wages and liquidated damages. UMRWA shall upon its own action or upon written request of an authorized federal representative withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in section 11.10.2.

11.10.4 Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in section 11.10.1 through 11.10.4 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in section 11.10.1 through 11.10.4.

11.11 Clean Air Act.

11.11.1 The contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

11.11.2 The contractor shall report each violation to UMRWA and understands and agrees that UMRWA will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

11.11.3 The contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

11.12 Federal Water Pollution Control Act.

11.12.1 The contractor shall comply with all applicable standards, orders or regulations issued pursuant to Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

11.12.2 The contractor shall report each violation to UMRWA and understands and agrees that UMRWA will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

11.12.3 The contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

11.13 Suspension and Debarment.

11.13.1 This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

11.13.2 The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

11.13.3 By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

11.13.4 This certification is a material representation of fact relied upon by UMRWA. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to UMRWA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

11.13.5 The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11.14. Byrd Anti-Lobbying Amendment, 31 U.S.C. section 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification set forth on **Attachment E**. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

11.15 Procurement of Recovered Materials. Contractor and any subcontractors shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or,
The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at:
www.epa.gov/epawaste/consERVE/tools/cpg/products/.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

11.16 Access to Records.

11.16.1 The Contractor agrees to provide the UMRWA, NFWF, State Auditor, the Comptroller General of the United States, or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR §13.36(i)(10); CA Govt. Code 8546.7.

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

11.16.3 The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date UMRWA makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until UMRWA, NFWF, the State Auditor, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 44 CFR §13.36(i)(11), CA Govt. Code 8546.7.

11.17 Trafficking in Persons. Contractor shall comply with the provisions set forth below and shall include these obligations in every subcontract financed with federal monies.

11.17.1 Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not-
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity -
 - i. Is determined to have violated a prohibition in subparagraph 1 of section 11.17.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition subparagraph 1 of section 11.17.1 of this award through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)."

11.17.2 Provision applicable to a recipient other than a private entity. We as the Federal awarding agency's pass-through entity may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-

1. Is determined to have violated an applicable prohibition in subparagraph 1 of section 11.17.1

of this award; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in subparagraph 1 of section 11.17.1 of this award through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement).”

11.17.3 Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in subparagraph 1 of section 11.17.1 of this award term.
2. Our right to terminate unilaterally that is described subparagraph 2 of section 11.17.1 and section 11.17.2:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of subparagraph 1 of section 11.17.1 of this award in any subaward you make to a private entity.

11.17.4 Definitions. For purposes of this award:

1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity:”
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
3. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

11.18 Recipient and Subrecipient Whistleblower Protection.

11.18.1 This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 U.S.C. 4712.

11.18.2 Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

11.18.3 The contractor shall include these requirements in each subcontract.

11.19 Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Other Restrictions.

11.19.1 The Contractor shall ensure that no payments have been or will be made or received by UMRWA in connection with this Agreement in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §dd-1 *et seq.*), the UK Bribery Act 2010, or any other applicable anti-corruption laws or regulations in the countries in which the Contractor performs under this Grant Agreement.

11.19.2 The Contractor shall not provide material support or resources directly or indirectly to, or knowingly permit any funds provided by NFWF pursuant to this Agreement or Matching Contributions to be transferred to, any individual, corporation or other entity that the NFWF Subrecipient knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (1) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac; (2) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council at http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; (3) on the consolidated list maintained by the U.S. Department of Commerce at http://export.gov/ecr/eg_main_023148.asp, or (4) on such other list as NFWF may identify from time to time.

11.19.3 The Contractor shall ensure that its activities under this contract comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, U.S. export controls, restrictive trade practices, boycotts, and all other economic sanctions or trade restrictions promulgated from time to time by means of statute, executive order, regulation or as administered by the U.S. Department of State, the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Bureau of Industry and Security, U.S. Department of Commerce.

11.19.4 The contractor shall include these requirements in each subcontract.

11.20 Eligible Workers. The Contractor shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The Contractor shall comply with regulations regarding certification and retention of the completed forms. The contractor shall include these requirements in each subcontract.

11.21 Pursuant to Labor Code section 1813, Contractor shall pay a penalty of Twenty-Five Dollars (\$25) per day for each worker employed on the Work for more than eight hours in any one calendar day or forty hours in any calendar week unless overtime compensation is paid in conformance with the provisions of the Labor Code.

11.22 Claims under this Contract are subject to the claims resolution procedures set forth in Public Contracts

Code section 20104 et seq. These procedures require, among other items, that (i) the claim must be filed in writing with substantiating documentation before the date of final payment; (ii) the UMRWA must respond in writing within 45 days if the claim is less than \$50,000 or 60 days if the claim is in excess of \$50,000 up to \$375,000; (iii) if the claim is not resolved, Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute; and (iv) if the issues are not resolved after the informal conference, Contractor may file a claim as provided in Government Code section 900 et seq.

- 11.23 This Contract may be amended only by written agreement executed by both UMRWA and Contractor. Notwithstanding the foregoing, UMRWA may issue change orders in conformance with this Contract. Alterations, modifications or extras (“modifications”) that result in a change in the Contract Price or Completion Date, or both, shall be effected by a written change order that has been approved by Project Manager for amounts not to exceed \$7,500 per modification of the Contract Price. Modifications for amounts exceeding \$7,500 up to \$25,000 per change may be approved and signed by the UMRWA Administrative Officer. Modifications in excess of those amounts for individual change orders, or any change order that in the aggregate exceeds 10% of the Contract Price, must be approved by the Board of Directors.
- 11.24 In the event of a conflict between this Contract and the Specifications, this Contract shall prevail.
- 11.25 This Contract shall be deemed to have been entered into in the County of Amador, and governed in all respects by California law; venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in Amador County, California.

11.26 Notices. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Postal Services, certified with return receipt requested, with postage prepaid and addressed as follows:

To Contractor: Dan Emerson
Vice President
K.W. Emerson, Inc.
413 W. Saint Charles Street
San Andreas, CA 95249

To UMRWA: Richard Sykes
Executive Officer
15083 Camanche Parkway South
Valley Springs, CA 95252

With a copy to: UMRWA Counsel
c/o Amador County
810 Court Street
Jackson, CA 95642

The address to which notice shall or may be mailed, as aforesaid, to either party shall or may be changed by written notice given by such party or the other, as hereinbefore provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals and have executed this contract in quadruplicate the day and year first above written.

UMRWA:

CONTRACTOR:

BY: _____
Richard Sykes
Executive Officer

BY: _____
Name: Dan Emerson
Title: Vice President
Federal I.D. No.: _____

APPROVED AS TO FORM:
GREGORY GILLOTT
UMRWA COUNSEL

ATTEST:

BY: _____

BY: _____

ATTACHMENT A

AGREEMENT AND RELEASE OF CLAIMS

This Agreement and Release of Claims (“Agreement and Release”), made and entered into this _____ day of _____, 20____, by and between the Upper Mokelumne River Watershed Authority (“UMRWA”), and K.W Emerson, Inc. (“Contractor”), whose place of business is 413 W. Saint Charles Street, San Andreas, CA 95249.

RECITALS

A. On _____, 2020, UMRWA and Contractor entered into a contract (the “Contract”) whereby Contractor agreed to perform certain work (the “Work”) consisting of all necessary permitting and support services, construction, cleanup, and all other services of any type, all necessary supplies, materials and equipment and all necessary supervision, labor, and services required for the complete construction and all necessary installation, start-up and testing required for Bid Nos. 20-01 and 20-02 for UMRWA POWER FIRE CULVERT IMPROVEMENT AND EROSION CONTROL PROJECT, BEAR RIVER SUB-WATERSHED AND PANTHER CREEK SUB-WATERSHED, as more particularly described in the Contract Documents located at the office of the Secretary of UMRWA, 15083 Camanche Parkway South, Valley Springs, CA. including all the necessary components to perform the Work.

B. The Work under the Contract has been completed.

NOW, THEREFOR, it is mutually agreed between UMRWA and Contractor as follows:

1. Contractor will not be assessed damages except as detailed below:

Original Contract Sum	\$ <u>\$951,059.50</u>
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Damages	\$ _____
Payment Due Contractor	\$ _____

2. Subject to the provisions of this Agreement and Release, UMRWA shall forthwith pay to Contractor the sum of _____ Dollars and _____ Cents (\$ _____) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with UMRWA as of the date of such payment.

3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against UMRWA arising from the performance of work under the Contract, except for (i) the Disputed Claims described in Paragraph 4 below, and (ii) continuing obligations described in Paragraph 6 below. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against UMRWA, all its respective agents, employees, inspectors, assignees and transferees except for the Disputed Claims set forth in Paragraph 4 below and continuing obligations described in Paragraph 6 below.

4. The following claims are disputed (hereinafter, the “Disputed Claims”) and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Date Submitted</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>
------------------	-----------------------	-----------------------------	------------------------

[Insert information, including attachments if necessary]

5. Consistent with California Public Contract Code section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2, above, Contractor hereby releases and forever discharges UMRWA, all its agents, employees, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the work under the Contract, except for the Disputed Claims.

6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.

7. Contractor shall immediately defend, indemnify and hold harmless UMRWA, all its respective agents, employees, inspectors, assignees and transferees from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims.

8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, UMRWA, municipal or other law, ruling or regulations, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

10. All rights of UMRWA shall survive completion of the Work or termination of Contract, and execution of this Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

UMRWA:

CONTRACTOR:

BY: _____
Richard Sykes
Executive Officer

BY: _____
Name: Dan Emerson
Title: Vice President
Federal I.D. No.: _____

ATTACHMENT B-1

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(CA CIVIL CODE § 8134)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release: This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including:
 - (A) a right based on rescission, abandonment, or breach of contract, and
 - (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

ATTACHMENT B-2

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
(CA CIVIL CODE § 8138)**

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following:

Disputed claims for extras in the amount of: \$_____

SIGNATURE

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

ATTACHMENT B-3

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(CA CIVIL CODE § 8132)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release: This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release: _____ Amount(s) of unpaid progress payment(s): \$ _____
- (4) Contract rights, including:
 - (A) a right based on rescission, abandonment, or breach of contract, and
 - (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant’s Signature: _____

Claimant’s Title: _____

Date of Signature: _____

ATTACHMENT B-4

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
(CA CIVIL CODE § 8136)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

SIGNATURE

Claimant’s Signature: _____

Claimant’s Title: _____

Date of Signature: _____

ATTACHMENT B-5

PARTIAL REDUCTION / RELEASE OF STOP PAYMENT NOTICE - PUBLIC WORKS

(CA Civil Code §§ 8044, 8128, 9300 et seq.)

TO: PUBLIC ENTITY DIRECT CONTRACTOR CONSTRUCTION LENDER, if any
(CA Civ. Code §§ 8036) (CA Civ. Code § 8018) (CA Civ. Code § 8006)
Name:
Address:

THE UNDERSIGNED, (use correct legal name),

HEREBY PARTIALLY RELEASES AND ACKNOWLEDGES PARTIAL SATISFACTION OF THE STOP PAYMENT NOTICE DATED

, (date),

WHICH WAS AT THAT TIME IN THE AMOUNT OF \$, AGAINST

AS THE OWNER OF THE WORK OF IMPROVEMENT OR THE PUBLIC ENTITY, OR (IF APPLICABLE) AGAINST

Contractor:

AS DIRECT CONTRACTOR FOR THE WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

Address:

or Description:

THIS PARTIAL REDUCTION / RELEASE HEREBY REDUCES THE STOP PAYMENT NOTICE DESCRIBED ABOVE BY THE SUM OF:

\$,

AFTER CONSIDERATION OF THIS PARTIAL REDUCTION / RELEASE OF STOP PAYMENT NOTICE, THERE SHALL REMAIN WITHHELD:

\$,

Date:

Name of Claimant: (Firm Name)

By: (Signature of Claimant or Authorized Agent)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

UMRWA

On, Notary Public (name and title of officer)

personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

ATTACHMENT B-6

RELEASE OF STOP PAYMENT NOTICE IN ITS ENTIRETY - PUBLIC WORKS

(CA Civil Code §§ 8044, 8128, 9300 et seq.)

TO:	PUBLIC ENTITY	DIRECT CONTRACTOR	CONSTRUCTION LENDER, if
any			
	(CA Civ. Code §§ 8036)	(CA Civ. Code § 8018)	(CA Civ. Code § 8006)
Name:	_____	_____	_____
Address:	_____	_____	_____
	_____	_____	_____

THE UNDERSIGNED, _____ (use correct legal name),

HEREBY PARTIALLY RELEASES AND FULLY DISCHARGES THE STOP PAYMENT NOTICE DATED

_____, _____ (date),

WHICH WAS AT THAT TIME IN THE AMOUNT OF \$ _____, AGAINST _____

AS THE OWNER OF THE WORK OF IMPROVEMENT OR THE PUBLIC ENTITY, OR (IF APPLICABLE) AGAINST

Contractor: _____

AS DIRECT CONTRACTOR FOR THE WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

Address: _____

or Description: _____

Date: _____

Name of Claimant: _____
(Firm Name)

By: _____
(Signature of Claimant or Authorized Agent)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

UMRWA _____

On _____, _____ (date), before me, _____, Notary Public (name and title of officer)

personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

ATTACHMENT C

CONSTRUCTION PERFORMANCE BOND

This Construction Performance Bond (“Bond”) is dated _____, 20____, is in the penal sum of \$ _____, and is entered into by and between the parties listed below to ensure the faithful performance of the Construction Contract listed below. The Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 12, attached to this page. Any singular reference to K.W. Emerson, Inc. (“Contractor”), _____ (“Surety”), UMRWA (“UMRWA”) or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Firm Name: K.W. Emerson, Inc.

Firm Name: _____

Address: 413 W. Saint Charles Street,
San Andreas, CA 95249

Address of Principal Place of
Business: _____

UMRWA:
15083 Camanche Pkwy. South
Valley Springs, CA 95252

Executive Officer: Richard Sykes

Construction Contract:
ITB 20-01 and 20-02, UMRWA Power Fire
Culvert Improvement And Erosion Control
Project, Bear River Sub-Watershed And Panther
Creek Sub-Watershed

Location: Amador UMRWA, CA

Construction Contract dated _____,
20____ in the amount of
\$ 951,059.50.

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature:

Name and Title

Signature:

Name and Title

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to UMRWA for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no UMRWA Default, Surety's obligation under this Bond shall arise after:
 - 3.1 UMRWA has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2. UMRWA has agreed to pay the Balance of the Contract Sum to:
 - 3.2.1 Surety in accordance with the terms of this Bond and the Construction Contract, or
 - 3.2.2 To a contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When UMRWA has satisfied the conditions of Paragraph 3, Surety shall promptly (within thirty (30) days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of UMRWA, to perform and complete the Construction Contract (but UMRWA may withhold consent, in which case Surety must elect an option described in paragraphs 4.2, 4.3 or 4.4, below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids from qualified contractors acceptable to UMRWA for a contract for performance and completion of the Construction Contract, and, upon determination by UMRWA of the lowest responsible bidder, arrange for a contract to be prepared for execution by UMRWA and the contractor selected with UMRWA's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to UMRWA the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, and, after investigation and consultation with UMRWA, determine in good faith the amount for which it may then be liable to UMRWA under Paragraph 6, below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to UMRWA with full explanation of the payment's calculation. If UMRWA accepts Surety's tender under this paragraph 4.4, UMRWA may still hold Surety liable for future damages then unknown or un-liquidated resulting from Contractor Default. If UMRWA disputes the amount of Surety's tender under this paragraph 4.4, UMRWA may exercise all remedies available to it at law to enforce Surety's liability under paragraph 5 below.
5. If Surety does not proceed as provided in Paragraph 4, above, then Surety shall be deemed to be in default on this Bond ten (10) days after receipt of an additional written notice from UMRWA to Surety demanding that Surety perform its obligations under this Bond. At all times UMRWA shall be entitled to enforce any remedy available to UMRWA at law or under the Construction Contract including, without limitation, and

by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other contractors or contractors.

6. Surety's monetary obligation under this Bond is limited by the amount of this Bond. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Contractor under the Construction Contract. Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of Contractor under the Construction Contract for completion of the Construction Contract and correction of defective work;
 - 6.2 The responsibilities of Contractor under the Construction Contract to pay liquidated damages, and for damages for which no liquidated damages are specified in the Construction Contract, actual damages caused by non-performance of the Construction Contract, including but not limited to all valid and proper back charges, offsets, payments, indemnities, or other damages,
 - 6.3 Additional legal, design professional and delay costs resulting from the Contractor Default or resulting from the actions or failure to act of Surety under Paragraph 4, above.
7. No right of action shall accrue on this Bond to any person or entity other than UMRWA or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between UMRWA and Contractor regarding the Construction Contract, or in a court of competent jurisdiction in the location in which the work is located.
10. Notice to Surety, UMRWA or Contractor shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.
12. Definitions:
 - 12.1. Balance of the Contract Sum: The total amount payable by UMRWA to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved modifications to the Construction Contract.
 - 12.2 Construction Contract: The agreement between UMRWA and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, including but not limited to the provisions of the General Conditions.
 - 12.4 UMRWA Default: Material failure of UMRWA, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material

terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

ATTACHMENT D

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

This Construction Labor and Material Payment Bond (“Bond”) is dated _____, 20____, is in the penal sum of \$ _____, and is entered into by and between the parties listed below to ensure the payment of claimants under the Construction Contract listed below. The Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 13, attached to this page. Any singular reference to K.W. Emerson, Inc. (“Contractor”), _____ (“Surety”), Upper Mokelumne River Watershed Authority (“UMRWA”) or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Firm Name: K.W. Emerson, Inc.

Firm Name: _____

Address: 413 W. Saint Charles Street,
San Andreas, CA 95249

Address of Principal Place of
Business: _____

UMRWA:

15083 Camanche Pkwy. South
Valley Springs, CA 95252

Executive Officer: Richard Sykes

Construction Contract:

ITB 20-01 and 20-02, UMRWA Power Fire
Culvert Improvement And Erosion Control
Project, Bear River Sub-Watershed And Panther
Creek Sub-Watershed

Location: Amador UMRWA, CA

Construction Contract dated _____,
2020 in the amount of \$ 951,059.50.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

SURETY

Company: (Corp. Seal)

Signature:

Name and Title

Signature:

Name and Title

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to UMRWA and to Claimants to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to UMRWA, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants; and
 - 2.2 Defends, indemnifies and holds harmless UMRWA from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided UMRWA has promptly notified Contractor and Surety (at the address described in Paragraph 10) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety, and provided there is no UMRWA Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. However, if Contractor or its subcontractors fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Construction Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor or subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, then Surety will pay for the same and also, in case suit is brought upon this bond, a reasonable attorneys' fee, to be fixed by the court.
4. Consistent with the California Mechanic's Lien Law, Civil Code §8000, et seq., Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
5. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety under this Bond.
6. Amounts due Contractor under the Construction Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of Contractor and Surety under this Bond.
7. UMRWA shall not be liable for payment of any costs, expenses, or attorneys' fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
9. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both, but, per Civil Code §9558, must be commenced before the expiration of six months after the period in which stop notices may be filed as provided in Civil Code §9356.
10. Notice to Surety, UMRWA or Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, UMRWA or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown-on the signature page.
11. This Bond has been furnished to comply with the California Mechanic's Lien Law, including, but not limited to, Civil Code §§9550, 9554, et seq. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
13. DEFINITIONS
 - 13.1.1 Claimant: An individual or entity having a direct contract with Contractor or with a subcontractor of Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract, as further defined in California Civil Code §9100. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of Contractor and Contractor’s subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Unemployment Development Department as referred to in Civil Code §9554.
 - 13.1.2 Construction Contract: The agreement between UMRWA and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 13.1.3 UMRWA Default: Material failure of UMRWA, which has neither been remedied nor waived, to pay Contractor as required by the Construction Contract, provided that failure is the cause of the failure of Contractor to pay the Claimants and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

ATTACHMENT E

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

The undersigned, [Company] K.W. Emerson, Inc. certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [Company] K.W. Emerson, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ATTACHMENT F

FIRE PLAN FOR CONSTRUCTION AND SERVICE CONTRACTS

08/02/2012

1. SCOPE:

The provisions set forth below outline the responsibility for fire prevention and suppression activities and establish a suppression plan for fires within the contract area. The contract area is delineated by map in the contract. The provisions set forth below also specify conditions under which contract activities will be curtailed or shut down.

2. RESPONSIBILITIES:

A. Contractor

- (1) Shall abide by the requirements of this Fire Plan.
- (2) Shall take all steps necessary to prevent his/her employees, subcontractors and their employees from setting fires not required in completion of the contract, shall be responsible for preventing the escape of fires set directly or indirectly as a result of contract operations, and shall extinguish all such fires which may escape.
- (3) Shall permit and assist in periodic testing and inspection of required fire equipment. Contractor shall certify compliance with specific fire precautionary measures in the fire plan, before beginning operations during Fire Precautionary Period and shall update such certification when operations change.
- (4) Shall designate in the Fire Plan and furnish on Contract Area, during operating hours, a qualified fire supervisor authorized to act on behalf of Contractor in fire prevention and suppression matters.

B. UMRWA

UMRWA may conduct one or more inspections for compliance with the Fire Plan. The number, timing, and scope of such inspections will be at the discretion of personnel responsible for contract administration. Such inspections do not relieve the Contractor of responsibility for correcting violations of the fire plan or for fire safety in general, as outlined in paragraph 2.A above.

3. DEFINITIONS:

The following definitions shall apply:

Active Landing: A location the contractor may be skidding logs into, or performing other operations such as delimiting, log manufacturing, and chipping logs. Except for EV and E days, loading logs or stockpiling chips only, on a cleared landing, does not constitute an Active Landing.

Hot Saw: A harvesting system that employs a high-speed (>1100 rpm) rotating felling head, i.e., full rotation lateral tilt head.

Mechanical Operations: The process of felling, skidding, chipping, shredding, masticating, piling, log processing and/or yarding which requires the use of motorized power which includes, chainsaws, chippers, motorized carriers, masticators, stroke delimiters, skidders, dozers etc.

4. TOOLS AND EQUIPMENT:

The Contractor shall comply with the following requirements during the fire precautionary period, as defined by unit administering contracts:

The Fire Precautionary Period is set by the State of California which is April 1 through December 1 of any year.

- This contract requires, does not require, a Fire Box and associated Fire Tools according to CPRC Section 4428.

A. Fire Tools and Equipment: Contractor shall meet minimum requirements of Section 4428 of the California Public Resources Code (C.P.R.C.). Fire tools kept at each operating landing shall be sufficient to equip all employees in the felling, yarding, loading, chipping, and material processing operations associated with each landing. Fire equipment shall include two tractor headlights for each tractor dozer used in Contractor's Operations. Tractor headlights shall be attachable to each tractor and served by an adequate power

source. All required fire tools shall be maintained in suitable and serviceable condition for fire fighting purposes.

Trucks, tractors, skidders, pickups and other similar mobile equipment shall be equipped with and carry at all times a size 0 or larger shovel with an overall length of not less than 46 inches and a 2-1/2 pound axe or larger with an overall length of not less than 28 inches.

Where cable yarding is used, Contractor shall provide a size 0 or larger shovel with an overall length of not less than 46 inches and a filled backpack can (4 or 5 gallon) with hand pump within 25 feet of each tail and corner block.

B. Fire Extinguishers: Contractor shall equip each internal combustion yarder, fuel truck, and loader with a fire extinguisher for oil and grease fires (4-A:60-B:C).

Skidders and tractors shall be equipped with a minimum 5-BC fire extinguisher.

All Fire Extinguishers shall be mounted, readily accessible, properly maintained and fully charged.

Contractor shall equip each mechanized harvesting machine with hydraulic systems, powered by an internal combustion engine (chipper, feller/buncher, harvester, forwarder, hot saws, stroke delimeter, etc), except tractors and skidders, with at least two 4-A:60-B:C fire extinguishers or equivalent.

C. Spark Arresters and Mufflers: Contractor shall equip each operating tractor and any other internal combustion engine with a spark arrester, except for motor vehicles equipped with a maintained muffler as defined in C.P.R.C. Section 4442 or tractors with exhaust-operated turbochargers. Spark Arresters shall be a model tested and approved under Forest Service Standard 5100-1a as shown in the National Wildlife Coordinating Group Spark Arrester Guide, Volumes 1 and 2, and shall be maintained in good operating condition. Every motor vehicle subject to registration shall at all times be equipped with an adequate exhaust system meeting the requirements of the California Vehicle Code.

D. Power Saws: Each power saw shall be equipped with a spark arrester approved according to C.P.R.C. Section 4442 or 4443 and shall be maintained in effective working order. An Underwriters Laboratories (UL) approved fire extinguisher containing a minimum 14 ounces of fire retardant shall be kept with each operating power saw. In addition, a size 0 or larger shovel with an overall length of not less than 38 inches shall be kept with each gas can but not more than 300 feet from each power saw when used off cleared landing areas.

• This contract requires, does not require, Section 4E of the Fire Plan.

E. Tank Truck or Trailer: Contractor shall provide a **water tank truck or trailer** on or in proximity to Contract Area during Contractor's Operations hereunder during Fire Precautionary Period. When Project Activity Level B or higher is in effect, a tank truck or trailer shall be on or immediately adjacent to each active landing, unless otherwise excepted when Hot Saws or Masticators are being used. See Section 6 for specific contract requirements.

The tank shall contain at least 300 gallons of water available for fire suppression. Ample power and hitch shall be readily available for promptly and safely moving tank over roads serving Contract Area. Tank truck or trailer shall be equipped with the following:

- (1) Pump, which at sea level, can deliver 23 gallons per minute at 175 pounds per square inch measured at the pump outlet. Pumps shall be tested on Contract Area using a 5/16 inch orifice in the Forester One Inch In-Line Gauge test kit. Pump shall meet or exceed the pressure value in the following table for nearest temperature and elevation:

T e m p	Sea Level	1000 Feet	2000 Feet	3000 Feet	4000 Feet	5000 Feet	6000 Feet	7000 Feet	8000 Feet	9000 Feet	10000 Feet											
55	179	23	174	23	169	23	165	22	161	22	157	22	153	22	150	21	146	21	142	21	139	21
70	175	23	171	23	166	22	162	22	158	22	154	22	150	21	147	21	143	21	139	21	136	20
85	171	23	168	23	163	22	159	22	155	22	151	21	147	21	144	21	140	21	136	20	133	20
100	168	23	164	23	159	22	155	22	152	22	148	21	144	21	141	21	137	20	133	20	131	20
	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G	P	G
	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P
	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M	I	M

The pump outlet shall be equipped with 1-1/2 inch National Standard Fire Hose thread. A bypass or pressure relief valve shall be provided for other than centrifugal pumps.

- (2) 300 feet of 3/4-inch inside diameter rubber-covered high-pressure hose mounted on live reel attached to pump with no segments longer than approximately 50 feet, when measured to the extreme ends of the couplings. Hose shall have reusable compression wedge type 1-inch brass or lightweight couplings (aluminum or plastic). One end of hose shall be equipped with a coupling female section and the other end with a coupling male section. The hose shall, with the nozzle closed, be capable of withstanding 200 PSI pump pressure without leaking, distortions, slipping of couplings, or other failures.
- (3) A shut-off combination nozzle that meets the following minimum performance standards when measured at 100 P.S.I. at the nozzle:

	G.P.M.	Horizontal Range
Straight Stream	10	38 feet
Fog Spray	6 - 20	N/A

- (4) Sufficient fuel to run the pump at least 2 hours and necessary service accessories to facilitate efficient operation of the pump.

When Contractor is using Hot Saws or Masticators, an additional 250 feet of light weight hose, approved by UMRWA or the Forest Service, shall be immediately available for use and be capable of connecting to the 300 feet of hose and appurtenances in (2) and (3) above.

This equipment and accessories shall be deliverable to a fire in the area of operations and is subject to the requirements for each specific activity level identified in Section 6.

F. Compressed Air Foam System: A Compressed Air Foam System (CAFS) is a fire suppression system where compressed air is added to water and a foaming agent. By agreement, Contractor may substitute a CAFS or functional equivalent in lieu of the tank truck, trailer or fire extinguishers, provided it meets or exceeds the following specifications and requirements:

1. Variable foam expansion ratio – 10:1 to 20:1.
2. Units shall be kept fully charged with air; water and foam concentrate as recommended by the manufacturer and have the appropriate tools to service the system.
3. The unit shall contain enough energy to empty tank and clear hose prior to exhausting propellant.
4. The unit shall be capable of being completely recharged within 10 minutes.
5. When used on cable yarding landings, the unit shall be outfitted for immediate attachment to carriage and transported without damage to the unit.

Fire extinguishers required for Hot Saws, Masticators and similar equipment identified in Section 4 B. above may be substituted with a 3 gallon CAFS.

Tank truck, trailer or equivalent may be substituted with a 30 Gallon CAFS with at least 550 feet of one inch hose and an adjustable nozzle with enough water, air and foam concentrate for at least one recharge.

This equipment and accessories shall also be deliverable to a fire in the area of operations and subject to the requirements for each specific activity level identified in Section 6.

5. **GENERAL**

- A. **State Law:** In addition to the requirements in this Fire Plan, the Contractor shall comply with all applicable laws of the State of California. In particular, see California Public Resource Codes.
- B. **Permits Required:** The Contractor must secure a special written permit from the District Ranger or designated representative before burning, welding or cutting metal or starting any warming fires. If contract requires Blasting and Storing of Explosives and Detonators, an Explosives Permit may be required pursuant to the California Health and Safety Code, Section 12101.
- C. **Blasting:** Contractor shall use electric caps only unless otherwise agreed in writing. When blasting is necessary in slash areas, a Fire Patrol person equipped with a size 0 or larger shovel with an overall length of not less than 46 inches and a filled backpack can (4 or 5 gallon) with hand pump shall remain in the immediate area for an hour after blasting has been completed.
- D. **Smoking:** Smoking shall not be permitted during fire season, except in a barren area or in an area cleared to mineral soil at least three feet in diameter. In areas closed to smoking, the CO may approve special areas to be used for smoking. The Contractor shall sign designated smoking areas. Contractor shall post signs regarding smoking and fire rules in conspicuous places for all employees to see. Contractor's supervisory personnel shall require compliance with these rules. Under no circumstances shall smoking be permitted during fire season while employees are operating light or heavy equipment, or walking or working in grass and woodlands.
- E. **Storage and Parking Areas.** Equipment service areas, parking areas, and gas and oil storage areas shall be cleared of all flammable material for a radius of at least 10 feet unless otherwise specified by local administrative unit. Small mobile or stationary internal combustion engine sites shall be cleared of flammable material for a slope distance of at least 10 feet from such engine. The COR shall approve such sites in writing.
- F. **Reporting Fires:** As soon as feasible but no later than 15 minutes after initial discovery, Contractor shall notify UMRWA Project Manager and Forest Service of any fires on Contract Area or along roads used by Contractor. Contractor's employees shall report all fires as soon as possible to any of the following Forest Service facilities and/or personnel listed below, but not necessarily in the order shown:

	Name	Office Address	Office telephone
Dispatch Center	Camino Interagency ECC	Camino, CA	530-644-0200
Nearest FS Station	Lumberyard Guard Station	HWY 88	209-295-4252
Inspector	Ken Pence		530-621-7152
COR	Rocio Espinoza	100 Forni Rd, Placerville, CA 95667	530-295-5647
District Ranger	Rick Hopson	26820 Silver Dr., Pioneer, CA 95666	209-295-5910

When reporting a fire, provide the following information:

- Your Name
- Call back telephone number
- Project Name
- Location: Legal description (Township, Range, Section); and Descriptive location (Reference point)
- Fire Information: Including Acres, Rate of Spread and Wind Conditions.
- **This contract requires, does not require, Section 5G of the Fire Plan.**
- G. **Communications:** Contractor shall furnish a serviceable telephone, radio-telephone or radio system connecting each operating side with Contractor's headquarters. When such headquarters is at a location which makes communication to it clearly impractical, UMRWA may accept a reasonable alternative location. The communication system shall provide prompt and reliable communications between Contractor's headquarters (or agreed to alternative) and UMRWA and Forest Service via commercial or Forest Service telephone.
 - **This contract requires, does not require, Section 5H of the Fire Plan.**
- H. **Fire Patrolperson:** Contractor shall furnish a qualified fire patrolperson each operating day when Project Activity Level C or higher is in effect. When on duty, sole responsibility of patrolperson shall be to patrol the operation for prevention and detection of fires, take suppression action where necessary and notify UMRWA and the Forest Service as required. This Fire patrol is required on foot, unless otherwise agreed. By agreement, one patrolperson may provide patrol on this and adjacent projects. No patrolperson shall be required on Specified Road construction jobs except during clearing operations unless otherwise specified.

The Contractor shall, prior to commencing work, furnish the following information relating to key personnel:

<u>Title</u>	<u>Name</u>	<u>Telephone Number</u>
<u>Fire Supervisor</u>		
<u>Fire Patrolperson</u>		

I. **Clearing of Fuels:** Contractor shall clear away, and keep clear, fuels and logging debris as follows:

Welding equipment and stationary log loaders, yarders and other equipment listed in California State Law:	10 feet slope radius
Tail or corner haulback blocks:	All running blocks shall be located in the center of an area cleared to mineral soil at least 15 feet in diameter.
Lines near, between or above blocks:	Sufficient clearing to prevent line from rubbing on snags, down logs and other dead woody material.

6. EMERGENCY PRECAUTIONS

Contractor's Operations shall conform to the limitations or requirements in the Project Activity Level (PAL) table below. Project Activity Levels applicable to this project shall be the predicted activity levels for the Fire Danger Rating Area(s), or fire weather station(s) stated below.

Fire Danger Rating Area/Fire Weather Station for Project

335 / Beaver RAWS

The Forest Service, in its sole discretion, may change the predicted activity level if the current fire suppression situation, weather and vegetation conditions warrant an adjustment. If practicable, Forest Service will determine the following day's activity level by 6:00 PM. Contractor shall obtain the predicted Project Activity Level from the appropriate Ranger District Office before starting work each day.

Phone Number or Website to obtain 530-295-5699 /

Predicted Activity Levels: <https://www.fs.usda.gov/detail/eldorado/home/?cid=stelprdb5379103>

Forest Service may change the Project Activity Level Table to other values upon revision of the National Fire Danger Rating System. When Contractor is notified, the revised Project Activity Levels will supersede the levels in the Project Activity Level Table below.

PROJECT ACTIVITY LEVEL

Level	<i>Project Activity Minimum Requirements and Restrictions. Restrictions at each level are cumulative.</i>
A	Minimum requirements noted above in Sections 4 and 5.
B	1. Tank truck, trailer, or approved CAFS substitute shall be on or adjacent to the Active Landing.
C	1. When Hot Saws or Masticators are operating, a tank truck, trailer, or approved CAFS substitute shall be within ¼ mile of these operations. Effective communications shall exist between the operator and the Active Landing. 2. Immediately after Mechanical Operations cease, Fire patrol is required for two hours.
D	1. Immediately after Hot Saw or Masticator operations cease, Fire patrol is required for three hours. 2. No Dead Tree felling after 1:00 PM, except recently dead. 3. No burning, blasting, welding or cutting of metal after 1:00 PM, except by special permit.

Level	<i>Project Activity Minimum Requirements and Restrictions. Restrictions at each level are cumulative.</i>
Ev	<p>1. The following activities may operate all day:</p> <ol style="list-style-type: none"> a) Loading and hauling logs decked at approved landings. b) Loading and hauling chips stockpiled at approved landings. c) Servicing equipment at approved sites. d) Dust abatement, road maintenance (Chainsaw use prohibited), culvert installation within cleared area, chip sealing, paving, earth moving or rock aggregate stock pile loading and installation (does not include pit or quarry development). e) Chainsaw and log processing operations associated with loading logs or other forest products at approved landings. <p>2. Hot Saws or Masticators may operate until 1:00 PM; provided that:</p> <ol style="list-style-type: none"> a) A tractor with a blade or other equipment capable of constructing fireline is on or adjacent to the active landing or within ¼ mile of the operating equipment. This piece of equipment shall have effective communication with the Hot Saw or Masticator. b) Any additional restrictions specified by the Forest. <p>3. All other conventional Mechanical Operations are permitted until 1:00 PM.</p> <p>4. Some operations may be permitted after 1:00 PM, on a case-by-case basis, under the terms of a PAL Ev Variance Agreement. Activities for which a Variance may be issued are:</p> <ul style="list-style-type: none"> • Rubber Tire Skidding • Chipping on Landings • Helicopter Yarding • Fire Salvage <p>When approved by a Forest Service Line Officer, a Variance Agreement can be implemented when the criteria specified in the agreement are met and mitigation measures are in place. This approval is good for ten (10) days unless cancelled sooner or extended by the Project Manager for an additional ten (10) days. Variance approval can be withdrawn at the sole discretion of the Forest Service. Variance approval is contingent on the 7-day fire weather forecast, fuel conditions, site characteristics, current fire situation, state of Contractor's equipment for prevention and suppression readiness, type of operation and social and community considerations etc. (See attached Project Activity Level Variance Agreement).</p>
E	<p>The following activities may operate all day:</p> <ol style="list-style-type: none"> 1. Loading and hauling logs decked at approved landings. 2. Loading and hauling chips stockpiled at approved landings. 3. Servicing Equipment at approved sites. 4. Dust abatement, road maintenance (chainsaw use prohibited) or loading stock piles and rock aggregate installation (does not include pit or quarry development). 5. Chainsaw operation associated with loading at approved landings. <p>All other activities are prohibited.</p>

This Project utilizes “The Project Activity Level” (PAL), an industrial operation’s fire precaution system. The following Climatology Chart indicates the Historic Activity Levels for the Project Fire Danger Rating Area or Fire Weather Station utilized on this Project. This is only a historical average of the Activity Levels for the identified Fire Danger Rating Area or Weather Station.

Project Activity Level Climatology

Station/SIG/Unit:	ENF SIG						Years Analyzed
	A	B	C	D	Ev	E	
Month	Expected Days per Month at each PAL Value						Days Analyzed
May	12.2	9.6	8.9	0.3	0.0	0.0	639
June	5.5	6.4	15.9	2.0	0.2	0.0	626
July	0.4	2.4	21.1	6.6	0.4	0.0	645
August	0.0	1.2	12.1	15.7	1.1	0.7	649
September	0.5	2.4	11.0	13.1	2.1	0.9	629
October	4.6	5.9	13.7	5.6	1.2	0.0	651
November	13.1	8.2	8.2	0.4	0.0	0.0	604
							4443
Month	Percent of Days per Month at each PAL Value						
May	39.4	30.8	28.6	0.9	0.2	0.0	639
June	18.4	21.4	53.0	6.5	0.6	0.0	626
July	1.4	7.8	68.2	21.4	1.2	0.0	645
August	0.2	4.0	39.1	50.7	3.7	2.3	649
September	1.7	7.9	36.7	43.6	7.2	2.9	629
October	14.7	19.0	44.1	18.1	3.8	0.2	651
November	43.5	27.5	27.3	1.5	0.2	0.0	604
							4443

Region 5 Project Activity Level (PAL) Ev Variance Application/Agreement

Project Name: _____

Contract Number: _____

Contractor Name: _____

Request #__, for period: _____

Units/Subdivisions Affected: _____

Location of operation:

Slope	
Aspect	
Elevation	
Fuels on site	
Fuels in surrounding area	
7 Day PAL Outlook	
Short range predictions (Red Flags)	
Fuel Moistures	
Response time of suppression resources	
Potential for ignition	
RAWS location	

Current Fire Situation:

Draw down information	
National Readiness Level	

Contractual considerations:

Normal Operating Season	
Frequency of recent contract fires in area	
Type of operation	
Contractors past/current performance & equipment readiness	
Other site specific mitigation or precaution (i.e. Contractors proposals)	

Social & Community Considerations:

Proximity of high value resources	
Sensitivity of location	

Proposed Actions:

Description of Mitigation Measures:

Remarks:

Fire Management Officer Concurrence _____ Date _____

Line Officer Approval _____ Date _____

I have considered the above request and determined the specified mitigation measures or actions must be implemented to continue operations in Project Activity Level Ev. Unless extended, the approval remains in effect for ten (10) calendar days unless cancelled sooner or extended by the Forest Service for an additional ten (10) days. At the sole discretion of the Forest Service, this variance can be modified and/or cancelled at no cost to the government.

UMRWA Operations Manager _____ Date _____

Contractor Representative _____ Date _____