

Sample Contract

Martis Wildlife Area Restoration Project – Construction

Contractor: [Name]

Mailing Address;

Lead: Truckee River Watershed Council

Mailing address:

P.O. Box 8568

Truckee, CA 96162

Physical address

10418 Donner Pass Rd (enter from High Street)

Truckee, CA

(530) 550-8760, office

Michele Prestowitz, Program Manager

Lisa Wallace, Executive Director

Project Property Owners:

- US Army Corps of Engineers
- Northstar Community Service District
- Trimont Land Company/Northstar California Resort

I. DEFINITIONS

- A. **Acceptance (or Final Completion)** – Acceptance occurs when all the provisions and requirements of the Contract are complete and is so certified by the Client.
- B. **Bulletin** – A Bulletin is a written order directed to Contractor and issued by the Client, directing a minor change or making a clarification in the Work, or requesting information from Contractor about the Work. A Bulletin is to be used for minor changes or clarifications which Client believes will have no impact on the Contract Sum or Contract Time.
- C. **Calendar Day (or Day)** – A Calendar Day is a day of twenty-four (24) hours measured from one midnight to the next midnight, Pacific Time. Unless otherwise indicated, a “day” shall mean a Calendar Day.
- D. **Change Order (or Amendment)** – A Change Order is a written modification of the Contract Documents made in accordance with the provisions of Section IV.C of this Contract and which has been signed by Client and Contractor.
- E. **Client** – the Client is the Truckee River Watershed Council (TRWC). TRWC and Client are used interchangeably in the Contract.
- F. **Contract (or Contract Documents)** – The Contract shall consist of this Contract, Bid Form, Performance Bond, Plans, Certificate of Insurance, Addenda, Amendments, and Proof of Contractor’s licenses.
- G. **Contract Sum** – The Contract Sum is the total amount of money stated in the Contract as payable to Contractor for the performance of the Work under the Contract, including authorized adjustments thereto.
- H. **Contractor** – The Contractor is the person, firm, individual, partnership, company, corporation, association, joint venture, or any combination thereof, which has entered into the Contract with TRWC.
- I. **Data Universal Numbering System (DUNS) number**- The DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866–705–5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- J. **Engineer and Engineer’s or Field Representative** – The Engineer for this project is Brian Hastings, Balance Hydrologics, Inc. The Engineer’s or Field Representatives include employees and subcontractors of Balance Hydrologics, Inc., TRWC personnel, and any other individuals that are named by the Engineer as Engineer’s or Field Representatives.
- K. **Field Order** – A Field Order is a written order directed to Contractor and signed by the Client directing a change or making a clarification in the Work, or requesting information from Contractor about the Work. A Field Order signed by Contractor indicates receipt of the Field Order. A Field Order shall be followed by a Change Order.
- L. **Milestone Date** – A Milestone Date is a significant point in the development of the Work that is illustrated on Contractor’s Project Work Schedule.
- M. **Not-in-Contract (NIC)** – Not-in-Contract means work not included in the Contract.
- N. **Owner’s Representative** – The Owner’s Representative is an employee of the US Army Corps

of Engineers, Northstar Community Service District, Trimont Land Company/Northstar California Resort.

- O. **Project** – The Project means the erection, construction, alteration, repair, or improvement to be accomplished under the Contract.
- P. **Project Work Schedule** – The Project Work Schedule is the schedule furnished by Contractor to Client in accordance with Section IV.D of this Contract displaying the anticipated schedule for completing the Work.
- Q. **Regular Work Hours** – Regular Work Hours for this project are weekdays between 6:00AM and 8:00PM and Saturday/Sunday 8:00AM to 8:00PM. Work outside of these hours must be approved in advance by the Engineer’s Representative.
- R. **Schedule of Values** – The Schedule of Values is the statement furnished by Contractor to Client in accordance with Section III.C of this Contract displaying the portions of the Contract Sum allotted for the various parts of the Work.
- S. **Subcontractor** – A Subcontractor is anyone having a direct contract with Contractor or another Subcontractor and includes one who furnishes material worked to a special design according to the Plans, but does not include one who merely furnishes material.
- T. **Work** – The Work is everything required to complete the Project, including, but not limited to, all labor, suppliers, material, equipment, and tools.

II. SPECIFIC CONDITIONS

A. PROJECT DESCRIPTION

- Background and Setting
- Work
- California Conservation Corps and Revegetation
- Access
- Traffic Control Plan
- Permits and Environmental Compliance
- Materials
- Bid Completeness
- Construction Oversight
- Expected Project Schedule

The lead for the project is Truckee River Watershed Council (TRWC). Several landowners and managers are project partners:

- US Army Corps of Engineers
- Northstar Community Services District
- Northstar California Resort and Trimont Land Company

Background and Setting. The Martis Wildlife Area is owned and operated by the US Army Corps of Engineers (USACE). The Wildlife Area represents a unique assemblage of habitat types, incorporating high desert chaparral, mixed-conifer forest, mountain meadow, and riparian ecosystems. Martis Creek flows roughly northeast across the Wildlife Area where it confluences with four perennial and primary tributaries: 1) West Martis Creek, 2) Middle Martis Creek, 3) East Martis Creek, and 4) Dry Lake Creek.

Several unnamed first- and second-order tributary streams are also present within the Wildlife Area; notable among these are the tributaries that originate from Lookout Mountain (i.e. Lookout Mountain Tributary) and from the Schaeffer's Mill area.

The Martis Wildlife Area has a long history of human use dating back to the pre-historic period. Over the course of the 19th and 20th centuries, the area hosted episodes of logging, mining, ranching, residential, and recreational land development. The culmination of these uses is the degradation of hydrologic processes, alteration of vegetation characteristics, and loss of riparian and meadow habitats. Within the Wildlife Area, Martis Creek exhibits impaired stream channel functions, in many reaches the stream is incised 1-4 feet below the floodplain surface. Its tributaries also exhibit significant degradation associated with incision, bank erosion, headcut development, and culvert failures.

The Martis Wildlife Area Restoration Project (the Project) was developed to improve the hydrologic and ecosystem processes in the Wildlife Area to provide natural benefits including restored floodplain connectivity, groundwater storage, prolonged base stream flows, enhanced critical habitat, and reduced erosion and sedimentation.

The Project includes restoration activities on four sites.

- Site 1 encompasses a two-mile portion of Martis Creek within the Wildlife Area. There are six "Reaches" within Site 1.
- Site 2 is located on an unnamed tributary that originates from Schaeffer's Mill approximately 0.16 miles upstream of its confluence with Martis Creek.
- Site 3 is located on Middle Martis Creek just upstream of Gumba's Crossing on the Tompkins Memorial Trail.
- Site 4 is located on the "Lookout Mountain Tributary" at Jakes' Crossing on the Tompkins Memorial Trail approximately 1.2 miles upstream of its confluence with Martis Creek.

Work. The Project work is described in detail in the attached 95% Mainstem Martis Creek Restoration design plans (Site 1, Attachment 1) and the Martis Wildlife Area Restoration Project design plans (Sites 2-4, Attachment 2). In general, construction activities include:

- Stream dewatering/bypass
- Installation and maintenance of Best Management Practices
- Fill abandoned irrigation ditches
- Sod harvest and storage
- Floodplain, channel, and streambank grading and excavation for inset floodplain development, bank layback, and breakout channel creation
- Export and disposal of off-haul material
- Culvert and road prism removal
- Installation of railroad car bridge (89-foot span)
- Install instream wood jams (logs, rootwads, racking material)
- Install bioengineered check dams
- Install buried log grade control structures
- Remove rip rap from stream bank
- Revegetation including salvaged sod material, willow poles, willow wattles, salvaged willow clumps.
- Install propagated revegetation mats (up to 25,000 square feet) in high-energy stream areas (Addendum 1)
- Two year plant establishment period-warranty work

Refer to the Attachments 1 and 2 for construction detail, typicals of project features, materials requirements, staging, access, etc.

California Conservation Corps and Revegetation. The California Conservation Corps (CCC) will

complete some of the revegetation activities included in Attachments 1 and 2. Specifically, the CCC will complete the installation of the wetland plugs and revegetation seed mix type 1 and type 2.

Access. Work will take place in sensitive areas, so access routes will be strictly limited to avoid impacts to natural and cultural resources.

Traffic Control Plan. Portions of work may encroach into Right of Way of the California Department of Transportation (Caltrans). TRWC will obtain an Encroachment Permit for this work.

Permits and Environmental Compliance. The Project is covered by a number of regulatory permits and environmental compliance documents. These include:

- CEQA Mitigated Negative Declaration for the TRWC's Martis Wildlife Area Restoration Project
- NEPA Categorical Exclusion (USACE) and Environmental Assessment (Bureau of Reclamation) documents for the Martis Wildlife Area Restoration Project.
- USACE Real Estate License
- USACE Section 404 nationwide permit
- California Dept. of Fish and Wildlife Section 1602 Streambed Alteration Agreement
- State Water Resources Control Board NPDES Construction General Permit
- Stormwater Pollution Prevention Plan for Martis Wildlife Area Restoration Project (Attachment 3)
- Lahontan Regional Water Quality Control Board Section 401 Water Quality Certification
- California Department of Transportation Encroachment Permit
- Trimont Land Company Right of Entry Agreement

TRWC will make these documents available to the selected contractor.

Materials. Except as noted below, contractor will furnish all labor, materials, equipment, tools, and incidentals as necessary to complete the project and comply with permits.

Materials provided by TRWC are:

- Revegetation seed mixes type #1 and #2
- Propagated revegetation mats
- Wetland plugs

Construction Oversight. Work will be observed by the Licensed Civil Engineer or Engineer's Representative as described in Attachments 1 and 2. Additional oversight will be provided by project archaeologist, biologists, and cultural monitors.

Schedule. Estimated start work date is July 1, 2019. Work shall be completed by October 15, 2019.

B. WORK REQUIREMENTS

- Work Schedule
- Permits and Environmental Compliance
- Staging and Access
- Traffic Control
- Equipment
- Personnel
- Materials

Work Schedule. The Work Schedule will be established between Contractor and TRWC. In either case,

the work is expected to continue until the project is completed. No overtime charges will be accommodated.

Permits and Environmental Compliance. The Contractor shall be responsible for complying with the requirements of and maintaining on-site copies of all project permits and compliance documents during construction.

Staging and Access. Equipment/site access will be limited to routes designated in Attachment 1 and 2. All equipment staging and stockpiling will take place in designated areas.

Traffic Control. The Contractor shall be responsible for compliance with the Caltrans Encroachment Permit, including all traffic control requirements and submittals necessary.

Portions of work will utilize existing recreational trails requiring periodic closures. The Contractor will submit a Recreational Trail Traffic Control Plan inclusive of a safety plan, trail closure schedule, and signage plan thirty days prior to mobilization.

Equipment. Contractor must provide equipment in excellent operating condition. No leaks of any size will be allowed. Contractor will be required to secure replacement equipment if any equipment is inoperable for two (2) days or longer. Failure to perform these requirements is grounds for contract termination.

All equipment will be pressure washed prior to mobilizing to the site to remove any vegetative matter, soil, or other organic matter to prevent the spread of noxious weeds. Any equipment that leaves the site must be cleaned again before re-entry.

Contractor will be required to provide all fuel, servicing and repairs to maintain equipment in operating condition. The Contractor shall fuel equipment at staging areas shown on Attachments 1 and 2. When fueling must be done at a construction area, the Contractor shall design a site(s) and obtain approval in writing from the Engineer before using. All fueling, servicing, and repairs will be done in designated fueling areas at a minimum of 50 feet from any water surface or drainage area to prevent accidental petroleum discharge in riparian and other sensitive areas. Refer to Attachment 1 - 3 for additional details on access, staging, and stockpiling.

Water quality concerns require that all equipment be free of all operating fluid leaks. The Contractor will be required to follow spill prevention procedures as outlined in the SWPPP, and is required to have the appropriate materials on-site to clean up any spills that may occur.

Spark arresters will be required on equipment for fire prevention.

The Contractor will be responsible for compliance with any fire risk mitigation required by the USACE, Northstar Community Services District, or Northstar California Resort and Trimont Land Company.

Personnel. No change in personnel will occur without written agreement between the Contractor and TRWC. TRWC reserves the right to have Contractor replace a non-performing operator.

Materials. All materials to be used in the project must meet the specifications stated in the specifications included in Attachments 1 and 2. The Engineer or Engineer's representative will approve all materials prior to installation.

C. FUNDING

Funding sources for this project only allow invoices to be submitted once every 90 days (as per the schedule below) for work completed. It is expected that payment can be made within 120 days of

invoice(s) submittal; however payment will only be made to the Contractor once TRWC has received payment from the project funders. All efforts will be made by TRWC to expedite payment; however no interest will be paid on overdue payments.

TRWC invoices project funders quarterly (March 20, June 20, September 20, and December 20) for work completed. The obligation of TRWC to pay its Contractors shall be subject to and conditioned upon its receipt of payment Project Funders.

Attachments:

Attachment 1. Site 1. Mainstem Martis Creek Restoration Design Plans (95%, dated 2/9/2018)
Attachment 2. Site 2-4. Martis Wildlife Area Restoration Project Design Plans (100%, dated 1/31/2018)
Attachment 3. Stormwater Pollution Prevention Plan (SWPPP) for Martis Wildlife Area Restoration Project
Attachment 4. Bid Sheet
Attachment 5. Addendum 1 to the Request for Bids for Martis Wildlife Area Restoration Project (dated 1/10/2019)
Attachment 6. [Reserved]
Attachment 7. [Reserved]

III. CONSIDERATION

A. INVOICE INSTRUCTIONS

Contractor shall submit an invoice to TRWC for compensation earned during the previous quarter. All costs and time incurred by Contractor to prepare, review, respond to, estimate, or otherwise process Bulletins, Field Orders, Amendments, Schedules, Correspondence, or any other paperwork shall be part of Contractor's base contract administration and no additional compensation will be allowed therefore.

Contractor shall **address and submit** invoices for each payment to: TRWC, PO Box 8568, Truckee, CA 96162. Invoices may also be submitted electronically to: mprestowitz@truckeeriverwc.org

Contractor shall submit invoices by close of business on March 25, June 25, September 25 and December 15.

Each invoice shall include cost data to support the invoice, including current percentage of completion on a line-item basis and an updated Project Work Schedule.

Note: final invoice shall be marked *Final*.

B. SUBCONTRACTS

Contractor shall include the billing requirements of this in all its contracts with subcontractors and outside consultants. Billing and audit provisions of all contractor's subcontracts over \$100,000 shall be reviewed and approved in writing by TRWC for compliance with the availability of information provision, prior to contractor's execution of the subcontract. For subcontracts over \$50,000 and less than \$100,000, contractor shall provide to TRWC a copy of the executed subcontract within ten days of its full execution. Nothing in this contract shall create any contractual relations between a subcontractor and TRWC.

C. SCHEDULE OF VALUES

The Contractor, within ten (10) days, not including Saturdays, and Sundays, after receiving notice that he/she is the successful bidder, shall submit along with the Contract Documents a complete itemized Schedule of Values that includes, but is not necessarily limited to, the cost of each line item equal to or

greater than one and one-half percent of the contractor's total bid and every work item (activity) shown on the Project Work Schedule. The sum of the cost of all activities in the Schedule of Values shall equal the Contract Amount. Contractor's mobilization, profit, fees, taxes, and administration must be itemized separately and not be prorated across other categories. The Schedule of Values, when approved by Client shall be used to monitor the progress of the Work and as a basis for payment requests. Each item shall show its total Scheduled Value, percentage completed, total value completed and value yet to be completed. Contractor is to add approved Change Orders (Amendments) to the Schedule of Values on a monthly basis.

IV. GENERAL CONDITIONS

A. INDEPENDENT CONTRACTOR

In assuming and performing the obligations of this contract, Contractor shall not be eligible for any benefits which TRWC may provide its employees or other contractors. All persons, if any, hired by contractor shall be employees or subcontractors of contractor and shall not be construed as employees or agents of TRWC in any respect.

B. CONFLICT OF INTEREST/BUSINESS ETHICS

1. During the term of this contract, Contractor will not accept any employment or engage in any work that creates a conflict with, or in any way compromises the work to be performed under this contract.
2. Contractor or its employees shall not offer substantial gifts, entertainment, payments, loans or other consideration to TRWC employees, their families, vendors, subcontractors and other third parties for the purpose of influencing such persons to act contrary to TRWC's interest.
3. All financial statements, reports, billings, and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of the TRWC.
4. Contractor shall immediately notify TRWC of any and all violations of this clause upon becoming aware of such violation.

C. CHANGES IN WORK

TRWC reserves the right to make such changes in work, specifications, or level of effort as may be necessary or desirable, and any difference in contract price resulting from such changes shall be agreed upon in writing by TRWC before the work is begun.

- i. Change Orders (Amendments) – When adjustments in the Contract Sum are determined, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. A Change Order signed by Contractor indicates Contractor's final and binding agreement therewith, including the adjustment in the Contract Sum. No Change Order shall authorize an adjustment in the Contract Sum unless such Change Order specifies such adjustment. If no adjustment in the Contract Sum is specified, Contractor's execution of the Change Order shall constitute Contractor's agreement that no such adjustment shall be made. Contractor agrees that in no event shall it make any subsequent claim relating to the items covered by an executed Change Order, whether direct, indirect, or consequential in nature.
- ii. Bulletins and Field Orders – A Bulletin or Field Order shall not be recognized as having any impact upon the Contract Sum. Contractor shall have no Claim therefore unless, within five (5) days from the date such direction or order was given, Contractor submits a written Change Order Request to the Client with estimates of any adjustment in the Contract Sum to which Contractor believes it is entitled as a result of the change in the Work described in the Bulletin or Field Order, including sufficient detail to allow evaluation by the Client.

iii. Pricing Changes – When submitting its change proposal, Contractor shall include and set forth in clear and precise detail, breakdowns of labor, materials and allowable costs for all trades involved and the estimated impact on the Project Work Schedule. If requested by Client, Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested, of any Subcontractors. Allowable costs to be included in Contractor's change proposal shall be strictly limited to those set forth in this Section of the Contract.

Allowable costs include and shall be strictly limited to the following:

- a. The actual and reasonable cost of additional materials required as a result of such change, purchased by Contractor (or any Subcontractor) and used in the work, including sales taxes, freight and delivery charges.
- b. Construction Equipment costs shall be substantiated by vendor's invoices. In no event shall the cost of such items exceed (1) the average current wholesale prices at which the items are locally available in the quantities required, delivered to the site, less applicable cash or trade discounts or (2) the equipment rental rates in the Labor Surcharge and Equipment Rental Rates published by Caltrans; whichever is less. The allowable rate constitutes full compensation to the contractor including cost of fuel, oil, lubrication, supplies, necessary attachments, repairs, maintenance, depreciation, storage, insurance, labor except for construction equipment operators, and incidentals. No costs will be allowed for time while construction equipment is inoperative, idle or on standby, unless approved by the Client.
- c. Labor costs including welfare and fringe benefits shall be the actual labor cost, required as a result of such change in the Work, including no more than one (1) working foreman, but not including any supervisory or administrative personnel.
- d. The cost of Work performed by Subcontractors or sub-Subcontractors is based on the actual direct costs of material, labor, and construction equipment and is determined pursuant to the provisions of this Section of the Contract.
- e. For deleted Work otherwise required to be performed hereunder, the Contract Sum shall be reduced by an amount equal to the net savings to Contractor and all Subcontractors and sub-Subcontractors on account of the deleted work for material, labor, and construction equipment.

Failure of Contractor and Client to agree on an adjustment of the Contract Sum or extension of Contract end date for performance under the Contract Documents shall not excuse Contractor from proceeding with the prosecution and performance of the Work as changed. Client shall have the right within its sole discretion to require Contractor to commence performance of changes to the Work. If Contractor and Client cannot agree on an appropriate stipulated sum for any change, the adjustment to the Contract Sum, if any shall, subject to the provisions of this Contract, be determined by Client on the basis of the allowable costs incurred as a result of such change as set forth in Section IV.C.iii of this contract.

D. CONTRACTOR'S CONSTRUCTION SCHEDULES

Within ten (10) calendar days of the Notice to Proceed, Contractor shall furnish to the Client one electronic copy of a Project Work Schedule, presenting an orderly and realistic plan for completing the Work. The schedule includes all scheduled working days, relevant work activities by trade and critical path dates. Within five (5) working days from the date the Project Work Schedule is furnished to the Client, Client shall review and comment on the Project Work Schedule and approve or disapprove it, giving reasons for any disapproval. If disapproved, Contractor shall modify the Project Work Schedule and resubmit it for approval following the above stated timeframes. The Project Work Schedule shall be maintained at the work site and all revisions, along with the reasons therefore, as well as any effect on the critical path of the Work and the completion date, shall be furnished to Client as soon as possible after the date of the revision, but in no event later than five (5) days after its revision.

E. CONTRACTOR'S USE OF TRWC AND/OR OWNER'S PROPERTY

All materials, equipment or other property in whatever form provided by TRWC or Owner(s) for Contractor's use in performance of services under this contract shall remain the property of those agencies and shall be returned to the appropriate agency immediately upon completion of contractor's use or upon written request by the agency.

F. CANCELLATION

TRWC may cancel this contract upon 48 hours written notice if the Contractor for any reason whatsoever fails, refuses, or is unable to perform the work in accordance with this contract. In the event of cancellation, TRWC will pay Contractor for services satisfactorily performed prior to the effective date of cancellation. Contractor shall not enter into any agreements, commitments, or subcontracts that would incur cancellation costs without prior written approval of TRWC. Such written approval is a condition precedent to the payment of any cancellation charges by TRWC.

G. AVAILABILITY OF INFORMATION

TRWC's duly authorized representatives shall have, during the term of the contract and for six (6) years thereafter, access at all reasonable times to all of Contractors and its subcontractors' personnel, accounts and records of all description, including but not limited to computer files, pertaining to the contract to verify or review the quantity, quality, work program and progress of the work, reimbursable costs, amounts claimed by contractor, estimates of cost for fixed rates including those applicable to proposed changes, and for any other reasonable purposes.

This provision shall apply to all contracts except those performed solely on a lump-sum basis. However, where lump-sum and time and materials work (unit price, reimbursable cost, fixed rates, etc.) are performed together, either as a part of this contract or as separate contracts, then the above audit privilege shall also extend to TRWC access to all contractor's records pertaining to all contracts including the lump-sum for assurance TRWC the portions of the work performed on a time and materials basis are not being charged with time, material or other units or cost which are intended to be covered by lump-sum or fixed rates, etc. provided herein, supplement hereto or in such other agreements.

Contractor's and its subcontractors' accounts shall be kept in accordance with generally accepted accounting principles in the particular industry and shall be kept in such a manner and in sufficient detail to clearly disclose the nature and amounts of the different items of service and cost pertaining to the contract and the basis for charges or allocations to the contract.

H. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the work called for in this contract.

I. COMPLIANCE WITH TAX REFORM ACT OF 1986

Contractor represents and warrants that it will withhold all taxes, if any, which are required to be withheld under applicable law with respect to payments to persons hired by Contractor who perform services for Contractor. Contractor shall indemnify and hold TRWC harmless, on an after-tax basis, for any liability incurred by TRWC as a result of contractor's failure to institute any such required withholding.

J. CHOICE OF LAWS

This contract shall be construed and interpreted in accordance with the laws of the state of California excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

K. NONWAIVER

The waiver by either party of any breach of any term, covenant, or condition contained in this contract or any default in the performance of any obligations under this contract shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of same.

L. ENFORCEABILITY

In the event that any of the provisions or the application of any of the provisions of this contract are held to be illegal or invalid by a court of competent jurisdiction, TRWC and Contractor shall negotiate an equitable adjustment in the provisions of this contract with a view toward effectuating the purpose of this contract. The illegality or invalidity of any of the provisions or the application of any of the provisions of this contract shall not affect the legality or enforceability of the remaining provisions of the contract.

M. INCIDENTAL AND CONSEQUENTIAL DAMAGES

TRWC shall not be liable for incidental or consequential damages including, but not limited to, loss of profits, commitments to subcontractors, rental or lease agreement(s), and personal services contracts unless expressly authorized in writing by TRWC.

N. PRIOR WORK

Services performed by Contractor pursuant to TRWC authorization, but before the execution of this contract, shall be considered as having been performed subject to the provisions of this contract.

O. FORCE MAJEURE

Neither TRWC nor Contractor shall be considered in default in the performance of its obligations under this contract, except obligations to make payments hereunder, for work previously performed to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party. In the event either party claims that performance of its obligations was prevented or delayed by any such cause, that party shall promptly notify the other parties of that fact and of the circumstances preventing or delaying performance. Such party so claiming a cause-delayed performance shall endeavor, to the extent reasonable, to remove the obstacles which preclude performance.

P. INTEGRATION

This contract including the attached Plans, Technical Specifications, and additional Attachments contains the entire agreement and understanding between the parties as to the subject matter of the contract. It merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between Contractor and TRWC, whether oral or written, and has been induced by no representations, statements, or agreements other than those expressed herein. Neither contractor nor TRWC shall be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of this contract.

Should Contractor discover conflicts, omissions, or errors in the Contract Documents or have any question concerning interpretation or clarification of the Contract Documents, or if it appears to Contractor that the Work to be done or any matters relative thereto are not sufficiently detailed or explained in the Contract Documents, then, before proceeding with the Work affected, Contractor shall immediately notify Client in writing to request interpretation, clarification, or furnishing of additional detailed instructions concerning the Work. Such questions shall be resolved and instructions to Contractor issued within fourteen (14) Calendar Days by Client, whose decision shall be final and conclusive. Should Contractor proceed with the Work affected before resolution, Contractor shall be responsible for any resultant damage or added cost, and

Contractor shall remove, replace, or adjust the Work not in accordance with Client's subsequent instructions.

Q. SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY

Contractor shall plan and conduct the work to safeguard persons and property from injury. Contractor shall direct performance of work in compliance with reasonable safety and work practices and applicable federal, state, and local laws, rules, and regulations including, but not limited to, *occupational safety and health standards*. Neither the issuance of special instructions by TRWC nor the adherence thereto by contractor shall relieve contractor of the sole responsibility to maintain safe and efficient working conditions.

All work shall conform to the requirements of the California Administrative Code, Title 8, Industrial Relations, Division of Industrial Safety. The Contractor along shall be responsible for responding to and for the final satisfaction of the any and all claims of personal injury or property damage.

R. INSURANCE REQUIREMENTS

Contractor shall, at its expense, maintain in effect at all times during the duration of this Contract not less than the following coverage and limits of insurance:

Liability. A certificate of liability insurance. Such comprehensive liability insurance as shall protect TRWC, its officers, agents, and employees and Contractor from claims which may arise from Contractor's operations under this Contract, whether such operations are by Contractor or by its employees, subcontractors, or anyone directly or indirectly employed by any of the foregoing. The liability insurance shall include, but not be limited to, protection against claims arising from bodily or personal injury or damage to property resulting from operations, equipment, or products of Contractor or by its employees, subcontractors, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance shall be as follows:

- a. Worker's Compensation insurance covering any persons to be employed in connection with the Project including subcontractors, and Employers' Liability insurance for all employees with a limit of no less than \$500,000 each accident for bodily injury, \$500,000 each employee for bodily injury by disease and \$500,000 policy limit for disease;
- b. Commercial General Liability insurance in an occurrence form in an amount of no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate (including, without limitation, bodily injury, property damage, products/completed operations, contractual and personal injury liability coverage); and
- c. Commercial Auto Liability insurance with a limit of insurance no less than \$2,000,000 combined single limit each accident for bodily injury and property damage covering "any auto" whether owned, non-owned, scheduled, leased, hired or other.

Such insurance shall be issued by an insurer licensed to do business in California, with a rating of not less than A- VII by AM Best's Insurance Rating Guide.

General and Auto Liability insurance shall include a provisions or endorsements naming Truckee River Watershed Council, US Army Corps of Engineers, Northstar Community Service District, Trimont Land Company, CLP Income Northstar, LLC, Northstar California Resort, Vail Resorts, Inc. as well as their principals, directors, employees, mortgagees, agents, representatives, successors, and assigns as additional insured, with respect to liability arising out of the performance of any work under this Contract, and providing that such insurance is primary insurance with respect to the interests of TRWC and that any other insurance maintained by TRWC is excess not contributing insurance with the insurance required hereunder. If contractor hires subcontractor(s), the subcontractor(s) shall comply with the above requirements.

Contractor shall notify the Client within 10 days of a receipt of a notice of cancellation, expiration, or any reduction in coverage, or if the insurer commences proceedings or has proceedings commenced against it,

indicating the insurer is insolvent. Contractor shall provide to Client evidence of replacement policy at least ten (10) working days prior to the effective date of such cancellation, expiration, or reduction in coverage.

Should Contractor fail to keep the insurance required to be carried by these provisions in full force and effect at all times, Client may, in addition to any other remedies Client has, terminate this contract immediately, and all payments due or that become due will be withheld, until notice is received by Client that such insurance has been restored or replaced in full force and effect and that the premiums, therefore, have been paid to cover a period of time satisfactory to the Client.

S. INDEMNIFICATION

TRWC and Contractor agree they shall attempt to settle any dispute arising out of this contract, to include allegations of professional negligence, through communication and negotiation in the spirit of mutual friendship and cooperation. If the dispute cannot be resolved in this manner, Contractor, at its expense, shall indemnify, hold harmless, and when requested by TRWC to do so, defend TRWC, its officers, agents, and employees from any and all claims, demands or charges and from any loss or liability, including attorney's fees and expenses of litigation, resulting from negligence or carelessness on the part of the Contractor, its employees, or agents in the execution of the work or delivery of materials and supplies, by or on account of any act or omission of the Contractor, its employees or agents, including damage or destruction of any property or properties arising from, caused by or connected with the performance of work by Contractor, its agents, subcontractors and employees, and any failure to fulfill the terms of any laws or regulations which apply to the contract.

T. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

Reference in the Contract Documents to any equipment, material, article, or process by specific brand, trade name, make, or catalog number, followed by the term "or approved equal", shall be regarded as establishing a standard of quality. In such cases Contractor may, subject to Client's review and approval, substitute any other brand of equal quality, utility, and availability. Engineer's Representative shall be the sole judge of equality and suitability of substitute materials. Contractor shall bear all costs and expenses, including, but not limited to, costs and expenses related to demonstrating equality or suitability of such substitutions, including, but not limited to, those related to other parts of the Work or the Work of other contractors. Client's approval of any substitution shall not relieve Contractor from compliance with all requirements of the contract Documents. Where the contract Documents do not specifically permit the use of "approved equals" for any equipment, material, article, or process referred to by specific brand, trade name, make or catalog number, no substitutions shall be permitted except by means of the Change Order procedures as set forth in Section IV.C of this contract.

Contractor shall not be relieved of responsibility for any deviations from requirements of the Contract Documents or allowed any additional compensation by reason of Client's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Client in writing of such deviation at the time of submittal and fully complied with Section IV.C of this Contract, and Client has given written approval to the specific deviation. If Shop Drawings provide detail not shown in Contract Documents, Contractor shall be deemed to have primary design-build responsibility for such items. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Client's approval thereof.

U. SAFETY AND CLEAN-UP

Contractor acknowledges that Owners will continue to occupy and must maintain continuous operations at the Project site. It is critical that these operations shall not suffer any significant interference, including, without limitation, unreasonable noise, dust, odor, or vibration. Contractor shall perform the Work and limit its use of the Project site in such a manner as to minimize any interference with use of the Project site. Contractor shall be liable for all costs for all claims related to dust, mud, noise, odor, vibration, or windblown materials attributed to the Work hereunder.

V. INSPECTION AND ACCEPTANCE

Authorized employees and/or agents of Client, Owners, or Engineer shall have access to the Work at all times. When the Work is completed, Contractor shall notify Client and shall request final inspection. Within five (5) calendar days, Client shall make final inspection. Contractor shall be notified in writing of any deficiencies. Contractor shall remedy these deficiencies to complete satisfaction of the Client. After all the Work under this Contract has been completed and is so certified by the Client, formal acceptance will be made in writing by the Client.

W. CORRECTION OF WORK

If, within one (1) year after the date of Final Project Acceptance of the entire Work, or within such longer period of time as may be prescribed by laws or in equity, any of the Work is found to be defective in product, materials, and/or workmanship or otherwise not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Client to do so unless Client has previously given Contractor a written acceptance of such condition. Corrective Work shall be warranted to be free from defects for a period equal to or longer of six (6) months after the completions of the corrective Work or one (1) year after the Date of Final Completion or such longer period of time as may be prescribed by law or in equity, whichever is longer. Any defect in such Work shall be corrected again by Contractor promptly upon written notice of the defect from the Client. The obligations under this Section IV.W of this Contract shall survive acceptance of the Work under the Contract and termination of the Contract. If Contractor fails to correct such Work, Client may proceed to have the work corrected at Contractor's expense and Contractor shall pay the costs thereof on demand.

X. SANITARY FACILITIES

Contractor shall provide potable drinking water and sanitary toilet facilities for Contractor's workers. Contractor shall locate temporary facilities as directed by the Client or Owners and maintain such facilities in good repair and in a sanitary condition. Contractor shall remove such facilities completely at the conclusion of the Work.

Y. STORAGE OF EQUIPMENT AND MATERIALS

Client shall inform Contractor of the availability of suitable areas for the storage of Contractor's equipment and materials. Contractor shall maintain the storage of equipment and materials within the confines of the area designated in the Plans or by Client.

Contractor shall store materials intended for use on this Project in such a manner that their quality and fitness for the Work will be preserved. When considered necessary by Engineer, materials shall be stored so as to facilitate inspection. It shall be Contractor's responsibility to protect those stored items. All stored materials remain the property of the Contractor until such time as they are installed in their final position as intended in the Contract Documents.

Z. SITE CONDITIONS

In performance of the Work, Contractor shall undertake such further investigations and studies as may be necessary or useful to determine subsurface characteristics and patent and concealed conditions. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any lines, cables, pipes, and pipelines. Utility points of connection and other site relationships referenced in the contract documents are diagrammatic in nature. The exact location and routing requirements are the responsibility of the Contractor and are subject to the approval of the Client.

All access routes and staging areas shall be restored to pre-project conditions after project completion as described in the Technical Specifications.

AA. VEHICLE AND RECREATIONAL TRAFFIC CONTROL

Portions of work may encroach into Right of Way of the California Department of Transportation (Caltrans). TRWC will obtain an Encroachment Permit for this work. The Contractor shall be responsible for compliance with that Encroachment Permit, including all traffic control requirements and submittals necessary.

Portions of work will utilize existing recreational trails requiring periodic closures. The Contractor will submit a Recreational Trail Traffic Control Plan inclusive of a safety plan, trail closure schedule, and signage plan thirty days prior to mobilization.

V. ADDITIONAL REQUIREMENTS

A. PERFORMANCE BOND

Contractor must furnish a performance bond in favor of TRWC in the following amounts: faithful performance (100%) of contract value, product, materials and/or workmanship for a period as described in Section IV.W (100%).

B. DEBARMENT AND SUSPENSION

TRWC can not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension"; or any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, §4477) www.epls.gov.

C. LOBBYING PROHIBITION

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 any 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 of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, 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.

D. HUMAN TRAFFICKING

Contractor or Contractor's employees may not: 1) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect; 2) Procure a commercial sex act during the period of time that the contract is in effect; or 3) Use forced labor in the performance of the award or subawards under this contract.

E. NON-DISCRIMINATION

During the performance of this Agreement, Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

F. PREVAILING WAGE

California prevailing wage is required as established by the California Department of Industrial relations (<http://www.dir.ca.gov/public-works/prevaling-wage.html>). Where applicable, rates for Placer County will apply.

G. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBERS

Contractor shall provide their DUNS number to TRWC prior to contract execution.

H. PROHIBITION OF TEST MESSAGING WHILE DRIVING

Contractor may not use text messaging while driving company-owned or rented vehicles, or while driving privately owned vehicles when performing any work for or on behalf of the TRWC.

I. EMPLOYEE WHISTLEBLOWER RIGHTS

All work included in this contract will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).

The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

The Contractor shall insert the substance of this clause, including this paragraph, in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR § 52.203-17 (as referenced in 48 CFR § 3.908-9).

J. AMENDMENTS

No modification or change to this contract that is beyond the scope of work described herein shall be binding or effective unless expressly set forth in writing and signed by the TRWC Executive Director. TRWC's staff is not authorized to make modifications or changes to this contract that are beyond the scope of work agreed upon. Contractor agrees that all costs for any such modification or change that is performed by contractor without TRWC's prior written approval shall be at contractor's sole risk and expense.

VI. EXECUTION

Accepted By: _____

TITLE: Executive Director, TRWC

Date: _____

Accepted By: _____.

TITLE:

Date: _____