Agreement for Engineering and Design, Environmental Compliance and Permitting, and Russian River Water Supply Resiliency Planning Services for the New Eel Russian Facility (NERF)

This agreement ("Agreement") is by and between **Eel-Russian Project Authority**, a Joint Powers Authority ("ERPA") and **Mendocino County Inland Water and Power Commission**, a Joint Powers Authority ("MCIWPC"). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

RECITALS

A. The Potter Valley Project (PVP), currently owned and operated by Pacific Gas and Electric (PG&E), has been diverting water from the Eel River into the Russian River watershed for more than a century. The PVP has played a crucial role in supplying water for agriculture, municipalities, rural residents, and instream flows to benefit aquatic ecosystems and threatened salmonids in Mendocino and Sonoma counties. The PVP facilities include Scott and Cape Horn dams on the Eel River, and a diversion tunnel and penstocks that divert Eel River water to a hydroelectric power facility located in Potter Valley. Eel River water released from the facilities' tailrace is discharged into the East Branch of the Russian River in Potter Valley upstream of Lake Mendocino.

B. In 2019, PG&E chose not to relicense its project with the Federal Energy Regulatory Commission (FERC), and on July 25, 2025, filed its license surrender application and decommissioning plan.

C. The Eel-Russian Project Authority (ERPA) — formed in December 2023, through a joint exercise of powers agreement between Sonoma Water, the County of Sonoma, and Mendocino County Inland Water and Power Commission — is leading design and environmental compliance and permitting efforts for construction and operation of the New Eel-Russian Facility (NERF) (Project) to preserve ongoing water diversions through the PVP's tunnel between the Eel River and Russian River, while allowing for upstream and downstream fish migration.

D. On May 21, 2026, Sonoma Water, MCIWPC, and ERPA executed a Master Agreement to establish the rules and process for the parties to advance costs and/or provide services for the benefit of ERPA and to establish the rules and process for ERPA to reimburse Sonoma Water and MCIWPC for those advanced costs and services performed.

E. Under this Agreement, MCIWPC will provide engineering and design, environmental compliance and permitting, and Russian River water supply resiliency planning services for NERF and ERPA's compliance with the terms of the July 16, 2025, Water Diversion Agreement for NERF. MCIWPC represents that it is duly qualified and experienced to provide these services.

F. This Agreement is funded from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) through California Department of Fish and Wildlife Watershed Restoration Grants Program.

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

A G R E E M E N T

1. RECITALS

1.1. The above recitals are true and correct and are incorporated herein.

2. LIST OF EXHIBITS

2.1. The following exhibits are attached hereto and incorporated herein:

a. Exhibit A: Scope of Work.

b. Exhibit B: California Department of Fish and Wildlife General Grant Provisions.

c. Exhibit D: Insurance Requirements.

d. Exhibit E: Data Management Requirements

3. SCOPE OF SERVICES

3.1. *MCIWPC's Specified Services:* MCIWPC shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

3.2. *Cooperation with ERPA:* MCIWPC shall cooperate with ERPA in the performance of all work hereunder. Contact information and mailing addresses:

ERPA	**MCIWPC**
David Manning Phone: 707-975-4430 Email: David.Manning@scwa.ca.gov Contract Manager: Bradley Elliott Phone: 707-547-1060 Email: Brad.Elliott@scwa.ca.gov 404 Aviation Boulevard Santa Rosa, California 95403-9019	Janet Pauli Post Office Box 1247 Ukiah, California 95482 Phone: 707-391-7574 Email: pauli@mendoiwpc.com
Remit invoices to:	**Remit payments to:**
Accounts Payable	Same address as above

ERPA	MCIWPC
Same address as above or Email: abe.byun@scwa.ca.gov	

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

3.4. *Assigned Personnel:*

a. MCIWPC shall assign only competent personnel to perform work hereunder. In the event that at any time ERPA, in its sole discretion, desires the removal of any person or persons assigned by MCIWPC to perform work hereunder, MCIWPC shall remove such person or persons immediately upon receiving written notice from ERPA.

b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by ERPA to be key personnel whose services were a material inducement to ERPA to enter into this Agreement, and without whose services ERPA would not have entered into this Agreement. MCIWPC shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of ERPA.

c. In the event that any of MCIWPC's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of MCIWPC's control, MCIWPC shall be responsible for timely provision of adequately qualified replacements.

4. PAYMENT

4.1. *Total Costs:* Total costs under this Agreement shall not exceed $1,067,135.

4.2. *Invoices:* MCIWPC shall submit its bills in arrears no more frequently than on a quarterly basis, based on work completed for the period, in a form approved by ERPA. The bills shall show or include:

a. MCIWPC name.

b. Agreement title and TW 25/26-145.

c. ERPA's Project Code W0112C001, W0112C002, W0112D021.

d. Task performed with an itemized description of services rendered by date.

e. Summary of work performed by subconsultants, as described in Paragraph 14.4. Subconsultant work will be reimbursed at cost.

f. Time in quarter hours devoted to the task.

g. Hourly rate(s) and title(s) of the person(s) performing the task.

h. List of reimbursable materials and expenses.

i. Copies of receipts for reimbursable materials and expenses.

4.3. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made only upon the satisfactory completion of the services as determined by ERPA, and once the California Department of Fish and Wildlife grant funding for the work previously invoiced has been received by ERPA. All invoices should be presented in a form approved by ERPA, which should include items listed in 4.3 Invoices.

4.4. *Taxes Withheld by ERPA:*

a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, ERPA shall withhold seven percent of the income paid to MCIWPC for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if MCIWPC does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

b. If MCIWPC does not qualify, as described in Paragraph 4.4.a, ERPA requires that a completed and signed Form 587 be provided by MCIWPC in order for payments to be made. If MCIWPC is qualified, as described in Paragraph 4.4.a, then ERPA requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, MCIWPC agrees to promptly notify ERPA of any changes in the facts. Forms should be sent to ERPA pursuant to Article 15 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, MCIWPC has

the option to provide ERPA with either a full or partial waiver from the State of California.

4.5. *State or Grant Funding:* MCIWPC is informed and aware that this Agreement is funded by a grant from the California Department of Fish and Wildlife (award number Q2596007), which grant is conditioned upon various terms that apply to MCIWPC. MCIWPC has reviewed the grant award documents attached hereto as Exhibit C (California Department of Fish and Wildlife General Grant Provisions) and hereby agrees to comply with them to the extent they apply to a subrecipient.

5. TERM OF AGREEMENT

5.1. *Term of Agreement:* The term of this Agreement shall be from May 1, 2026 ("Effective Date"), to December 31, 2030, unless terminated earlier in accordance with the provisions of Article 6 (Termination).

5.2. *Term Extension:* ERPA's Executive Director shall have the ability to extend the term of this Agreement for up to two additional years by providing written notice to MCIWPC thirty days in advance of the expiration date noted in this Article. The extension shall be formalized in an amended agreement or amendment signed by ERPA and MCIWPC.

6. TERMINATION

6.1. Either party may terminate this Agreement by giving ninety (90) calendar days advance written notice to the other party of its intent to terminate this Agreement.

6.2. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should MCIWPC fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, ERPA may immediately terminate this Agreement by giving MCIWPC written notice of such termination, stating the reason for termination.

6.3. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, MCIWPC, within 14 days following the date of termination, shall deliver to ERPA all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by MCIWPC or MCIWPC's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 11.10 and shall submit to ERPA an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

6.4. *Payment Upon Termination:* Upon termination of this Agreement by ERPA, MCIWPC shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as

the services satisfactorily rendered hereunder by MCIWPC bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then MCIWPC shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if ERPA terminates the Agreement for cause pursuant to Paragraph 6.2, ERPA shall deduct from such amounts the amount of damage, if any, sustained by ERPA by virtue of the breach of the Agreement by MCIWPC.

6.5. *Change in Funding:* MCIWPC understands and agrees that ERPA shall have the right to terminate this Agreement immediately upon written notice to MCIWPC in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which ERPA anticipated using to pay MCIWPC for services provided under this Agreement or (2) ERPA has exhausted all funds legally available for payments due under this Agreement.

7. MUTUAL INDEMNIFICATION

7.1. Each party shall indemnify, defend, protect, hold harmless, and release the others, their officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.2. MCIWPC agrees to indemnify, defend, and save harmless the State of California and California Department of Fish and Wildlife and their officers, agents, and employees from any and all claims and losses accruing or resulting to any and all subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Grantee in the performance of this Agreement

8. INSURANCE

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

9. PROSECUTION OF WORK

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

10. EXTRA OR CHANGED WORK

10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by ERPA's Executive Director and MCIWPC's Board Chair in a form approved by ERPA's counsel and MCIWPC's counsel. The parties expressly recognize that ERPA personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of MCIWPC to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter MCIWPC shall be entitled to no compensation whatsoever for the performance of such work. MCIWPC further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of ERPA.

11. REPRESENTATIONS OF MCIWPC

11.1. *Status of MCIWPC:* The parties intend that MCIWPC, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. MCIWPC is not to be considered an agent or employee of ERPA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits ERPA provides its employees. In the event ERPA exercises its right to terminate this Agreement pursuant to Article 6 (Termination), MCIWPC expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

11.2. *No Suspension or Debarment:* MCIWPC warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. MCIWPC also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services

Administration. If MCIWPC becomes debarred, MCIWPC has the obligation to inform ERPA.

11.3. *Taxes:* MCIWPC agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. MCIWPC agrees to indemnify and hold ERPA harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of MCIWPC's failure to pay, when due, all such taxes and obligations. In case ERPA is audited for compliance regarding any withholding or other applicable taxes, MCIWPC agrees to furnish ERPA with proof of payment of taxes on these earnings.

11.4. *Records Maintenance:*

a. MCIWPC shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to ERPA, California Department of Fish and Wildlife, the Department of Finance (DOF), Department of General Services (DGS), California State Auditor's Office (CSA), or their designated representatives for inspection at any reasonable time. MCIWPC shall maintain such records for a minimum period of four (4) years following completion of work hereunder.

b. MCIWPC shall allow interviews of any employees who might reasonably have information related to such records. Auditors shall have the right to review and to copy any records and supporting documentation related to the performance of this Agreement.

c. MCIWPC agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this Agreement.

11.5. *Conflict of Interest:* MCIWPC covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. MCIWPC further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by ERPA, MCIWPC shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with ERPA within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.

11.6. *Statutory Compliance:* MCIWPC agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Noncompliance during the term of the

Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

11.7. *Nondiscrimination:* During the performance of this agreement, MCIWPC shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. MCIWPC shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. MCIWPC shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 (a-f) et seq.) and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this agreement. MCIWPC shall give written notice of its obligations under this non-discrimination clause to labor organizations with which MCIWPC has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this section. MCIWPC agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.

11.8. *Drug-Free Workplace Certification (Certification of Compliance):* By signing this Agreement, MCIWPC, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350 *et seq*.) and have or will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.

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

   i. The dangers of drug abuse in the workplace,

   ii. MCIWPC's policy of maintaining a drug-free workplace,

iii. Any available counseling, rehabilitation, and employee assistance programs, and

iv. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

c. Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Agreement:

i. Will receive a copy of MCIWPC's drug-free policy statement, and

ii. Will agree to abide by terms of MCIWPC's condition of employment, contract or subcontract.

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

11.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by MCIWPC or MCIWPC's subcontractors, consultants, and other agents in connection with this Agreement shall be the joint property of ERPA and MCIWPC. ERPA shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, MCIWPC shall promptly deliver to ERPA copies of all such documents, which have not already been provided to ERPA in such form or format as ERPA deems appropriate. Such documents shall be and will remain the property of ERPA without restriction or limitation.

11.11. *Authority:* The undersigned hereby represents and warrants that the undersigned has authority to execute and deliver this Agreement on behalf of MCIWPC.

11.12. *Nondisclosure of Confidential Information:* While doing the work required by this Agreement, MCIWPC may have access to technical information and materials pertaining to ERPA's sensitive information or data determined by ERPA to be confidential ("Confidential Information"). The Confidential Information may include confidential or proprietary information or trade secrets exempt from

disclosure under provisions of the California Public Records Act. In consideration of disclosure by ERPA of Confidential Information to MCIWPC, MCIWPC and its agents shall hold any material or information designated by ERPA as Confidential in strict confidence and shall not disclose it or otherwise make it available, in any form or matter whatsoever, to any person or entity without the prior written consent of ERPA, except as may be ordered by a court of law. Immediately upon receipt of any request or demand for disclosure of any Confidential Information within the scope of this Agreement, MCIWPC shall give ERPA written notice and a copy of the request and the time period, if any, within which MCIWPC is required to respond to the request. Upon termination of this Agreement, MCIWPC shall return Confidential Information in its possession, including copies, to ERPA. MCIWPC's obligation to maintain material and information designated as Confidential in strict confidence shall survive completion of work under this Agreement and termination of this Agreement and, as provided for in Paragraph 11.10, MCIWPC agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of ERPA.

12. PREVAILING WAGES

12.1. Pursuant to Labor Code sections 1720 and 1771, some of the work under this Agreement may be subject to prevailing wage obligations and compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). If work is determined to be subject to prevailing wage obligations, MCIWPC shall comply with all applicable requirements, including but not limited to the following:

12.2. *General:* MCIWPC shall pay to any worker on the job for whom prevailing wages have been established an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and ERPA to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. MCIWPC shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed, in addition to all other job site notices prescribed by regulation. Copies of the prevailing wage rate of per diem wages are on file at ERPA and will be made available to any person upon request.

12.3. *Subcontracts:* MCIWPC shall insert in every subcontract or other arrangement which MCIWPC may make for performance of such work or labor on work provided for in the Agreement, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar

character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code. Pursuant to Labor Code section 1775(b)(1), MCIWPC shall provide to each Subcontractor a copy of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.

12.4. *Compliance Monitoring and Registration*: This project may be subject to compliance monitoring and enforcement by the Department of Industrial Relations. If applicable, MCIWPC shall furnish and shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g., electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code § 1771.4 (a)(3)). MCIWPC and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.

12.5. *Compliance with Law:*

a. MCIWPC stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code sections 1725.5, 1775, 1776, 1777.5, 1813, and 1815 and California Code of Regulations, Title 8, section 16000, et seq. Projects funded in whole or in part with California Department of Fish and Wildlife grant funds may be public works projects and must comply with the California Labor Code.

b. If MCIWPC is a public entity exempt from obtaining a Department of Industrial Relations Contractor Registration but may subcontract work that is subject to prevailing wage requirements, MCIWPC shall comply with Labor Code section 1773.3. MCIWPC shall ensure that any subcontractor performing such work is currently registered with the DIR pursuant to Labor Code section 1725.5, and MCIWPC shall timely register the Agreement using Form PWC-100 with the Department of Industrial Relations, as required.

13. DEMAND FOR ASSURANCE

13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this

Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits ERPA's right to terminate this Agreement pursuant to Article 6 (Termination).

14. ASSIGNMENT AND DELEGATION

14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

14.2. *Subcontracts:* Notwithstanding the foregoing, MCIWPC may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement. Approved subconsultants are as follows:

Full Legal Name	*Type of Services*	*Prevailing Wages Apply? Y/N*
Tommy Johnson LLC	Engineering, Project Management	N
Downey Brand	Legal counsel	N
Larsen Wurzel & Associates	Project Management	N

14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, MCIWPC may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 14.3. The following provisions apply to any subcontract entered into by MCIWPC other than those listed in Paragraph 14.2:

a. Prior to entering into any contract with subconsultant, MCIWPC shall obtain ERPA approval of subconsultant.

b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of ERPA in substantially the following form, (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

   i. [firm name] agrees to accept all responsibility for loss or damage to any person or entity, including MCIWPC, and to indemnify, hold harmless, and release MCIWPC, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including [firm name], that arise out of, pertain to, or relate to [firm name]'s or its agents', employees', contractors', subcontractors', or invitees' performance or

obligations under this Agreement. [firm name] agrees to provide a complete defense for any claim or action brought against MCIWPC based upon a claim relating to [firm name]'s or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. MCIWPC's obligations under this Article [__] apply whether or not there is concurrent or contributory negligence on the part of MCIWPC, but, to the extent required by law, excluding liability due to conduct of MCIWPC. MCIWPC shall have the right to select its legal counsel at [firm name]'s expense, subject to [firm name]'s approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for [firm name] or its agents, employees, contractors, subcontractors, or invitees under workers' compensation acts, disability benefits acts, or other employee benefit acts.

14.4. *Summary of Subconsultants' Work:* MCIWPC shall provide ERPA with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.2. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

14.5. *California Labor Code*: MCIWPC must comply with the California Labor Code. Projects funded in whole or in part with California Department of Fish and Wildlife grant funds may be public works projects under the Labor Code. (See Section 1720 et seq.) Labor Code compliance may require the payment of prevailing wage.

14.6. *California Business and Professions Code*: MCIWPC must comply with the California Business and Professions Code. MCIWPC shall be responsible for obtaining the services of an appropriately licensed professional if required by the Business and Professions Code, including but not limited to Section 6700 et seq. (Professional Engineers Act) and Section 7800 et seq. (Geologists and Geophysicists Act).

14.7. MCIWPC's use of generative artificial intelligence in the implementation of the Project must comply with all applicable federal and California laws, regulations, and statewide policies governing such technologies.

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

15.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.

15.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 15.

16. MISCELLANEOUS PROVISIONS

16.1. *No Waiver of Breach:* The waiver by ERPA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

16.2. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. MCIWPC and ERPA acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. MCIWPC and ERPA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

16.3. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

16.4. *No Third-Party Beneficiaries:* Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

16.5. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.

16.6. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

16.7. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

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

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

16.10. *Counterpart; Electronic Signatures:* The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via electronic means, or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

16.11. *Acknowledgement of Credit and Signage:* MCIWPC shall include signage, to the extent practicable, informing the public that the Project received funds through the California Department of Fish and Wildlife from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1, CWC § 79707). In addition, MCIWPC shall include appropriate acknowledgement of credit to the Watershed Restoration Grant Program and its implementing agency, the California Department of Fish and Wildlife, for its financial support when using any data and/or information developed under this Agreement (e.g., in posters, reports, publications, presentations). MCIWPC shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this paragraph.

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

Approved as to form:

By: _____
Scott Shapiro, MCIWPC Counsel

Mendocino County Inland Water and Power Commission, a Joint Powers Authority

By: _____
Janet Pauli, Chair

Date: _____

Approved as to form:

By: _____
Cory O'Donnell, ERPA Counsel

Eel-Russian Project Authority, a Joint Powers Authority

By: _____
David Manning, Executive Director

Date: _____

Exhibit A

Scope of Work

1. TASKS

1.1. Task 1: Supplemental Engineering Design

a. Work with ERPA consultant(s) and staff to provide review and guidance for 60%, 90%, and 99% design

b. Deliverables: Submit the below deliverables in accordance with Paragraph 2.1 (Review and Acceptance of Deliverables).

Deliverable	Due Date
Comments, redlines or other review products on plans, specs, and technical memos	As-needed

1.2. Task 2: Environmental Compliance Review

a. Work with ERPA consultant(s) and staff to provide review and guidance for CEQA and permitting

b. Deliverables: Submit the below deliverables in accordance with Paragraph 2.1 (Review and Acceptance of Deliverables).

Deliverable	Due Date
Comments, redlines or direct edits on draft versions of CEQA or permits	As-needed

1.3. Task 3: Russian River Water Supply Resiliency Planning - Planning efforts to achieve water supply resiliency within the basin and decrease dependence on Eel River imports over time. Studies and regional planning efforts are required to achieve this long-term goal, including:

a. Engage in a Lake Mendocino Army Corps feasibility study to evaluate improvements to water resource management at Coyote Dam/Lake Mendocino, which could include exploring alternatives to increase the storage available in an expanded or modified Lake Mendocino.

b. Participate in the Potter Valley groundwater resource assessment and test well project, which could include: (1) design and construction of new test wells and monitoring wells; (2) obtaining permits and access agreements for the wells; (3) performing geophysical surveys in Potter Valley; and (4) refinement of an existing groundwater model developed for the Potter Valley.

c. Deliverables: Submit the below deliverables in accordance with Paragraph 2.1 (Review and Acceptance of Deliverables).

Deliverable	Due Date
Interim and final reports associated with the feasibility study and monitoring project	As-needed
Final design plans and as-built drawings for monitoring wells	As-needed
Copies of all permits and landowner access agreements	As-needed
Geospatial data and groundwater monitoring data (See Exhibit E: Data Management Requirements)	As-needed

2. DELIVERABLES

2.1. Review and Acceptance of Deliverables

a. First Draft: Prepare each deliverable in draft form and submit to ERPA for review and approval in accordance with the date listed for the deliverable in the applicable task. ERPA will return the draft deliverable to MCIWPC with comments or approval in writing.

b. Subsequent Draft(s): If ERPA requests revisions, revise the draft deliverable and resubmit for ERPA approval.

c. Final. Following ERPA approval and prior to ERPA's acceptance of work under this Agreement, submit the final approved deliverable to ERPA in accordance with the date listed for this deliverable.

2.2. In addition to the requirements above, if any, submit one electronic copy in PDF format (emailed, on USB flash drive, or via internet) of each final deliverable to ERPA.

2.3. Include Agreement title and TW 25/26-145 on first page or cover of each deliverable.

Exhibit B

California Department of Fish and Wildlife General Grant Provisions

California Department of Fish and Wildlife General Grant Provisions

Contained herein are the general grant provisions used by California Department of Fish and Wildlife (CDFW) for all grant agreements. Please note there are two versions of the general grant provisions, one of which will be used based upon the type of entity entering into a grant agreement.

I. Public Entities General Grant Provisions (Exhibit 1.a)
For use with all public agencies except UCs and CSUs.

II. Non-Public Entities Payable Grant Provisions (Exhibit 1.b)
For use with all non-public entities including non-profits.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

EXHIBIT 1a – PUBLIC ENTITIES GENERAL GRANT PROVISIONS

Grant Agreement Number:
Grantee Name:

1. **APPROVAL**: This Agreement is of no force or effect until signed by both Parties. Grantee shall not incur any costs in reliance on this Agreement until this Agreement has been signed by both Parties.

2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. Only persons duly authorized to sign an amendment on behalf of CDFW may do so. No oral understanding or agreement not incorporated in this Agreement is binding on either of the Parties.

3. **ASSIGNMENT**: This Agreement is not assignable by Grantee, either in whole or in part, without written approval from CDFW.

4. **AUDIT**: Grantee agrees that CDFW, the Department of Finance ("**DOF**"), Department of General Services ("**DGS**"), California State Auditor's Office ("**CSA**"), or their designated representatives shall have the right to review and to copy any records and supporting documentation related to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three years after CDFW's final payment to Grantee pursuant to this Agreement, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

   Further, Grantee agrees to include the following term or a substantially similar term in any subcontract related to performance of this Agreement:

   Subcontractor agrees that CDFW, the Department of Finance, Department of General Services, California State Auditor's Office, or their designated representatives shall have the right to review and to copy any records and supporting documentation related to the performance of this agreement. Subcontractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated. Subcontractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Subcontractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.

5. **INDEMNIFICATION**: Grantee agrees to indemnify, defend, and save harmless the State of California ("**State**") and CDFW and their officers, agents, and employees from any and all claims and losses accruing or resulting to any and all subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Grantee in the performance of this Agreement.

   CDFW agrees to indemnify, defend, and save harmless Grantee and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all subcontractors,

suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by CDFW in the performance of this Agreement but, collectively, only in proportion to and to the extent that such claims or losses are caused by or result from the negligent or intentional acts or omissions of CDFW or its officers, agents, and employees.

6. **DISPUTES**: Grantee shall continue with its responsibilities under this Agreement during any dispute.

7. **INDEPENDENT CONTRACTOR**: Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of CDFW. Grantee acknowledges and promises that CDFW is not acting as an employer to any individuals furnishing services or work on the Project pursuant to this Agreement.

8. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Grantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Grantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. 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. Grantee shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 (a-f) et seq.) and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement. Grantee shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Grantee has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this Section 8.

   Further, Grantee agrees to include the following term or a substantially similar term in any subcontract related to performance of this Agreement:

   During the performance of this agreement, Subcontractor shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subcontractor shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment

are free of such discrimination and harassment. 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. Subcontractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 (a-f) et seq.) and applicable regulations (California Code of Regulations, Title 2, Section 7285 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this agreement. Subcontractor shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Subcontractor has a collective bargaining or other agreement and shall post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this section. Subcontractor agrees to put a substantially similar term in any subcontract it executes with another entity related to the performance of this agreement.

9. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

10. **REGULATORY COMPLIANCE:** Grantee's implementation of the Project must comply with all applicable federal, state, and local government statutes, laws, regulations, codes, ordinances, orders, or other governmental and quasi-governmental requirements that apply to the Project (including its planning, construction, management, monitoring, operation, use, and maintenance). The costs associated with such regulatory compliance may be reimbursed under this Agreement only to the extent authorized by the Budget Detail and Funding Summary section of this Agreement.

    Grantee's use of generative artificial intelligence in the implementation of the Project must comply with all applicable federal and California laws, regulations, and statewide policies governing such technologies.

    Grantee's implementation of the Project must comply with the California Labor Code. Projects funded in whole or in part with CDFW grant funds may be public works projects under the Labor Code. (See Section 1720 et seq.) Labor Code compliance may require the payment of prevailing wage. Grantee is responsible for Labor Code compliance, and CDFW cannot provide advice about Labor Code compliance.

    Grantee's implementation of the Project must comply with the California Business and Professions Code. Grantee shall be responsible for obtaining the services of an appropriately licensed professional if required by the Business and Professions Code, including but not limited to Section 6700 et seq. (Professional Engineers Act) and Section 7800 et seq. (Geologists and Geophysicists Act). CDFW cannot provide advice about Business and Professions Code compliance.

11. **RIGHTS IN DATA**: Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement, are subject to the rights of CDFW as set forth in this Section 11. CDFW shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by Grantee, CDFW reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

12. **CONTINGENT FUNDING**: It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of State appropriation of funds for the mutual benefit of both Parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after that determination was made.

    This Agreement is valid and enforceable only if sufficient funds are made available pursuant to the California State Budget Act for the fiscal year(s) covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the State Legislature of any statute enacted by the Legislature which may affect the provisions, terms, or funding of this Agreement in any manner.

    If the Legislature does not appropriate sufficient funds for this Agreement, CDFW may terminate this Agreement in accordance with Section 13 of this Exhibit 1.a or amend this Agreement to reflect any reduction of funds.

13. **RIGHT TO TERMINATE**:

    a. This agreement may be terminated by mutual consent of both Parties or by any Party upon 30 days written notice and delivered in person, USPS First Class Mail, or electronic transmission.
    b. In the event of termination of this Agreement, Grantee shall immediately provide CDFW an accounting of all Grant Funds received under this Agreement.
    c. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either Party already incurred prior to such termination. CDFW shall reimburse Grantee for all allowable and reasonable costs incurred by Grantee for the Project, including foreseeable and uncancellable obligations. Upon notification of termination from CDFW, Grantee shall make reasonable efforts to limit any outstanding financial commitments.

14. **USE OF SUBCONTRACTOR(S):** If Grantee desires to accomplish part of the Project through the use of one or more subcontractors, the following conditions must be met:

    a. Grantee shall submit any subcontracts to CDFW for inclusion in the grant file;
    b. Agreements between the Grantee and the subcontractor must be in writing;

11. **RIGHTS IN DATA**: Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement, are subject to the rights of CDFW as set forth in this Section 11. CDFW shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by Grantee, CDFW reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

12. **CONTINGENT FUNDING**: It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of State appropriation of funds for the mutual benefit of both Parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after that determination was made.

    This Agreement is valid and enforceable only if sufficient funds are made available pursuant to the California State Budget Act for the fiscal year(s) covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the State Legislature of any statute enacted by the Legislature which may affect the provisions, terms, or funding of this Agreement in any manner.

    If the Legislature does not appropriate sufficient funds for this Agreement, CDFW may terminate this Agreement in accordance with Section 13 of this Exhibit 1.a or amend this Agreement to reflect any reduction of funds.

13. **RIGHT TO TERMINATE**:

    a. This agreement may be terminated by mutual consent of both Parties or by any Party upon 30 days written notice and delivered in person, USPS First Class Mail, or electronic transmission.
    b. In the event of termination of this Agreement, Grantee shall immediately provide CDFW an accounting of all Grant Funds received under this Agreement.
    c. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either Party already incurred prior to such termination. CDFW shall reimburse Grantee for all allowable and reasonable costs incurred by Grantee for the Project, including foreseeable and uncancellable obligations. Upon notification of termination from CDFW, Grantee shall make reasonable efforts to limit any outstanding financial commitments.

14. **USE OF SUBCONTRACTOR(S):** If Grantee desires to accomplish part of the Project through the use of one or more subcontractors, the following conditions must be met:

    a. Grantee shall submit any subcontracts to CDFW for inclusion in the grant file;
    b. Agreements between the Grantee and the subcontractor must be in writing;

c. Subcontracts must include language establishing the audit rights of CDFW, DOF, DGS, CSA, or their designated representatives with respect to subcontractors that complies with Section 4 of this Exhibit 1.a.;
d. Subcontracts must include non-discrimination clause language with respect to subcontractors that complies with Section 8 of this Exhibit 1.a; and
e. Upon termination of any subcontract, the CDFW Grant Manager shall be notified immediately, in writing.

15. **POTENTIAL SUBCONTRACTOR(S):** Nothing contained in this Agreement or otherwise shall create any contractual relation between CDFW and any of Grantee's subcontractor(s) and no subcontract shall relieve Grantee of its responsibilities and obligations hereunder. Grantee agrees to be as fully responsible to CDFW for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Grantee. Grantee's obligation to pay its subcontractor(s) is an independent obligation from CDFW's obligation to make payments to Grantee. As a result, CDFW shall have no obligation to pay or to enforce the payment of any monies to any of Grantee's subcontractors.

16. **TRAVEL AND PER DIEM:** If the reimbursement of travel or per diem costs are authorized by this Agreement, such costs shall be reasonable and not exceed those amounts identified in the California Department of Human Resources travel reimbursement guidelines. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the CDFW Grant Manager.

17. **LIABILITY INSURANCE :** Unless otherwise specified in this Agreement, when Grantee submits a signed Agreement to CDFW, Grantee shall also furnish to CDFW either proof of self-insurance or a certificate of insurance stating that there is liability insurance presently in effect for Grantee of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined. Grantee agrees to make the entire insurance policy available to CDFW upon request.

The certificate of insurance will include provisions a, b, and c, in their entirety:

a. The insurer will not cancel the insured's coverage without 30-days prior written notice to CDFW;
b. The State and CDFW and their officers, agents, employees, and servants are included as additional insured, insofar as the operations under this Agreement are concerned; and
c. CDFW will not be responsible for any premiums or assessments on the policy.

Grantee agrees that the liability insurance herein provided for, shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement, or for a period of not less than one year. New certificates of insurance are subject to the approval of CDFW, and Grantee agrees that no work or services

shall be performed prior to CDFW giving such approval. In the event Grantee fails to keep in effect, at all times, insurance coverage as herein provided, CDFW may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

CDFW will not provide for, nor compensate Grantee for any insurance premiums or costs for any type or amount of insurance. The insurance required above, shall cover all Grantee supplied personnel and equipment used in the performance of this Agreement. If subcontractors performing work for Grantee under this Agreement cannot provide to Grantee either proof of self-insurance or a certificate of insurance stating that the subcontractor has liability insurance of not less than $1,000,000 per occurrence for bodily injury or property damage liability combined, then Grantee's liability insurance shall provide such coverage for the subcontractor.

18. **GRANTEE STAFF REQUIREMENTS:** Grantee represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with CDFW.

19. **EQUIPMENT PURCHASES:** For purposes of this Agreement, "**Equipment**" means tangible personal property having a useful life of four years, and "**Major Equipment**" means Equipment with a unit cost of $5,000 or more. The unit cost includes the purchase price plus all costs to acquire, install, and prepare the equipment for its intended use. Grantee may purchase Major Equipment under this Agreement only when a specific type Major Equipment is listed in the Budget Details and Funding Summary section of this Agreement. This restriction on the purchase of Major Equipment does not include the lease or rental of Major Equipment. Grantee shall own all Equipment purchased under this Agreement; CDFW does not claim title or ownership to such Equipment. Grantee shall keep, and make available to CDFW upon CDFW's request, appropriate records of all Equipment purchased with Grant Funds. Equipment purchased by Grantee outside the term of this Agreement is not eligible for reimbursement by CDFW under this Agreement.

    When Grantee submits an invoice to CDFW for reimbursement of Major Equipment purchase costs, that invoice must include a receipt listing the purchase price of the Major Equipment and the serial number and model number of the Major Equipment. That invoice must also include the location, including street address, where the Major Equipment will be used during the term of this Agreement.

20. **GRANTEE'S PROCUREMENT OF GOODS AND/OR SERVICES:** Grantee's process for procuring goods or services to carry out the Project under this Agreement must reasonably ensure that Grantee is making sound business decisions.

21. **DRUG-FREE WORKPLACE CERTIFICATION:** Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
    1. the dangers of drug abuse in the workplace;
    2. the person's or organization's policy of maintaining a drug-free workplace;
    3. any available counseling, rehabilitation, and employee assistance programs; and,
    4. penalties that may be imposed upon employees for drug abuse violations.
c. Every employee who works on the proposed Agreement will:
    1. receive a copy of the company's drug-free policy statement; and
    2. agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of disbursements under this Agreement or termination of the Agreement or both, and Grantee may be ineligible for award of any future State agreements if CDFW determines that any of the following has occurred: (1) Grantee has made false certification or (2) Grantee has violated the certification by failing to carry out the requirements as noted above.

22. **UNION ORGANIZING:** Grantee acknowledges the applicability to this Agreement of Government Code Sections 16645 through 16649, and certifies that:

    a. No Grant Funds disbursed pursuant to this Agreement will be used to assist, promote, or deter union organizing;
    b. Grantee shall account for Grant Funds disbursed for a specific expenditure pursuant to this Agreement to show those funds were allocated to that expenditure;
    c. Grantee shall, where Grant Funds are not designated as described in Section 22(b) above, allocate, on a pro-rata basis, all disbursements that support the grant program; and
    d. If Grantee makes expenditures to assist, promote, or deter union organizing, Grantee will maintain records sufficient to show that no Grant Funds were used for those expenditures and shall provide those records to the Attorney General upon request.

23. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

Exhibit C

Insurance Requirements

MCIWPC shall maintain and require all of its subcontractors, consultants, and other agents to maintain insurance and/or self-insurance as described below unless such insurance has been expressly waived in writing by ERPA.

1. INSURANCE

a. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California, and Employers Liability with minimum limits of $1,000,000 per accident; $1,000,000 disease per employee; $1,000,000 disease per policy. The requirement of Workers Compensation Insurance does not apply to MCIWPC unless it has an employee.

b. Commercial General Liability Insurance with Minimum Limits: $1,000,000 per occurrence; $2,000,000 general aggregate; $2,000,000 products/completed operations aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance.

    1. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. The insured party is responsible for any deductible or self-insured retention and shall fund it upon ERPA's written request, regardless of whether the insured party has a claim against the insurance or is named as a party in any action involving ERPA.

    2. ERPA shall be endorsed as an additional insured for liability arising out of operations by, or on behalf of, MCIWPC in the performance of this Agreement.

    3. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

    4. The policy shall cover inter-insured suits between the additional insureds and MCIWPC and include a "separation of insureds" or "severability" clause which treats each insured separately.

c. Automobile Liability Insurance with Minimum Limit of $1,000,000 combined single limit per accident. Automobile Insurance shall apply to all owned, hired, and non-owned autos. The automobile liability insurance requirement does not apply to MCIWPC.

d. Professional Liability/Errors and Omissions Insurance with Minimum Limit of $1,000,000 per claim or per occurrence. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. The professional liability/errors and omissions insurance requirement does not apply to MCIWPC.

e. The Certificate of Insurance must include the following reference: Eel-Russian Project Authority.

f. All required Evidence of Insurance shall be submitted to ERPA within 10 business days of the Effective Date. MCIWPC agrees to maintain current Evidence of Insurance on file with ERPA for the entire term of this Agreement.

g. The name and address for Additional Insured endorsements and Certificates of Insurance is: Eel-Russian Project Authority, Attention David Manning, 404 Aviation Boulevard, Santa Rosa, California 95403.

h. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) business days before expiration or other termination of the existing policy.

i. MCIWPC shall provide ERPA prompt written notice if any of the required insurance policies are terminated.

j. MCIWPC's indemnity and other obligations are not limited by these insurance requirements.

Exhibit D

Data Management Requirements

MCIWPC is responsible for ensuring that Project data are collected using peer-approved methods, undergo a quality control and accuracy assessment process, include metadata that meet California Department of Fish and Wildlife's minimum standards (https://www.wildlife.ca.gov/Data/BIOS/Metadata) and include documentation of the methods and quality assessments utilized, and are properly stored and protected until the Project has been completed and data have been delivered as required under this Agreement.

All scientific data collection efforts are required to include metadata files or records indicating at a minimum:

1. Who collected the data;
2. When the data was collected;
3. Where the data was collected;
4. How the data was collected (description of methods and protocols);
5. The purposes for which the data was collected;
6. Definitions of variables, fields, codes, and abbreviations used in the data, including units of measure;
7. The terms of any landowner access agreement(s), if applicable;
8. References to any related California Department of Fish and Wildlife permits or regulatory actions;
9. Peer review or statistical consultation documentation; and
10. Data licensing and disclaimer language.

All data and associated metadata collected by or created under this Agreement are a required deliverable of this Agreement. Geospatial data must be delivered in an industry-standard geospatial data format where applicable and documented with metadata in accordance with the California Department of Fish and Wildlife Minimum Metadata Standards.
Data related to observation, occurrence, or distribution of state or federal special status species or California Native Plant Society listed species shall be reported to the California Natural Diversity Database (CNDDB) using the online field survey form or other digital method. MCIWPC shall provide proof of successful submission of the online field survey form or other digital method.
Groundwater monitoring data generated by the Project will be collected and reported in a manner that is compatible and consistent with the groundwater data systems administered by the State Water Resources Control Board (CWC § 79704).