



STALLION SPRINGS COMMUNITY SERVICES DISTRICT

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AGENDA SUPPORTING INFORMATION

Agenda #6

Subject: Discussion and approval of an agreement between the Stallion Springs Community Services District and the County of Kern allowing the District to participate in the Coronavirus Relief Fund Program for Special Districts.

Submitted by: Vanessa Stevens, General Manager

Date: December 4, 2020

Background: The Kern County Chief Administrative Office has shared its agreement for special districts to approve and submit for its \$2 million special districts COVID-19 relief program. This is a prerequisite for completing a reimbursement form for eligible COVID-19 expenses.

The District has been tracking the various expenses involved with COVID-19 and participating in the relief program will be beneficial in recouping funds used for COVID-19.

Recommendation: Approve the attached agreement and allow the General Manager and Chief of Police to work together in applying for the necessary relief funds.

**AGREEMENT
CORONAVIRUS RELIEF FUND PROGRAM
ASSISTANCE TO SPECIAL DISTRICTS**

THIS AGREEMENT ("**Agreement**") is made and entered into on _____, 2020, by and between the COUNTY OF KERN, a political subdivision of the State of California ("**COUNTY**"), and _____ whose principal place of doing business is located at _____, California ("**SPECIAL DISTRICT**" or "**Subgrantee**").

RECITALS:

(a) COUNTY has obtained funds from the Department of Treasury pursuant to section 601(b) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), specifically the Coronavirus Relief Fund ("CRF") (hereinafter referred to as "CRF Program"); and

(b) On November 17, 2020, COUNTY, by and through the Kern County Board of Supervisors, considered and amended the CARES Act Coronavirus Relief Fund Initial Utilization Plan which was originally approved on May 5, 2020; and

(c) COUNTY agrees to assist SPECIAL DISTRICT by making available a portion of the CRF Program funds available to SPECIAL DISTRICT in an amount and upon the conditions provided for herein and for such activities as are permitted by the CRF Program; and

(d) COUNTY desires to distribute to SPECIAL DISTRICT a portion of the total CRF Program funds allotted to the COUNTY so long as SPECIAL DISTRICT's payments are eligible SPECIAL DISTRICT costs, eligible SPECIAL DISTRICT costs are costs that:

(1) Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) Were not accounted for in the budget most recently approved by SPECIAL DISTRICT as of March 27, 2020;

(3) Were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which are acknowledged, the COUNTY and SPECIAL DISTRICT agree to the following terms:

AGREEMENT:

1. Definitions

(a) **"Project"** means the eligible activities to be carried out by SPECIAL DISTRICT under the CRF Program which are COVID-19 related net of other CARES funding received by the SPECIAL DISTRICT.

(b) **"Eligible CRF Program Components"** include out of pocket costs related to COVID-19 and the related public health precautions, including:

- (1) Personal protective equipment
- (2) Telecommuting
- (3) Sanitizing
- (4) Public health order enforcement
- (5) Eligible payroll expenses
- (6) Other

2. COUNTY's Financial Obligations

(a) COUNTY's financial obligation under this Agreement shall only be paid from CRF Program funds received by COUNTY from the United States Department of the Treasury. These funds shall be considered a grant to SPECIAL DISTRICT pursuant to this Agreement.

(b) Notwithstanding the foregoing, COUNTY's duty to pay SPECIAL DISTRICT under this Agreement is expressly contingent on SPECIAL DISTRICT submitting a COVID-19 SPECIAL DISTRICT Reimbursement Form ("Reimbursement Form," an example of which is attached hereto as Exhibit "A.") of eligible costs and retaining documentation of such costs. COUNTY, at its sole option, may terminate or suspend this Agreement if SPECIAL DISTRICT fails to comply with terms of the CARES Act or in accordance with Section 19 of this Agreement, Termination. SPECIAL DISTRICT hereby agrees to and grants said option to COUNTY without reservation or claim for future cause of action based thereon.

(c) COUNTY may withhold payments to SPECIAL DISTRICT if SPECIAL DISTRICT, in COUNTY's sole determination, has not complied with provisions of the Act, federal regulations thereunder, terms of the CRF Program grant from the federal government to COUNTY, the regulations of COUNTY promulgated to facilitate the administration of such grant, the terms of this Agreement, or any other statute or regulation applicable to the CRF Program or administration thereof. COUNTY agrees to inform SPECIAL DISTRICT within fifteen (15) days if COUNTY becomes aware that

SPECIAL DISTRICT is not in compliance with the foregoing.

3. SPECIAL DISTRICT's Obligations

(a) SPECIAL DISTRICT shall submit a certified Reimbursement Form to Kern County prior to December 15, 2020. Said certified claim is to be itemized and properly documented so as to clearly indicate, at minimum, the eligible costs for which payment is being claimed, or other measurement as agreed by and between COUNTY and SPECIAL DISTRICT.

4. COUNTY's Obligations

(a) COUNTY shall provide CRF Program funds as reimbursement for Project activities carried out by SPECIAL DISTRICT.

(b) Disbursements shall be made by COUNTY to SPECIAL DISTRICT or its designee, after SPECIAL DISTRICT's submittal to COUNTY of a Reimbursement Form executed by a properly designated official of SPECIAL DISTRICT indicating the expenses incurred by SPECIAL DISTRICT for Project activities.

(c) SPECIAL DISTRICT agrees that the Board of Supervisors of COUNTY or its designee is hereby empowered to make an independent determination as to eligible Project activities which have been acquired or completed, and any such determination is conclusive.

(d) COUNTY shall process a Reimbursement Form of SPECIAL DISTRICT for payment under this Agreement with due diligence.

5. Compliance with Laws

(a) SPECIAL DISTRICT agrees to comply with the provisions of the CARES Act, any amendments thereto, the federal regulations and guidelines now or hereafter enacted pursuant to the Act, terms of the CRF Program grant to COUNTY now or hereafter in effect, and the regulations now or hereafter enacted by COUNTY to facilitate its administration of the CRF Program grant in Kern County, or any other statute, regulation or guideline applicable to the CRF Program, including, without limitation, the requirements under 24 CFR part 576. SPECIAL DISTRICT shall become familiar with the applicable statutes, regulations and guidelines governing the CRF Program, each of which is made a part hereof and incorporated herein by this reference as if set forth in full.

(b) It is agreed that all provisions of State of California law applicable to public contracts (except to the extent California law may be waived and is waived by the parties) are a part of this Agreement to the same extent as if set forth herein in full and shall be complied with by SPECIAL DISTRICT under this Agreement and any related

agreements.

(c) Should COUNTY become subject to any sanctions, including but not limited to those enumerated at 24 CFR part 576.501, due to any failure by SPECIAL DISTRICT or SPECIAL DISTRICT's agents to comply with all Federal, State and local laws and regulations, SPECIAL DISTRICT hereby agrees without reservation to be liable for any such sanctions and shall fully reimburse COUNTY for any payments made or funding lost as a result of such sanctions.

(d) All references or citations to Federal, State, or local codes, statutes, rules, regulations or executive orders are effective and applicable to this Agreement only to the extent they are currently valid or as they are from time to time amended, repealed or superseded.

(e) In the event SPECIAL DISTRICT, or any Contractors hired by SPECIAL DISTRICT, fails to comply with any of the obligations pursuant to this Agreement, including, but not limited to, use of CRF Program funds for ineligible Projects or any failure to comply with Federal, State or local codes, statutes, rules or regulations, SPECIAL DISTRICT agrees to re-pay CRF Program funds to COUNTY within five (5) business days of a determination that said funds are ineligible. Should SPECIAL DISTRICT fail to remit payment to COUNTY within five (5) business days, SPECIAL DISTRICT hereby authorizes the Kern County Auditor-Controller to transfer funds directly from any deposit accounts SPECIAL DISTRICT maintains with COUNTY, including but not limited to property taxes, directly into COUNTY accounts in order to re-pay CRF Program funds in accordance with this Agreement.

(f) Notwithstanding the above, including the Eligible CRF Program Components set forth in subsection 1(b) of this Agreement, in the event the United States government determines that SPECIAL DISTRICT's uses of CRF Program funds are used for ineligible Projects, SPECIAL DISTRICT agrees to re-pay said CRF Program funds in accordance with section 5(e) of this Agreement.

6. Records and Administration

(a) SPECIAL DISTRICT shall comply with the policies, guidelines, and requirements of 2 CFR part 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS as now in effect and may be amended from time to time, including without limitation, cost allocation plans, and procurement, as they relate to the acceptance and use of CRF Program funds by SPECIAL DISTRICT organizations. In the event COUNTY determines that an intentionally false or fraudulent certified claim has or is being filed by SPECIAL DISTRICT, COUNTY, in its sole discretion, may immediately terminate this Agreement and/or SPECIAL DISTRICT shall reimburse COUNTY for any and all funds found to be improperly paid, as well as those reasonable costs, including attorney fees,

associated with the investigation and recovery of the contested claims and/or amounts.

(b) SPECIAL DISTRICT agrees to maintain Project documents, records and accounts, personnel and financial records, and submit such financial and performance reports as are required to assure a proper accounting of all Project funds, as required by the regulations adopted pursuant to the CARES Act. Methods used to determine costs assigned to Project must conform to 2 CFR part 200 UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS as now in effect and may be amended from time to time, and must not differ substantially from the methods used by SPECIAL DISTRICT to determine costs for other aspects of its operations or programs. SPECIAL DISTRICT shall provide for access during normal business hours to the Project records by Federal, State and COUNTY auditors, or their authorized agents, as may be deemed necessary to carry out their audit responsibilities. SPECIAL DISTRICT shall retain Project records for five (5) years after completion of Project, or until all related audit issues are resolved, whichever should occur later.

(c) COUNTY and SPECIAL DISTRICT shall comply with Recordkeeping and Reporting Requirements established at 24 CFR part 576.500.

7. Political Activity

SPECIAL DISTRICT agrees that no CRF Program funds shall be expended to finance any political activity in contravention of the Hatch Act of 1939, as amended, 5 U.S.C. 15 et seq.

8. Use of Grant Funds for Religious Purpose

SPECIAL DISTRICT will not engage in inherently religious activities as part of the CRF Program. Additionally, no otherwise qualified individual shall, solely by reason of his or her religion or religious belief, be excluded from the participation in, be denied the benefits of, or be subjected to, discrimination under any program funded by CRF Program funds.

9. Indemnification and Insurance

SPECIAL DISTRICT agrees to indemnify, defend, and hold harmless COUNTY and its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by COUNTY, expert fees, costs of staff time, and investigation costs) of whatever kind or nature which arise out of or are in any way connected with any act or omission of SPECIAL DISTRICT or its officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting

the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of COUNTY; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of SPECIAL DISTRICT by any person or entity.

SPECIAL DISTRICT acknowledges that SPECIAL DISTRICT, and all contractors hired by SPECIAL DISTRICT to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). SPECIAL DISTRICT is and shall remain in compliance with the IRCA and shall ensure that only contractors hired by SPECIAL DISTRICT to perform services under this Agreement are in compliance with the IRCA. In addition, SPECIAL DISTRICT agrees to indemnify, defend, and hold harmless the COUNTY, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims that SPECIAL DISTRICT's employees or the employees of any contractor hired by SPECIAL DISTRICT, are not authorized to work in the United States for SPECIAL DISTRICT or its contractor and/or any other claims based upon alleged IRCA violations committed by SPECIAL DISTRICT or its contractor(s).

SPECIAL DISTRICT acknowledges that SPECIAL DISTRICT, and all contractors hired by SPECIAL DISTRICT to be compensated with CRF Program funds, will comply with the obligations and conditions set forth in this Agreement, including, but not limited to those expressly set forth in section 5, Compliance with laws. SPECIAL DISTRICT agrees to indemnify, defend, and hold harmless the COUNTY, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims or determinations that SPECIAL DISTRICT or SPECIAL DISTRICT's contractors used CRF Program funds for ineligible Projects.

SPECIAL DISTRICT in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of SPECIAL DISTRICT's actions in connection with the performance of SPECIAL DISTRICT's obligations, as required in this Agreement, shall secure and maintain insurance as described below. SPECIAL DISTRICT shall not perform any work under this Agreement until SPECIAL DISTRICT has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the COUNTY's authorized insurance representative, Insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, SPECIAL DISTRICT shall supply proof that such person is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. The SPECIAL DISTRICT shall promptly deliver to ITS a certificate of

insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. SPECIAL DISTRICT shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by SPECIAL DISTRICT or COUNTY as an additional insured.

a. Workers' Compensation and Employers' Liability Insurance Requirement

In the event SPECIAL DISTRICT has employees who may perform any services pursuant to this Agreement, SPECIAL DISTRICT shall submit written proof that SPECIAL DISTRICT is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

SPECIAL DISTRICT shall require any contractor or sub-contractor to provide workers' compensation for all of the contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by the insurance afforded by SPECIAL DISTRICT. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, SPECIAL DISTRICT shall provide and/or require each contractor or sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

SPECIAL DISTRICT shall also maintain employers' liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. Liability Insurance Requirements

(1) SPECIAL DISTRICT shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of SPECIAL DISTRICT's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. SPECIAL DISTRICT shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(b) Automobile Liability Insurance against claims of Personal

Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

(2) The Commercial General Liability and Automobile liability Insurance required herein shall include an endorsement naming the COUNTY and COUNTY's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided on ISO form CG 20 10 Edition date 11/85 or such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of ten thousand (\$10,000) must be declared on the Certificate of Insurance or other documentation provided to COUNTY and must be approved by the COUNTY Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, SPECIAL DISTRICT at its option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. Cancellation of Insurance — The above stated insurance coverages required to be maintained by SPECIAL DISTRICT shall be maintained until the completion of all of SPECIAL DISTRICT's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the SPECIAL DISTRICT must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or 30 days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. SPECIAL DISTRICT shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-; VII" rating. Any exception to these requirements must be approved by the COUNTY Risk Manager.

e. If SPECIAL DISTRICT is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, SPECIAL DISTRICT shall provide coverage equivalent to the insurance coverages and endorsements required above.

COUNTY will not accept such coverage unless COUNTY determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by SPECIAL DISTRICT is equivalent to the above-required coverages.

f. All insurance afforded by SPECIAL DISTRICT pursuant to this Agreement shall be primary to and not contributing to any other insurance maintained by COUNTY. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the COUNTY.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve SPECIAL DISTRICT for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by SPECIAL DISTRICT to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by SPECIAL DISTRICT. COUNTY, at its sole option, may terminate this Agreement and obtain damages from SPECIAL DISTRICT resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to SPECIAL DISTRICT, COUNTY shall deduct from sums due to SPECIAL DISTRICT any premiums and associated costs advanced or paid by COUNTY for such insurance. If the balance of monies obligated to SPECIAL DISTRICT pursuant to this Agreement is insufficient to reimburse COUNTY for the premiums and any associated costs, SPECIAL DISTRICT agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve SPECIAL DISTRICT of its obligation to obtain and maintain the insurance coverages required by this Agreement.

i. Subcontractor Requirements

(1) If SPECIAL DISTRICT hires a consultant to provide professional services, such as counseling or substance abuse treatment services, under this Agreement, SPECIAL DISTRICT shall require its consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

(2) During the Project, SPECIAL DISTRICT shall require that all contractors hired by SPECIAL DISTRICT to perform work with CRF Program funds maintain the following insurance coverages at all times during the performance of said work:

(a) Commercial General Liability Insurance including Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work. The

amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles, with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

10. Assignment

SPECIAL DISTRICT shall not assign any right, title or interest it may acquire by reason of this Agreement except upon first obtaining the written consent of the COUNTY.

11. Remedies

No right or remedy herein conferred on or reserved to COUNTY is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

12. Non Waiver

No covenant or condition of this Agreement to be performed by SPECIAL DISTRICT can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by SPECIAL DISTRICT. A waiver of one covenant or condition by COUNTY does not grant or imply a waiver of any other covenant or condition to be performed by SPECIAL DISTRICT. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

13. Incorporation of Prior Agreements and Amendments

This Agreement, including all attachments hereto and any reference to pertinent Federal or State laws and regulations, contains the entire Agreement between the parties, relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

14. Severability

Should any part, term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

15. Signatory Authority

Each individual executing this Agreement on behalf of each party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. SPECIAL DISTRICT shall, prior to Agreement execution by COUNTY's Board of Supervisors, deliver to COUNTY a copy of the resolution or minute order of SPECIAL DISTRICT's governing body authorizing the execution of this Agreement.

16. Modifications or Changes

The terms of this Agreement may only be modified by the written consent of the parties hereto.

17. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

18. Term of Agreement

The term of this Agreement shall commence as of the date first written above and shall terminate December 30, 2020. Notwithstanding the foregoing, this Agreement shall be in effect only during such time as COUNTY maintains its CRF Program in effect in Kern County under the CRF Program Grant to COUNTY, except that SPECIAL DISTRICT shall retain records as is required in **Section 6** entitled "Records and Administration".

19. Termination

Notwithstanding **Section 18**, above, COUNTY and SPECIAL DISTRICT each reserve the right to terminate this Agreement according to the standards and requirements found at 2 CFR 200.339 upon giving 30 days' notice to the other party. In the event this Agreement is terminated, SPECIAL DISTRICT shall furnish to COUNTY the results of its work or copies of any and all documents relating to Project in SPECIAL DISTRICT's possession up to the date of termination. SPECIAL DISTRICT's failure to perform or observe any term, covenant or condition of this Agreement shall constitute

an event of default under this Agreement and provide grounds for immediate termination of the Agreement.

20. Execution

This Agreement is effective upon the date indicated herein above. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

21. Notices

Notices shall be sufficiently given hereunder if personally served in writing upon the Clerk of the Board of Supervisors of COUNTY or the SPECIAL DISTRICT Clerk of SPECIAL DISTRICT or if sent by the United States mail, postage prepaid, as follows:

If directed to COUNTY:

County Administrative Office
County Administrative Center
1115 Truxtun Avenue, Fifth Floor
Bakersfield, California 93301

If directed to SPECIAL DISTRICT:

22. Venue

This Agreement has been entered into and is to be performed in the County of Kern, California. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be brought in the County of Kern.

23. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, option, or determination of either COUNTY or SPECIAL DISTRICT, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, option, or determination to be arbitrary, capricious, or unreasonable.

24. No Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to COUNTY and SPECIAL DISTRICT. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COUNTY and SPECIAL DISTRICT that any such person or entity, other than COUNTY and SPECIAL DISTRICT, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

25. Prohibited Interest of Officials and Employees

In addition to the conflict of interest requirements in OMB Circulars A-102 and A-110, no person who is an employee, agent, consultant, officer, or elected or appointed official of COUNTY, or SPECIAL DISTRICT (or of any designated public agency) that receives CRF Program funds and who exercises any functions or responsibilities with respect to the CRF Program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed pursuant to this Agreement. SPECIAL DISTRICT shall incorporate or cause to be incorporated, in all contracts or subcontracts, relating in any manner to this Agreement, a provision prohibiting such interest.

The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the COUNTY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, COUNTY may immediately terminate this Agreement by giving written notice thereof. SPECIAL DISTRICT shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

26. Audit

In the event SPECIAL DISTRICT expends at least seven hundred fifty thousand dollars (\$750,000) in federal financial assistance in any single fiscal year, from all sources combined, it shall arrange at its own expense for performance of an audit in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F, incorporated herein by this reference as if set forth in full.

The results of the audit must be submitted to COUNTY within 30 days of completion. Acceptance of SPECIAL DISTRICT's audit reports by COUNTY does not prohibit COUNTY from performing any additional audit work required to follow up on findings, as deemed necessary by COUNTY, or as necessary for COUNTY to comply

with any administrative or audit requirements imposed by the Federal or State government.

27. Other Federal Requirements

Use of CRF Program funds must comply with the following additional requirements:

(a) Definitions:

1. **Government** means the United States of America and any executive department or agency thereof.

2. **Third Party subcontract** means a subcontract at any tier entered into by SPECIAL DISTRICT or subcontractor, financed in whole or in part with Federal assistance originally derived from CRF Program funds.

(b) Federal Changes

1. SPECIAL DISTRICT shall at all times comply with all applicable regulations, policies, and procedures, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. SPECIAL DISTRICT's failure to so comply shall constitute a material breach of this contract.

2. The SPECIAL DISTRICT agrees to include the above clause in each third party subcontract financed in whole or in part with CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(c) Access to Records

1. The SPECIAL DISTRICT agrees to provide the County, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the SPECIAL DISTRICT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

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

3. The SPECIAL DISTRICT agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five (5) years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, SPECIAL DISTRICT agrees to maintain same until the County, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

4. The requirements set for in paragraphs 1, 2, and 3 above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 6 and Section 26 of the Agreement.

(d) Debarment and Suspension

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

2. SPECIAL DISTRICT represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. SPECIAL DISTRICT agrees that neither SPECIAL DISTRICT nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.

3. The SPECIAL DISTRICT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid and throughout the period of any contract that is funded by CRF Program funds and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. SPECIAL DISTRICT agrees to the provisions of the below, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions. For purposes of this Agreement and the Debarment, Suspension, Ineligibility and Voluntary Exclusion Certification, SPECIAL DISTRICT is the "prospective lower tier participant."

4. The SPECIAL DISTRICT agrees to include paragraphs 1 and 2 above in each third party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. This certification is a material representation of fact relied upon by

County. If it is later determined that the SPECIAL DISTRICT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(e) No Federal Government Obligations To SPECIAL DISTRICT

1. The County and SPECIAL DISTRICT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, SPECIAL DISTRICT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

2. The SPECIAL DISTRICT agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(f) Equal Employment Opportunity Compliance (applicable to all construction contracts awarded meeting the definition of "federally assisted construction contract" under 41 CFR 61-1.3)

SPECIAL DISTRICT agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

1. During the performance of this Agreement, the SPECIAL DISTRICT agrees as follows:

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

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

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

with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the SPECIAL DISTRICT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (viii) The SPECIAL DISTRICT will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The SPECIAL DISTRICT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

The SPECIAL DISTRICT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for,

Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the SPECIAL DISTRICT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the SPECIAL DISTRICT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such SPECIAL DISTRICT; and refer the case to the Department of Justice for appropriate legal proceedings.

(g) Anti-Kickback Act Compliance (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36 (i)(4))

SPECIAL DISTRICT agrees to comply with the Copeland "Anti-Kickback" Act 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

Subcontracts. The SPECIAL DISTRICT or subcontractor shall insert in any subcontracts the clause above and such other clauses as the Government may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The SPECIAL DISTRICT shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

(h) Davis-Bacon Act Compliance (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County's expenses incurred in connection with the services provided under this Agreement, SPECIAL DISTRICT agrees, and all transactions regarding this Agreement will, comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements by Department of Labor regulations (29 CFR Part 5) as set forth below.

1. The SPECIAL DISTRICT shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at

<http://www.dir.ca.gov/lcp.asp>. SPECIAL DISTRICT shall pay wages not less than once a week.

2. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Kern." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

(i) Contract Work Hours and Safety Standards (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

1. Compliance. SPECIAL DISTRICT agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

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

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of Paragraph 2, the SPECIAL DISTRICT and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such SPECIAL DISTRICT and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 2 in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph 2.

4. Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the SPECIAL DISTRICT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph 3 of this section.

5. Subcontracts. The SPECIAL DISTRICT or subcontractor shall

insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

(j) Notice of Reporting Requirements

1. SPECIAL DISTRICT acknowledges that it has read and understands the reporting requirements of Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

2. The SPECIAL DISTRICT agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(k) Notice of Requirements Pertaining to Copyrights

1. SPECIAL DISTRICT agrees that Government shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

- (i) The copyright in any work developed with the assistance of funds provided under this Agreement;
- (ii) Any rights of copyright to which SPECIAL DISTRICT purchases ownership with the assistance of funds provided under this Agreement.

2. The SPECIAL DISTRICT agrees to include paragraph 1 above in each third party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(l) Patent Rights (applicable to contracts for experimental, research, or development projects financed by CRF Program funds; 44 CFR §13.36(i)(8))

1. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and SPECIAL DISTRICT agree to take actions necessary to provide immediate notice and a detailed report to Government.

2. Unless the Government later makes a contrary determination in writing, irrespective of SPECIAL DISTRICT's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization,

institution of higher education, individual), the County and SPECIAL DISTRICT agree to take the necessary actions to provide, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

3. The SPECIAL DISTRICT agrees to include paragraphs 1 and 2 above in each third-party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by CRF Program funds.

(m) Energy Conservation Requirements

1. The SPECIAL DISTRICT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

2. The SPECIAL DISTRICT agrees to include paragraph 1 above in each third-party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(n) Clean Air and Water Requirements (applicable to all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

1. SPECIAL DISTRICT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to Government and the Regional Office of the Environmental Protection Agency (EPA).

2. SPECIAL DISTRICT agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to Government and the appropriate EPA regional office.

3. The SPECIAL DISTRICT agrees to include paragraph 1 and 2 above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by CRF Program funds.

(o) **Termination for Convenience of County** (applicable to all contracts in excess of \$10,000)

See Section 19 of the Agreement.

(p) **Termination for Default** (applicable to all contracts in excess of \$10,000)

See Section 19 of the Agreement.

(q) Changes

See Section 16 of the Agreement.

(r) Lobbying (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)

1. SPECIAL DISTRICT shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. SPECIAL DISTRICT agrees to the provisions of the below, Certification Regarding Lobbying, (applicable for contracts or subcontracts in excess of \$100,000).

3. SPECIAL DISTRICT agrees to include paragraphs 1 and 2 above in each third-party subcontract financed in whole or in part with Federal assistance provided by CRF Program funds. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(s) MBE/WBE Requirements

SPECIAL DISTRICT shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the Agreement.

PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used

whenever possible as sources of supplies, construction, equipment, or services. If SPECIAL DISTRICT fails to take the steps outlined below, it shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the Agreement.

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
6. If subcontracts are to be let, SPECIAL DISTRICT shall take the affirmative steps listed in 2 CFR 200.321.

(t) Procurement of Recovered Materials (2 CFR 200.322)

SPECIAL DISTRICT shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this Agreement, the SPECIAL DISTRICT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: (1) competitively within a timeframe providing for compliance with the contract performance schedule; (2) meeting contact performance requirements; or (3) at a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(u) Incorporation of Uniform Administrative Requirements

The preceding provisions include, in part, certain standard terms and conditions required by Government, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by Government are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Government mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. SPECIAL DISTRICT shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the Government terms and conditions.

(v) Program Fraud and False or Fraudulent Statements or Related Acts

The SPECIAL DISTRICT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the SPECIAL DISTRICT's actions pertaining to this Agreement.

(w) Drug-Free Workplace Act of 1988

SPECIAL DISTRICT, in executing this Agreement certifies that it and any of its agents or subcontractors will maintain a drug-free workplace in accordance with the requirements of 2 CFR 182.

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds.

SPECIAL DISTRICT is required to sign the certification below which specifies that neither SPECIAL DISTRICT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that SPECIAL DISTRICT will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without

modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

SPECIAL DISTRICT's Signature

Date

[[The remainder of this page intentionally left blank.]]

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SPECIAL DISTRICT's Signature

Date

[[Signature page follows.]]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers and agents hereunto duly authorized as of the day and year first above written.

APPROVED AS TO CONTENT:

COUNTY OF KERN

BY _____

James Zervis, Chief Operating Officer

BY _____

Ryan J. Alsop, Chief Administrative Officer

Date

"COUNTY"

APPROVED AS TO FORM:

Office of County Counsel

"SPECIAL DISTRICT"

Corporation Number _____
Employer's Identification Number _____

BY _____

Ann S. Garza, Deputy

BY _____

"SPECIAL DISTRICT"