

Burney Water District
20222 Hudson Street, Burney, CA 96013
Telephone (530) 335-3582
<http://www.BurneyWater.org>

Contractor: Bear Mountain Construction,
2435 Radio Lane
Redding, CA 96001

District Approval Date:
Purchase Order No.:

THIS CONTRACT is made and entered into this ____ day of ____, 20____, by and between the BURNEY WATER DISTRICT, a County Water District, hereinafter referred to as "District" and BEAR MOUNTAIN CONSTRUCTION, hereinafter referred to as "Contractor." District and Contractor are sometimes hereinafter referred to as the "Parties."

RECITALS:

WHEREAS, District is a County Water District pursuant to Board Resolution No. 82-12, and was formed pursuant to Water Code section 30000 et seq.;

WHEREAS, District is authorized as a County Water District to negotiate contracts for project construction without competitive bids pursuant to applicable law (see *Associated Builders & Contractors, Inc. v. Contra Costa Water District* (1995) 37 Cal.App.4th 466, 468);

WHEREAS, District desires to retain a person or firm without competitive bidding to provide the following services: Utility Repair and Maintenance; and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services; **NOW, THEREFORE**, for and in consideration of the Contract made, and the payments to be made by District, the parties agree to the following:

1. **Services.** Contractor agrees to perform the following services ("Services" or "Work") for the District: Contractor agrees to provide services on an as needed, or on-call, basis in the repair and maintenance of District Water and/or Wastewater systems, including but not limited to point repairs, pipe replacements, water leaks, water meter replacements and other work related to above and underground water and sewer utilities. Services may be for emergencies and scheduled work and/or to support District staff in the repair and maintenance of District Water and Wastewater systems. No Services may be subcontracted without the prior written consent of the District.
2. **Response Time for Emergency Services.** Anticipated response time to a District emergency, mobilize and arrive on site within 3 hours. If the Contractor is unable to respond within the anticipated response time, then the contractor will provide an approximate time for arrival to the emergency. An emergency may be, but not limited to, a water main break, power outage that affects water and/or sewer utilities, sanitary sewer overflows, and other unplanned events. Time is of the essence.
3. **Compensation.** District shall pay Contractor on a time and materials basis, not to exceed \$14,000 over the period of the contract, based on the following Payment Rate Schedule (see attachment A). Any sum in excess (singular or combined work) of the not-to-exceed amount shall be presented to the District Board for prior approval. If an increase in the not-to-exceed amount during the contract time is approved by the District Board, it will be added as an amendment to this contract.
4. **Payment.** Payment shall be made to Contractor upon District's acceptance of Work. Contractor shall submit an invoice for payment, which must include Purchase Order No. _____ and properly supported with documentation evidencing time and materials for such Work. Undisputed Invoices shall be paid within 30

days of receipt. District may withhold payment (or portions thereof) in the event of a contested invoice, stop payment notice, Contractor's material violation, or threat, of any Contract provision, or Contractor's failure to maintain reasonable progress toward completion of the Work. District may withhold retention proceeds pursuant to Public Contract Code section 7107 as related to the Work or portions of the Work. Contractor shall provide a Conditional Waiver and Release on Progress Payment in the form required by Civil Code section 8132 with each invoice. Upon completion, Contractor shall provide a Conditional Waiver and Release on Final Payment in the form required by Civil Code section 8136 along with the final invoice; or an Unconditional Waiver and Release on Final Payment in the form required by Civil Code section 8138 upon receipt of final payment.

5. **Time for Completion.** Contractor shall complete all Work no later than an agreed upon time for each repair/maintenance task or job.
6. **Prevailing Wages.** This project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations. A determination of the general prevailing rates of per diem wages and holiday and overtime work applicable to the Work is available for review upon request at the District Office. Contractor and subcontractors will not pay less than the prevailing rates of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, state of California, for the type of work performed and the locality in which the Work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code. The statutory provisions for penalties for failure to comply with state's wage and hour laws will be enforced (Labor Code § 1813). Contractor shall forfeit as penalty to the District the sum of up to two hundred dollars (\$200.00) for each calendar day or portion thereof, and for each worker paid less than the prevailing rates.
7. **Hours of Work.** Eight hours labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times the basic rate of pay for work in excess of eight hours during a calendar day or 40 hours during a calendar week. Contractor shall forfeit as penalty to the District twenty-five dollars (\$25.00) for each worker, including subcontractors' workers, for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of this provision, as provided in California Labor Code section 1815. Contractor shall comply with Labor Code § 1777.5 concerning employment of apprentices. Contractor shall comply with California Labor Code Section 1776 for payroll accounting.
8. **Change Orders.** No extra or changed Work shall be performed except pursuant to a written change order signed by the District and Contractor, and setting forth the basis upon which payment is to be made. No claim for additional compensation shall be valid unless pursuant to such a change order which has been approved by the District's Board
9. **Contractor Qualifications and Standard of Work.** Contractor warrants that it is fully qualified to perform the Work, and holds all applicable licenses, permits, and other necessary qualifications. Contractor's License No. is [_____]. As required by law, Contractor and all subcontractors shall be properly licensed and regulated by the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 98827, <http://www.cslb.ca.gov>. As required by law, Contractor and all subcontractors shall be properly registered as public works contractors by the Department of Industrial Relations at <https://www.dir.ca.gov/public-works/contractor-registration.html> or current URL. Contractor shall perform and complete in a good and skilfull manner all the Work agreed for each call to repair and/or support the District in its utility work and to furnish at its cost and expense all tools, equipment, labor and materials necessary therefor, except as specifically agreed to be furnished by District. Rejected Work shall be removed and replaced by Contractor in an acceptable manner at its sole expense and liability for any delay damages the District incurs as a result of such defective Work. Contractor shall take all precautions necessary for the safety and prevention of damage to property on/or adjacent to the work site, and for the safety of and prevention of injury to persons, including District's employees, Contractor's employees, and third persons, on/or adjacent to the work site. Contractor shall be responsible for complying with all applicable local, state, and federal laws and regulations.

10. Subcontractors. Contractor agrees to bind every subcontractor, if approved by District to perform Work, by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification to the fullest extent permitted by law, insurance, and warranty requirements.

11. TIME OF CONTRACT:

This Contract shall commence on _____, and shall terminate on _____. Insurance Policies must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the Work.

12. Guarantees. Contractor warrants to District that all materials and equipment furnished shall be new unless otherwise specified, and Contractor guarantees Work shall be of good quality and free from defect in materials and workmanship for the period of two years from the date of final acceptance by the District and shall repair and replace such Work, together with other displaced work, without expense to the District, ordinary wear and tear, usual abuse or neglect excepted. District may have the defects repaired and made good at the expense of the Contractor, if Contractor fails to comply with the above-mentioned conditions within a week after being notified in writing. All warranties and guarantees of Contractor's suppliers and materialmen shall be assigned to Owner or shall name Owner as an additional beneficiary. This provision shall not preclude other remedies of Owner under applicable law.

13. Suspension, Termination. District may suspend or terminate Work upon three (3) days' written notice to Contractor for its own convenience. If Work is suspended or terminated due to no fault of Contractor, District shall pay Contractor for services satisfactorily performed, as solely determined by the District including time and materials provided until the date of suspension or termination. Upon termination, the District may complete the Work by any means it deems expedient

14. Insurance. Contractor shall maintain and prior to commencement of the Work shall provide the District proof of the following insurance:

- *Commercial General Liability:* including coverage for defense costs in addition to limits, no less than \$1,000,000 per occurrence and \$2,000,000 per aggregate.
- *Workers Compensation Insurance:* Covering all employees as required by state law.
- *Automobile Liability:* Any Auto: combined single limit of \$1,000,000; Excess Liability insurance: \$2,000,000;

Coverage shall apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the District. Contractor agrees to waive subrogation rights against the Additional Insureds regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise. On all insurance policies except for worker's compensation, the District and its directors, agents, officers, employees, and volunteers shall be named as additional insureds ("Additional Insureds"). The Contractor is solely responsible for payment of any and all premiums, deductibles, or self-insurance retentions.

15. Indemnity. To the furthest extent permitted by California law, Contractor shall indemnify, defend and hold harmless District and its officers, directors, employees, volunteers, and agents (the "Indemnified Parties") from and against any and all claims, demands, causes of action, costs, expenses, loss, damage, claims on liens, injury of any kind, and liability whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contract by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or sub-contractors of Contractor, including without limitation the payment of all consequential, compensatory, punitive damages and extra-contractual liability. Contractor agrees that it owes a duty to defend in addition to the duty to indemnify and that duty is immediate upon tender. Nothing herein is intended to relieve the District from liability for the District's active negligence. The provisions of this section shall survive the termination or expiration of this Agreement.

16. Limitation of District Liability. District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue or lost bonding capacity, arising out of or in connection with this Contract for the Services, except to the extent of the District's own active negligence.

17. Independent Contractor. Contractor shall act as an independent contractor and shall not be an employee, officer, agent, partner, or joint venture of the District by virtue of this Agreement. Contractor shall be solely responsible for its own Workers' Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable and fully responsible for the acts, omissions, or errors of its employees, agents, or subcontractors. The Contractor acknowledges that: (1) it is free from the control and direction of the District in connection with the performance of the Work, both under the Contract for the performance of such Work and in fact; (2) the Contractor performs work that is outside the usual course of the District's business; and (3) the Contractor is customarily engaged in an independently established trade, occupation, or business of the same nature as the Work performed for the District. Contractor shall defend, indemnify and hold District harmless from any claims, demands or liabilities, arising from Contractor's misclassification of its own workers providing Work hereunder as independent contractors.

18. Force Majeure Clause. Contractor or the District shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, epidemics or pandemics, such as COVID-19, or other events that are outside of a Party's reasonable control, when satisfactory evidence thereof is presented to the other Party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing. For avoidance of doubt, the District's obligation to pay Contractor is excused to the extent the Contractor is not performing its obligations during a force majeure event.

19. Compliance with Laws. Contractor shall give all notices and comply with all applicable federal and state laws, ordinances, rules, and regulations related to the Work. Contractor shall bear all costs arising from any Work that Contractor or its agents or subcontractors perform in violation of such laws, ordinances, rules, or regulations.

20. Underground Conditions. To the extent that the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Contractor.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work.

That District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described herein. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

21. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in Shasta County.

22. Binding Contract. This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns. Each individual signing below represents that they have authority to bind the Party on whose behalf they are signing.

23. Invalid Term. If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

24. Non-Assignment. This Agreement is a personal services agreement. Contractor shall not assign this Agreement or any portion of it voluntarily to any third party without the prior written consent of the District, and any purported assignment without prior written consent of the District shall automatically terminate this Agreement.

25. Claims and Disputes. Contractor shall continue to perform its Work under the Contract and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or legal proceeding, except by written agreement by the District.

26. Claims Resolution Procedure (Public Contract Code § 9204).

(a) **Claims Defined.** For purposes of this Contract, a "Claim" means a separate demand by the Contractor for one or more of the following:

1. A time extension, including relief from damages or penalties for delay;
2. Payment by the District of money or damages arising from work done by, or on behalf of, the Contractor for which payment is not otherwise expressly provided for or the Contractor is not otherwise entitled to; or
3. Payment of an amount disputed by the District.

(b) **Submission of Claims.** The Contractor shall submit Claims by written notice, with reasonable documentation, to the District.

(c) **Response.** Within forty-five (45) days of receipt of a Claim of \$375,000 or less, or sixty (60) days of receipt of a Claim over \$375,000, the District shall provide a written response. The time period may be extended by mutual agreement.

(d) **Meet and Confer.** If the Contractor disputes the response, the Contractor shall so notify the District in writing within fifteen (15) days of receipt, and the parties shall meet and confer within thirty (30) days to attempt to resolve the Claim.

(e) **Mediation.** If the Claim is not resolved through the meet-and-confer process, the Claim shall be submitted to nonbinding mediation, with the costs shared equally between the District and the Contractor.

(f) If a Claim, or any portion thereof, remains unresolved upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claim resolution requirements as provided in Public Contract Code section 20104.

(g) **Retention and Payments.** Amounts not in dispute shall continue to be paid, and the District shall not withhold retention on work performed solely because of the dispute.

(h) **Statutory Rights Preserved.** This Claims procedure is intended to implement Public Contract Code § 9204. Nothing in this Contract shall be construed to waive, modify, or limit the application of § 9204. Any attempted waiver is null, void, and unenforceable.

27. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:
Burney Water District
20222 Hudson Street
Burney, CA 96013

Contractor
Bear Mountain Construction
PO Box 492968
Redding, CA 96049

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28. Attorney's Fees. The party prevailing in any litigation commenced between the parties concerning this Contract shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney's fees in such litigation.

29. Entire Agreement. This Contract sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements, understandings, written or oral, between the Parties pertaining to the subject matter thereof.

30. Execution. The Parties may execute this Contract in several counterparts, each of which the Parties shall deem an original, but all of which together shall constitute one and the same agreement. A copy of a handwritten signature shall be as good as an original.

ACCEPTED AND AGREED on the date indicated below:

BURNEY WATER DISTRICT

CONTRACTOR:

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____