

SERVICES CONTRACT

1. The Parties. The Parties to this Contract are:

The TOMALES VILLAGE COMMUNITY SERVICES DISTRICT (the "District"), a California Special District, and Natural Systems Utilities-CA, Inc. ("Contractor").

2. Term. The Effective Date of this Contract is July 1, 2017 and it shall terminate at the close of business on June 30, 2020, unless extended annually by mutual consent of the District and the Contractor an additional two years for a total of five years; or unless terminated earlier in accordance with the provisions set forth below in Sections 6 and 7; or extended beyond the five years in accordance with the provisions of Addendum Section C6.

3. Additional Terms. Additional terms and provisions of this Contract, including the description of the services to be provided and the agreement concerning compensation and reimbursement of expenses, are set forth in the Addendum to Services Contract attached hereto and incorporated into this Contract by this reference. The Addendum can be altered at any time with mutual consent of the District and the Contractor.

4. Performance Monitoring. In order to monitor Contractor's performance under this Contract: (a) Contractor shall submit reports requested by the District to disclose compliance information; (b) the District shall have the right to inspect Contractor's documents, activities and circumstances as appropriate to monitor compliance; and (c) the District will conduct a formal evaluation of Contractor's performance annually, measuring criteria set by the District's Board of Directors.

5. Events of Default. The following constitute events of default:

A. Any material misrepresentation made by Contractor to the District, whether negligent or willful, and whether in the inducement or in the performance of the Contract.

B. Contractor's material failure to perform any of its obligations under the Contract including the following: (a) failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services; (b) failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory; (c) discontinuance of the Services for reasons within Contractor's reasonable control; (d) failure to comply with the District's terms and conditions as set forth in the RFP; (e) failure to comply with any other material term of the Contract.

C. (a) The filing by Contractor of a petition or proceeding under applicable state or federal bankruptcy or solvency laws or statutes, which petition or proceeding has not been dismissed within thirty (30) days after the date of its filing; (b) the initiation

against Contractor by any creditor of an involuntary petition or proceeding under any state or federal bankruptcy or insolvency law or statute, which petition or proceeding is not dismissed within thirty (30) days after the date of filing; or (c) the appointment of a receiver for Contractor with respect to all or a portion of its assets.

D. Failure to comply with the provisions in the Contract requiring compliance with all laws in the performance of the Contract.

6. Remedies. Upon the occurrence of any event of default the District shall have the right to declare Contractor in default. The District may in its sole discretion give Contractor an opportunity to cure the default within thirty (30) days. The District will give Contractor written notice of the default, after which the District may invoke any or all of the following remedies:

A. The right to terminate the Contract as to any or all of the Services yet to be performed;

B. The right of specific performance, an injunction, or any other appropriate equitable remedy;

C. The right to money damages;

D. The right to withhold all or any part of Contractor's compensation under this Contract.

7. A. Termination for Cause. The District reserves the right to terminate this Contract in the event Contractor breaches or violates any term or terms of the Contract. In the event of such termination for cause, the District shall pay for services performed and accepted by the District that are in compliance with the requirements of this Contract prior to the date of termination.

B. Termination for Convenience. The District and the Contractor reserve the right to terminate this Contract without showing cause upon giving one hundred eighty (180) days written notice to the Contractor. The District shall only pay for services performed prior to the effective date of termination.

8. Ownership of District Data. Any and all data or confidential information that may be provided to or made available to Contractor ("District Data") is and shall remain the property of the District. Contractor and its employees, agents and subcontractors and their employees and agents shall not: (a) use the District Data other than in connection with the performance of the Services; (b) disclose, sell, assign, lease or otherwise provide the District Data to any third parties; or (c) commercially exploit the District Data.

9. Warranties and Representations. In connection with signing and carrying out the Contract, Contractor represents and warrants to the District that: (a) Contractor is appropriately licensed under California law to perform the Services specified in this

Contract and will perform no Service for which Contractor is not appropriately licensed; and (b) Contractor is competent to perform the Services and will provide experienced and competent personnel to carry out the Services in a timely fashion.

10. Notices. Notices permitted or required under this Contract shall be sent: (a) to Contractor by delivery to the Contractor's primary contact person identified in the attached Addendum to Services Contract; (b) to the District by delivery to Tomales Village Community Services District, PO Box 303, Tomales, CA 94971; or (c) to such other address that the party may designate by notice to the other which is given in accordance with the terms of this paragraph. Notice shall be deemed to have been given five (5) days after being sent by Registered or Certified Mail, postage prepaid, return receipt requested.

11. Insurance. Contractor is required to procure and maintain insurance as described below. Contractor will provide certificates of insurance showing that it has the required policies. Each company providing insurance coverage shall be authorized to do business in the State of California and shall have a Best's rating of no less than A. The insurance shall require sixty (60) days prior written notice to be given to the District in the event coverage is substantially changed, suspended, voided, cancelled, or not renewed. The Contractor is not provided workers' compensation insurance by the District.

A. General Liability, with limits of liability not less than \$1,000,000 per occurrence.

B. Automobile Liability, with limits of liability not less than \$1,000,000 per occurrence.

C. Professional Liability, with limits of liability not less than \$1,000,000 per occurrence.

12. Disputes. This Contract shall be governed by the laws of the State of California. The Parties agree that any dispute between them arising out of or relating to this Contract shall be resolved by binding arbitration before one arbitrator under the commercial rules of the American Arbitration Association. The parties shall attempt to agree on the arbitrator. If they fail to reach agreement, the arbitrator shall be appointed by the Presiding Judge of the Superior Court of Marin County, California. Unless the parties agree otherwise, the arbitration shall be held in Tomales, California. The prevailing party in any such arbitration or other legal action shall be entitled to recover its reasonable attorney's fees and costs.

13. Indemnification and Limitation of Liability. Contractor shall indemnify and hold the District, its employees, officers, directors, agents, consultants, contractors, and

representatives harmless from and against all liability, including attorneys' fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of Contractor, its employees, officers, directors, agents, consultants, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Contract, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of Contractor, its employees, officers, directors, agents, consultants, subcontractors, and representatives.

Notwithstanding any other term in the Contract, in no event shall Contractor's total liability to the District and any of the District's officers, directors, employees, agents, contractors, or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Contract from any cause or causes, including, but not limited to, Contractor's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed an amount equal to \$250,000.00.

The District shall indemnify and hold Contractor, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives harmless from and against all liability, including attorneys' fees and costs, for all damages of any nature whatsoever, including employee related injury or illness, any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the fault, failure, error, omission, negligent, or wrongful act of the District, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives for which it may be responsible in the performance or purported performance of its obligations under this Contract, but only to the extent of and in proportion to the degree of fault, failure, error, omission, negligent, or wrongful act of the District, its employees, officers, directors, agents, consultants, contractors, subcontractors, and representatives.

This obligation to indemnify shall survive the termination or expiration of this Contract.

14. Independent Contractor. This Contract is not intended to and will not constitute, create, or give rise to a joint venture, partnership, or any other business association or organization of any kind between Contractor and the District. The rights and the obligations of the Parties are only those expressly set forth in this Contract. Contractor shall perform under the Contract as an independent contractor and not as a representative, employee, agent, or partner of the District.

15. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders.

16. Modifications and Amendments. No changes, amendments or modifications of the Contract, or any part hereof, shall be valid unless in writing and signed by both Parties.

17. Assigns. All of the terms and conditions of the Contract are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. Neither Contractor nor the District may assign or transfer all or any portion of this Contract without the prior written consent of the other Party.

18. Cooperation. If this Contract is terminated for any reason, or if it expires on its own terms, Contractor agrees to: (a) make every effort to assure an orderly transition to another provider of the Services and an orderly demobilization of its own operations in connection with the Services; (b) promptly return all District property, including District Data (as defined in Section 8 above), files and documents; and (c) will otherwise comply with the reasonable requests of the District in connection with the termination or expiration.

19. Waiver. The making or failure to make any payment, take any action or waive any right under this Contract shall not be deemed to be an amendment of this Contract nor a consent to such action or failure to act, or to any other action or failure to act. No waiver by either Party of a breach of any provision of this Contract shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right or remedy under this Contract.

20. Severability. In the event that any provision of this Contract is deemed to be invalid by reason of the operation of any law or by reason of an interpretation by any court or other governmental body, this Contract shall be construed as not containing that provision and all other provisions of this Contract shall remain in full force and effect.

21. Non-Liability of Public Officials. Contractor will not charge any director, officer, representative, volunteer, official, employee or agent of the District personally with any liability or expenses of defense or hold any director, officer, representative, volunteer, official, employee or agent of the District personally liable to it under any term or provision of the Contract or because of the District's execution, attempted execution or breach of the Contract.

22. Confidentiality. Contractor acknowledges that it will be entrusted with or have access to valuable and confidential information, including documents, data and records of the District. With respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. If Contractor is presented with a subpoena or request concerning any such information which may be in Contractor's possession by reason of the Contract, Contractor shall immediately give notice to the District so that the District will have the opportunity to contest such subpoena or request before the documents, data or records are submitted to a court or third party. Contractor is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

23. Entire Contract. This Contract, together with the attached Addendum to Services Contract and the Request for Proposal, constitutes the entire agreement and understanding between the parties related to its subject matter. All prior or contemporaneous conversations, negotiations, agreements and representations with respect to the subject matter hereof are superseded by the written terms of this Contract. If there is a conflict between the language in this Contract and language contained in the RFP, then the language in this Contract shall govern.

24. Authority. The persons signing this Contract certify that they have the power and authority to enter into and execute this Contract on behalf of the contracting Parties.

The Parties hereby agree to the terms and provisions set forth in this Services Contract as of the Effective Date set forth above, and agree to be bound by the terms and provisions, including those set forth in the attached Addendum to Services Contract.

TOMALES VILLAGE COMMUNITY
SERVICES DISTRICT

NATURAL SYSTEMS UTILITIES-CA, INC.

By: 
Title: General Manager

By: 
Title: Vice President

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A. Contractor's Primary Contacts.

Operations:

Steve Chase

Tomales - Chief Plant Operator

707-254-1931

schase@naturalsystemsutilities.com

Contract:

Andre Zinkevich

Vice President

azinkevich@naturalsystemsutilities.com

B. Services to be Provided.

The Services to be provided under this Contract are described in detail in the Scope of Work Attached as Addendum Section D.

In the event that Contractor is requested to provide services that are beyond the Scope of Work as described herein, those services will be compensated as set forth in Addendum Section C.

C. Compensation and Reimbursement of Expenses.

1. The initial Monthly Service Charge shall be \$4095.64.
2. The Monthly Service Charge will be billed to the District at the beginning of each month services are to be provided. This fee is intended to cover all routine operation, management and maintenance services for the Facilities up to the limits specified in these Specifications. The monthly service charge includes:
 - a. Employee salaries, benefits, employers' taxes, workers compensation insurance for services as identified in the scope of services.
 - b. Vehicles and hand tools.
 - c. Plant management, supervision, record keeping, and reporting.
 - d. Answering service 24-7 availability.
 - e. Customer service calls initial telephone response.
 - f. Contractor administration, overhead and profit.
3. Compensation for later years of the agreement will be adjusted annually in December starting with December 2018 for the period starting January 1, 2019 and annually for January 1st thereafter. The adjustment will be based on the U.S. Department of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco- Oakland area. The adjustment shall be based on the most recent period

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available compared with the prior adjustment effective date. The Contractor will modify District's invoice to reflect the calculated CPI adjustment at the beginning of each new year of the contract.

4. Non Scheduled Work- Non Scheduled Work will be billed in accordance with these Specifications in accordance with the Contractor's then-current Schedule of Rates. Non Scheduled Work will be invoiced at the end of the month in which the work was performed. Non Scheduled Work invoices shall include supporting documentation as necessary.
5. Time of Payment - Invoices are due upon receipt. District shall pay 1/2 % interest per month for balances over 30 days past due. District shall be responsible for reasonable collection fees, including but not limited to attorney's fees, for the collection of any outstanding balance.
6. Extension -The term of the Agreement will automatically extend beyond the normal expiration date under the same terms of these Specifications, or as amended, until a Notice of Termination is given.

D. Scope of Work

1. Relationship - The relationship of Contractor to District shall at all times be that of an independent contractor.
2. Ownership - Facilities, Supplies and Equipment- Property and Facilities owned, operated and maintained by the District, as well as tools, furniture, parts, documents and supplies owned by the District shall be the sole property of the District. Property provided by Contractor shall remain the sole property of the Contractor, except those items provided by Contractor for which specific payment has been received from District by Contractor for those items.
3. Data- Documents pertaining to operation, management and maintenance of the Facilities as currently exist, or as may be gathered by the Contractor in accordance with these Specifications, shall remain the sole property of the District. Written and/or electronic records shall be maintained on District property. Contractor's internal correspondence, personnel records, confidential financial reports, and other documents shall remain the property of the Contractor.
4. Facilities Included:
 - a. General - Contractor shall operate and maintain in accordance with these specifications.
 - b. Tomales Facilities- Facilities shall include all District collection system, pipelines, cleanouts and manholes; lower town lift station and force main; treatment plant facilities, effluent force main, storage reservoirs and irrigation system. Note that side sewers from the District "Y" connection are the property owner's responsibility.

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- c. Existing Conditions- Facilities are provided in their existing condition.

5. District Requirements

- a. Competency of Workers- Contractor shall provide personnel adequately skilled to perform their assigned duties. Where applicable, workers shall comply with certification, registration or license requirements for their duties.
- b. Staffing Levels - Contractor shall provide adequately staff to meet these Specifications.
- c. Plant Manager
 - i. Contractors Representative – Contractor shall designate a Chief Plant Operator to oversee system operations.
 - ii. Scope of Duties- The Plant Manager, or his designee, shall have responsibility for managing the Contractors activities under these Specifications.
 - iii. Qualifications - The Plant Manager shall be certified at a minimum of a Grade II Wastewater Treatment Plant Operator and shall have experience in the operation, management and maintenance of treatment systems similar to the District Facilities.
 - iv. Availability- The Plant Manager shall be available to consult with District staff during normal business hours. During non-business hours the Plant Manager or designee shall be available by telephone or pager seven (7) days per week, twenty four (24) hours per day.

6. Operation of Facilities

- a. Design Capacity- For the purposes of these Specifications, the design capacity of the treatment plant is 43,000 gallons per day.
- b. Regulatory Requirements- Contractor and District agree to operate, manage and maintain the Facilities in compliance with applicable regulations, including but not limited to:
 - i. San Francisco Regional Water Quality Control Board and Waste Discharge Order R2-2015-0019.
 - ii. Bay Area Air Quality Management District
 - iii. California Division of Industrial Safety (Cal OSHA)
 - iv. State Water Resources Control Board Operator Certification Regulations
 - v. Environmental Protection Agency (EPA)
 - vi. Contractor shall prepare and submit routine operating reports required by current regulations.
 - vii. Contractor is required to report all noncompliance events in accordance with the Waste Discharge Order.

7. Maintenance of Facilities

- a. Preventive and Corrective Maintenance- Contractor shall provide preventive and corrective maintenance as defined herein, and maintain the Facilities in good

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working order and repair.

- b. The contractor shall submit the proposed method of repair or replacement and associated costs for any materials or parts associated with repair or replacement to the District. In cases of an emergency nature, Contractor shall be authorized to proceed after a reasonable attempt is made to contact the District. Associated material or emergency repair costs will be Non Scheduled Work.
- c. Parts for corrective repairs to rotating or moving equipment such as motors, pumps, and valves and Irrigation spray head replacement parts will be considered non-scheduled work. Labor associated with corrective repair for aerators, pumps, valves, or sprinkler parts in excess of regular operations and maintenance visits will be considered as Non Scheduled Work.
- d. Sludge, Residue and Residuals -District is responsible for disposal of sludge, residue, grit, grease, chemicals, abandoned equipment and/or other residual materials produced by the District's facilities.
- e. Standard Maintenance Program- Contractor shall develop and provide a systematic maintenance program, which comply with the Operations and Maintenance Manuals, equipment manufacturer's recommendations or best industry practice; whichever Contractor believes is most appropriate. Copies will be located at the treatment plant. Copies of the program are attached.
- f. Maintenance Reports - Reports will be maintained and filed at the wastewater treatment plant on a monthly basis.
- g. Performance Standards- Contractor shall perform all work in a neat and workmanlike manner. Any damage to District facilities caused by Contractor willful misconduct or negligence shall be repaired at Contractor's sole expense. All work shall be completed in a timely manner and of a quality in compliance with industry standards.
- h. Special Requirements- Grounds shall be maintained by the district in a manner that limits vegetation to eighteen inches or less in the treatment plant area and maintains drainage free of excessive vegetation. Roadways shall be maintained in a relatively vegetation free condition and graded or repaired as needed to control potholes. Vegetation shall be controlled in ponds and reservoirs so not to obstruct proper operation and sanitation. Rodents shall be controlled as necessary.

8.Operational Standards

- a. Operations and Maintenance Manuals - Contractor shall operate and maintain the Facilities at a minimum in accordance with the Operations and Maintenance Manual. Manuals shall be maintained and kept at the wastewater treatment plant.
- b. Reporting - Contractor shall provide the District with a copy of all routine or special operating reports. Contractor shall prepare reports as requested by the District to document process upsets, noncompliance events, and damage to equipment, emergency situations, and other such matters related to the operation

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of the Facilities in accordance with these Specifications.

- c. Non-degradation- Contractor shall not employ any practices which result in excessive wear or degradation of the Facilities.
- d. Emergency Response- Contractor shall promptly respond to all alarms and notifications of emergency conditions. Emergency response and actual emergency repairs are eligible for reimbursement as a Non-Scheduled Work expenditure

9. Communications

- a. District- Contractor shall maintain staffing and procedures necessary to insure timely professional communications with the District.
- b. Document Forwarding- Both District and Contractor shall immediately forward to each other any document or information received which concerns the operations, management and maintenance of the Facilities.
- c. Customers- Contractor shall maintain a work request tracking system to document calls and responses from and to District customers.
- d. Regulators- Contractor shall provide written and oral communications with regulatory agencies concerning the operations and maintenance of the Facilities.
- e. District- Contractor shall provide copies to the District of written communications with regulatory agencies and report substantive conversations or communications which may affect the District
- f. At least annually the Contractor shall attend a Board of Directors meeting and respond to Board questions.

10. Non-Standard Operation - This section is intended to provide a mechanism to equitably manage changes in facility operations and maintenance which are considered to be beyond the normal scope as described in these Specifications.

- a. District Initiated Work- When authorized by the District, Contractor may perform work outside the scope of these specifications as Non Scheduled Work
- b. Emergencies - In the event of an emergency situation, Contractor shall make a reasonable effort to contact the District before incurring costs for Non Scheduled Work. In the event the Contract cannot reach the District, Contractor is authorized to make reasonable and necessary expenditures to alleviate the emergency condition. In the event such expenditures were made, Contractor shall notify the District as soon as possible and provide a written report to the District as soon as practical.
- c. Changed Conditions- Due to events outside the control of the Contractor and/or District, such as changed laws, regulations or requirements, changed processes or procedures, latent conditions unknown by Contractor, loss of supply, judgment or stipulation; including but not limited to changes in annual flow above 15% of prior year's flow; Contractor will bill the District as Non Scheduled Work. Within eighteen months Contractor shall amend its agreement with the District to

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reflect the costs of the new or modified conditions.

- d. Special Operations and Maintenance- Winter irrigation, and other non-routine tasks not covered by these Specifications shall be approved by the District in writing as Non Scheduled Work, except in an emergency, in advance of Contractor beginning the work.
- e. New Construction- When requested by the District, Contractor shall undertake the operation, management and maintenance of new or modified facilities as Non Scheduled Work. Within eighteen months Contractor shall amend its agreement with the District to reflect the costs of the new or modified facilities. Work by Others - District may have work done by others which impacts Contractor. Work performed by Contractor necessary to coordinate with others shall be billed to District as Non Scheduled Work.

11. District Responsibilities

- a. Capital Improvements and Capital Expenditures - District shall be responsible for planning, scheduling, designing and implementing all capital improvement work necessary to replace, modify, add or remove facilities. Annually the District and Contractor will meet and evaluate capital improvements for purposes of planning and budgeting. The District may authorize capital improvements to be completed by Contractor, or may make arrangements with others. If improvements are not performed by Contractor, District will closely coordinate this work with the Contractor to minimize impacts on plant operations. The following are included as capital improvements.
 - i. Engineering- Provide all engineering for new construction or modifications to facilities, and provide for Contractor to review and comment on work. District will provide all specifications and record drawings for work as well as manufacturers equipment submittals and operations and maintenance manuals.
 - ii. Construction - Provide all new or modification construction to facilities and require outside parties to coordinate work with Contractor.
 - iii. Spare Parts- All specified spare parts will be furnished to Contractor.
Initial Training- Any new or modified facilities will include District provided training for Contractor's staff.
- b. District Records -Official District Records will be maintained by the District and include easements, maps, etc. which shall be made available to Contractor as the need arises.
- c. District Administration -District administration, accounting, legal and professional work is performed by District and is not included in these Specifications.
- d. Agreements, Permits and Licenses - District shall maintain all agreements, easements, permits, licenses, etc. to lawfully operate District facilities and agrees

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to cooperate with Contractor in order to maintain compliance with all local, state and federal regulations; and to provide facilities that are safe and in compliance with all safety and health regulations for workers.

- e. The district will directly contract with providers and pay for all electricity chemicals, laboratory analysis costs and landscaping maintenance.

12. Contractor Responsibilities

- a. Specifications - Contractor shall comply with these Specifications.
- b. Cooperation- Contractor shall cooperate with the District's engineers, attorneys, consultants or others engaged by the District to investigate, evaluate, modify, construct, demolish or remove facilities. Non Schedule Work may apply where appropriate.
- c. Professionalism - Contractor shall conduct their business in a professional manner and conduct themselves appropriately when dealing with District customers, regulators, citizens at large, politicians or others while conducting business on behalf of the District.

End of Addendum