



Daniel Woldesenbet, Ph.D., P.E., Director

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September 29, 2015

The Honorable Board of Directors
Flood Control and Water Conservation District
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

Dear Board Members:

SUBJECT: APPROVE AND EXECUTE CONTRACTS TO PROVIDE ENVIRONMENTAL SUPPORT SERVICES TO THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE PUBLIC WORKS AGENCY

RECOMMENDATION:

Approve and execute Agreements between the Alameda County Flood Control and Water Conservation District (“District”) and the following listed firms to provide Biological and Broad Range Professional Services to the District:

1. GHD (Principal: Peter Masson. Location: Emeryville, CA) Procurement # 12677 for the period October 13, 2015 through June 30, 2020, in the amount of \$1,000,000.
2. Questa Engineering Corp, (Principal: Jeffrey H. Peters. Berkeley, CA) Procurement #12651 for the period October 13, 2015 through June 30, 2020, in the amount of \$1,000,000.
3. MIG, (Principal: Susan Goltsman, Berkeley, CA) Procurement #12652 for the period October 13, 2015 through June 30, 2018, in the amount of \$600,000

DISCUSSION/SUMMARY:

Environmental professional consulting services are required to assist Alameda County Flood Control and Water Conservation District (District) and Public Works Agency (PWA) staff in assuring that District and PWA activities and projects are in compliance with a variety of Federal and State environmental laws and regulations, and that environmental impacts associated with these activities or projects are minimized and/or mitigated. Three (3) consulting firms GHD, Questa Engineering, and MIG were selected through a competitive process to provide multi-year staff support services that includes conducting environmental studies and reports required for timely delivery of District projects and activities. District has the option to renew MIG Agreement for an additional two-year term. District may exercise this renewal option in its sole discretion.

SELECTION CRITERIA PROCESS:

A qualifications-based selection method was followed in accordance with Government Code Sections 4525-4529.5 for selecting professional environmental firms. In addition, firms were also required to either meet the definition of a small, local, or emerging business (SLEB) or subcontract a minimum 20 percent of the estimated contract amount with a SLEB or SLEBs.

A Request for Qualifications (RFQ) was issued on July 13, 2015, and mailed and emailed to all consultants providing biological broad range consulting services identified in the County SLEB and the Public Works Agency databases. The RFQ was also posted on the ACPWA's website for 30 days. A Pre-Submittal Conference was held on July 28th, 2015. Twenty-four (24) consulting firms attended. Seven (7) consulting firms submitted Statements of Qualifications (SOQs). Upon evaluation of the submittals, four firms were short-listed and subsequently participated in oral interviews held on September 1, 2015, at the District's office. A selection committee of two District staff and one staff person from the State of California Regional Water Quality Control Board evaluated and rated the consultants' proposals and oral interviews. Evaluation criteria included relevant experience, qualifications, written proposal/oral presentation and interview, level of SLEB participation, and overall approach to services delivery.

The four shortlisted firms were ranked as follows:

Prime FIRM NAME	LOCATION	SLEB CERTIFIED	TOTAL SCORE	RANKING	Participating SLEBs (20%)
GHD	Emeryville	NO	1428	1	YES
Questa	Berkeley	YES	1356	2	N/A
MIG	Berkeley	NO	1261	3	YES
Michael Baker	Oakland	NO	1119	4	YES

Based on the SOQ evaluation and the oral interviews, the three top ranked firms judged to best deliver the services required were selected to enter into contract negotiations with the District. Questa Engineering Corp., is SLEB certified (#11-00170). GHD and MIG will satisfy the SLEB requirements by subcontracting at a minimum 20% of the contract amount under this agreement to Alameda County Certified SLEBs. See Attachment 1.

FINANCING:

There is no impact on the County General Fund. Funding for the contracts is budgeted and allocated in the FY 2015/16 budget at \$600,000 (\$200,000 each firm), and \$200,000 each firm in future MOF recommended budgets, in Fund 21801, Organization 270301, Account 610261, (Professional and Specialized Services) Program 50600.

Yours truly,


Daniel Woldesenbet, Ph.D., P.E.
Director of Public Works

DW/JY/rk

Attachment

C: Kathy H. Lee, Deputy County Counsel
Steve Manning, Auditor-Controller
CAO

Attachment 1
Biological and Broad Range Professional Services
Non-SLEB Sub-contracting Summary

Prime Firm	Location	Total Dollar Value	Local participation		Emerging Local Participation		Small Local Participation	
			Percent	Dollar Amount	Percent	Dollar Amount	Percent	Dollar Amount
GHD	Emeryville	\$1,000,000	75%	750,000	0	0	0	0
SLEB Subcontracting Information								
Pacific Biology	Berkeley						10%	\$100,000
GECO	Berkeley						10%	\$100,000
Vollmar	Berkeley						5%	\$50,000

Prime Firm	Location	Total Dollar Value	Local participation		Emerging Local Participation		Small Local Participation	
			Percent	Dollar Amount	Percent	Dollar Amount	Percent	Dollar Amount
MIG	Berkeley	\$600,000	80%	480,000				
SLEB Subcontracting Information								
Vollmar	Berkeley						10%	\$60,000
Applied Marine	Oakland				10%	\$60,000		

Professional Services Agreement

With

GHD

for

BIOLOGICAL AND BROAD RANGE PROFESSIONAL SERVICES

Contract No. 12677

Alameda County Flood Control and Water Conservation District

AGREEMENT BETWEEN
THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
GHD

This Agreement is made this the _____ day of October, 2015, in the City of Oakland, State of California, by and between GHD, 2900 Hollis Street, Suite A, Emeryville, CA 94608, hereinafter referred to as "Consultant" and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as "District."

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "B-1", "C", "D", "E", "F" and "G" attached hereto.

CONSULTANT GHD

DISTRICT Alameda County Flood Control and Water Conservation District

Project The DISTRICT's project – Biological and Broad Range Professional Services - as further described in Appendix "A", Scope of Services

Services All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

Subconsultants Consultant's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from October 13, 2015 through June 30, 2020.

3. Services Consultant Agrees to Perform

- 3.1 Consultant shall perform all Services described in Appendix "A", "Scope of Services" to be Provided by Consultant, attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Consultant and District shall mutually agree upon a specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks will be performed on a "time and material" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be shown in the Fee Schedule Appendix B-1. Consultant shall complete all Services required by this Agreement within the times specified by mutual agreement. Consultant shall achieve its agreed-upon time frames unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when

acting at District's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation..

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the District's satisfaction. (For example, and not by way of limitation, contract punch list and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of critical importance in the performance of this Agreement.

4. Compensation

- 4.1 District shall pay Consultant compensation according to the Payment Terms established in Appendix "B", Payments to Consultant. District shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until District receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then District may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.
- 4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amount(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Consultant's transmittal of all deliverables to District required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to District. All amounts paid by District to Consultant shall be subject to audit by District. Payment shall be made by District to Consultant at the address stated hereinabove.
- 4.5 District may set off against payments due Consultant under this Agreement any sums that District determines that Consultant owes to District because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by District, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and

supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

- 5.3 District shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through (GHD, Peter Masson, 2900 Hollis Street, Suite A, Emeryville, CA 94608. and Consultant shall direct all communications to "District" through District Project Manager.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", "Scope of Services" to be provided by consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the "Payment Terms" to Consultant established in Appendix "B", Billing rates to Consultant shall be from the "Fee Schedule Rates" established in Appendix B-1.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by District to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by District, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

8.1(a) To the fullest extent allowed by law, Consultant shall indemnify and hold harmless the District and County of Alameda, their Board of Supervisors, officers, employees, and representatives from and against any and all claims, actions, including administrative actions, penalties, fees or fines, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, District or County employees, and the public, or damage to property, or any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District or County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

(b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2782.8 of the California Civil Code.

(c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by an applicable statute of repose or statute of limitation.

8.2 [Intentionally Omitted]

8.3 [Intentionally Omitted]

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.

8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", Scope of Services to be provided by Consultant.

9. Liability of District

9.1 Except as provided in Appendix "A", Scope of Services to be Provided by Consultant, and Appendix "C", Insurance, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes, and Other Expenses

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

- 11.1 Prior to execution of this Contract, Consultant shall furnish to District satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse District for such expense).

12. Suspension of Services

- 12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may be failing to complete the Services as required by this Agreement, or District has provided written notice of observed deficiencies in Consultant's performance, District may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Consultant's right to proceed under the Agreement, for cause:

- 13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- 13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan); or
- 13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan.)
- 13.3 In the event of termination by County as provided herein for cause:
- 13.3.1 District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
- 13.3.2 Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.
- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

14. Termination of Agreement for Convenience

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - 14.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District.
 - 14.2.7 Use its best efforts to assist District in selling, in the manner, at times, to the extent, and at a price or prices that District directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by District. All proceeds from the foregoing shall be applied to reduce payments to be made by District to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as District may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which District has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Consultant's written request made within such 3-month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. District shall then pay to Consultant the amount so determined.

- 14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments Terms "to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the District that Consultant has no present, and will have no future, conflict of interest between providing the District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the District hereunder.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Consultant agrees to notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the District's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notice to the Parties

- 17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.
- 17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:
- (a) When personally delivered to the recipient, notice is effective on delivery.
 - (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
 - (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To District:
Kwablah Attiogbe, Environmental Manager
399 Elmhurst Street
Hayward, CA 94544

To Consultant:
GHD
Peter Masson, 5900 Hollis Street, Suite A, Emeryville, CA 94608

- 17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to District at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. District shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from District's use of Consultant's documents on work for which Consultant is not retained.
- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to District. With the prior written approval of the District, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising District and allowing District to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with District requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to Consultant's activities under this Agreement. Consultant will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from District's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon District's request and at Consultant's sole cost and expense, make such items available to District, and District's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay District its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section.
- 19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/ District Employees

- 20.1 Consultant and District agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the Subconsultants for the scopes of work listed in Appendix A attached hereto, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the District in writing.
- 20.3 To the extent Consultant is permitted by District in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section §3321. Consultant shall

remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.

- 20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

21. Drug-Free Workplace Policy

- 21.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on a County facility or work site. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents, or assigns shall be deemed a material breach of this Agreement.
- 21.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the District department/agency for which the contract services are performed.

22. Compliance with Americans with Disabilities Act

- 22.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

23. Debarment and Suspension Certification (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- 23.1 (a) By signing this agreement and Appendix E, Debarment and Suspension Certification, Consultant/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, and Executive Order 12549.
- (b) By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

24. Small, Local, and Emerging Business (SLEB) Participation

Small Local and Emerging Business (SLEB) Participation: Consultant shall subcontract with Pacific Biology, GEICO and Vollmar for services to be provided under this Agreement in an amount equal to twenty percent (20%) of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:

- 24.1 SLEB subcontractor(s) is (are) independently owned and operated (*i.e.*, is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 24.2 As is applicable, Consultant shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this Agreement.
- 24.3 Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County contract representative identified under Section 6.1 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- 24.4 All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation Compliance System. Consultant and Consultant's small and/or emerging local businesses participating subcontractors on the awarded contract are required to use the Elation web-based Compliance System as described in Exhibit F (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation Compliance System. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.
- 24.5 County will be under no obligation to pay Consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.
- 24.6 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

25. First Source Program

- 25.1 For contracts over \$100,000, Consultant shall provide District ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the District that Consultant has available during the contract term before advertising to the general public.

26. Disputes

- 26.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.
- 26.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this

Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

- 26.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

27. Agreement Made in California; Venue

27.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

27.2 The parties shall execute one original and three copies of this Agreement.

28. Compliance with Laws

28.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.

28.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

29. Construction

29.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

30. Miscellaneous

30.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

30.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

30.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

- 30.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 30.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

31. Entire Agreement; Modifications of Agreement

- 31.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 31.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 31.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 31.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 31.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 31.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

32. Labor Code Requirements

- 32.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the County, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 32.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.

- 32.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 32.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 32.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 32.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 32.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 32.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 32.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.

32.12 In accordance with Section 1776 of the Labor Code:

- 32.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 32.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
- 32.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 32.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 32.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
- 32.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 32.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 32.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 32.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

- 32.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 32.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 32.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 32.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 32.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 32.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 32.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 32.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 32.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 32.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 32.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 32.17.1 If District finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the District will notify the Consultant in writing of the sanctions to be imposed.
- 32.17.2 In addition, the District shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein
- 32.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the

- 32.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 32.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 32.18.3 Terminate the contract and collect appropriate damages from the Consultant.
- 32.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future District contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

“DISTRICT”

Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California

By:
PRESIDENT
BOARD OF SUPERVISORS

Date: OCT 15 2015

“CONSULTANT”

TAX ID: 16-1229774

By:
GHD, PETER MASSON, ENVIRONMENTAL
PLANNING LEAD

Date: 9/15/15

Approved as to form:
Donna R. Ziegler, County Counsel

By
Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

END OF DOCUMENT

APPENDIX A

CONTRACT NO-12677

SCOPE OF SERVICES

BIOLOGICAL AND BROAD RANGE SERVICES

During the period of this contract, Consultant will provide professional Biological consulting services, labor, equipment and/or materials as needed to support Public Works Agency and Flood Control District activities. It is anticipated that District's associated work will involve primarily transportation and flood control activities in upland, riparian and wetland areas.

District requires "On-Call" professional environmental support services to assist District staff in delivery of the District Capital improvement projects (CIP) in compliance with state and federal environmental laws (CEQA/NEPA) and other environmental regulations. Consultant will provide biological services, including project site surveys and assessment, special status species surveys (including protocol level surveys per USFWS guidelines); Army Corps of Engineers (AOE) wetland delineations and jurisdiction determinations; project impact analyses; mitigation studies, concept level and detailed mitigation design, installation, and monitoring; preparation of permit applications and coordination with permitting agencies (AOE, Section 404, Regional Water Quality Control Board (RWQCB) Section 401 and Department of Fish and Wildlife Section (DFW) 1600). Consultant shall advise and assist District staff with respect to compliance with environmental permit conditions including pre-construction project site surveys; construction site monitoring; and preparation of associated reports. Consultant shall provide Broad Range Service, including noise and vibration, air quality, aesthetics, and land use analyses and other such studies as is required and the firm is qualified to perform.

All work and materials shall meet the standards and requirements of all applicable Federal, State, and local government laws and the regulations and guidelines of their agencies, and shall also comply with the prevailing standards and practices of the profession. Use of subcontractors is subject to pre-approval by District.

It is possible that Consultant may not be called upon to do any work pursuant to this agreement at the discretion of the District.

Consultant and District shall mutually agree upon specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks would be performed on a "time and materials" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be as shown in the Fee Schedule Appendix B-1.

APPENDIX B

PAYMENTS TERMS

This is an appendix attached to, and made a part of the Agreement dated October 13, 2015, between the Alameda County Flood Control and Water Conservation District ("District") and GHD. ("Consultant"), providing for professional services.

1. Amount of Compensation for Services of Consultant

1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed One Million Dollars (\$1,000,000) referred to hereafter as the Not To Exceed Amount ("NTE"). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant's hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.

1.2 "Reimbursable Expenses" means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by District.

2. Monthly Billing Breakdown

2.1 District shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for District's approval prior to the first monthly invoice. The "Monthly Billing Breakdown" shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

3. Methods of Payment to Consultant

3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved "Monthly Billing Breakdown" specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant's total billings.

3.2 For Additional Services. The District shall pay Consultant for Additional Services, as defined below, as follows:

3.2.1 General. For Additional Services of Consultant's professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at District's option, based on hourly rates per Consultant's billing schedule with an agreed Not-to-Exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

4. Definitions

- 4.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.
- 4.2 The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the Definitions of Services (Appendix A). The Fee Schedule Rates (Appendix B-1) shall remain constant through June 30, 2016, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. After June 30, 2016, the consultant may propose fee adjustments during subsequent year(s) of the Agreement period due to normal salary increases. Upon review of the request of fee adjustments and acceptance by the District, it shall become a part of this Agreement and remain in full force and effect.
5. The markup cost for material and services required for the Project shall not exceed ten percent of the original cost (10%).

END OF APPENDIX B



APPENDIX B-1

2015 USA Fee Schedule

Principals:	\$181.00 - \$206.00	Information Technologists:	
Associates:	\$160.00 - \$185.00	◆ Level A	\$103.00
Specialist:	\$166.00 - \$206.00	◆ Level B	\$114.00
Engineers:		◆ Level C	\$124.00 - \$134.00
◆ Level A	\$109.00	◆ Level D	\$144.00 - \$154.00
◆ Level B	\$119.00	◆ Level E	\$169.00 - \$179.00
◆ Level C	\$129.00 - \$149.00	Database Analysts:	
◆ Level D	\$154.00 - \$164.00	◆ Level A	\$88.00
◆ Level E	\$169.00 - \$179.00	◆ Level B	\$98.00
Geologists/Hydrogeologists:		◆ Level C	\$113.00 - \$135.00
◆ Level A	\$109.00	◆ Level D	\$145.00 - \$165.00
◆ Level B	\$119.00	◆ Level E	\$170.00 - \$180.00
◆ Level C	\$129.00 - \$149.00	Technicians/Technologists:	
◆ Level D	\$154.00 - \$164.00	◆ Level A	\$77.00
◆ Level E	\$169.00 - \$179.00	◆ Level B	\$93.00
Environmental Chemists/Scientists/Planners:		◆ Level C	\$108.00
◆ Level A	\$103.00	◆ Level D	\$119.00 - \$139.00
◆ Level B	\$114.00	◆ Level E	\$149.00 - \$159.00
◆ Level C	\$124.00 - \$134.00	Draft/CADD:	
◆ Level D	\$144.00 - \$154.00	◆ Level A	\$72.00
◆ Level E	\$169.00 - \$179.00	◆ Level B	\$82.00
Industrial Hygienists/Safety Professionals:		◆ Level C	\$93.00
◆ Level A	\$104.00	◆ Level D	\$103.00
◆ Level B	\$114.00	◆ Level E	\$113.00
◆ Level C	\$124.00 - \$134.00	Technical Apprentices:	\$77.00 - \$87.00
◆ Level D	\$144.00 - \$154.00	Administrative Support:	\$62.00
◆ Level E	\$169.00 - \$179.00		



APPENDIX B-1

Chargeout List for Reproduction Supplies

Display Materials:

Foam Core Presentation Board	\$1.50/sq. ft.
White Print on Bond	\$0.20/sq. ft.
Laminates - 8 1/2" x 11"	\$1.50
Laminates - 11" x 17"	\$2.50
Recordable Compact Disk	\$3.00
Disc Labels	\$1.00

Color Photocopies:

8 1/2" x 11" size/11" x 17" size on Bond	\$0.50
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Black & White Photocopies:

8 1/2" x 11" size/11" x 17" size	\$0.14/copy
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Printed Plots:

24" x 36" or 36" x 48" Monochrome Laser	\$0.25/sq. ft.
Line Drawings Color 24" X 36" or 36" X 48" Color	\$2.50/sq. ft.
Full Graphic Color Oversize	\$3.50/sq. ft.
Full Graphic Color Specialty Paper	\$5.00/sq. ft.
Full Color Inkjet on Acetate	\$5.00/sq. ft.

Printing Supplies:

Cover Stock (Front & Back Set)	\$0.75
Coverbind Cover Sets	\$3.00
Plastic Pockets	\$2.00
Acetate Cover	\$0.50
Binders - 1"	\$7.50
Binders - 1 1/2"	\$8.50
Binders - 2"	\$9.50
Binders - 3"	\$11.50
Binders - 3 1/2" and up	\$14.00

Tabs:

Figures, Tables, Appendices (A, B, C, etc.), Sections (1, 2, 3, etc.)	\$0.40/Tab
---	------------

Digital Equipment:

Digital Camera	\$10/day, \$35/week, \$100/month
Digital Projector	\$25/day, \$75/week, \$200/month
Laptop Computer	\$15/day, \$55/week, \$200/month



APPENDIX B-1

2015 Fee Schedule

Notes:

- 1) Rates are for employees GHD.
- 2) Mileage rates are consistent with current IRS/Canada Revenue Agency rates, which is the rate at which employees are reimbursed.
- 3) Company owned vehicle rate is \$80.00/Day plus \$0.28/mile (USA) or \$0.24/km (CDN).
- 4) Travel charges are identified under disbursements and are passed through directly as incurred, all travel via common carrier being at coach class rates.
- 5) Accommodation expenses are identified under disbursements and are passed through directly as incurred. Lodging costs and meal allowances for each full day depend on the area.
- 6) Photocopy charges are \$0.14 per page.
- 7) Color photocopy charges are \$0.50 per page.
- 8) Information Technology is billed at \$4.50 per hour per person.
- 9) Specialized Computer Application is billed at \$15.00 per hour.
- 10) Other Office and Field Supplies are charged at standardized rates and are available upon request.
- 11) Other project related out of office disbursements, expenses, and subcontractor costs will be invoiced with a markup of 10%.
- 12) Fee schedule is subject to change on January 1, 2016.

APPENDIX B-1

PACIFIC BIOLOGY



635 Carmel Avenue • Albany, California 94706 • Phone/Fax: (510) 527-1008

Staff Hourly Rates

Principal/Senior Biologist: \$120 per hour

Principal/Senior Botanist: \$120 per hour

Staff Biologist/Botanist: \$100 per hour

GIS Technician: \$105

Principal CEQA/NEPA Specialist: \$125

Visual Simulation Specialist: \$120

Air Quality, Noise, Water Resources, Geologic, or Archeology Specialist: \$110

Equipment

ATV: \$100 per day per vehicle

Vehicle mileage: Standard IRS rate (currently \$0.57 per mile)

Office supplies (no charge)

APPENDIX B-1

Vollmar Natural Lands Consulting Fee Schedule:

- Senior Ecologists: \$120/hour
- Senior GIS Specialists: 120/hour
- Staff Ecologists/GIS Analysts: \$90/hour

The follows rates will apply for direct project expenses:

- ATV/Trailer: \$100/day
- Professional GPS Unit: \$100/day
- Water Quality Meter: \$100/day
- Vehicle Mileage: \$0.575/mile

Grassetti Environmental Consulting Fee Schedule

Principal CEQA/NEPA Specialist: \$140/hour

Assistant Planner: \$100/hour

Archeology Specialist: \$125



APPENDIX C

GHDINC0-01

PALMU

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/10/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Willis of Massachusetts, Inc. CONTACT NAME: Willis Certificate Center. INSURER(S) AFFORDING COVERAGE: AIG Specialty Insurance Company, Zurich American Insurance Company.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes Commercial General Liability, Automobile Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) GHD Project no.: 11103244, Biological And Broad Range Environmental Services - NO. 2015EJY

Grasetti Environmental Consulting, Pacific Biology LLC, Vollmar Natural Lands Consulting LLC, County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are included as Additional Insureds as respects to General Liability as required by contract or agreement.

CERTIFICATE HOLDER: Alameda County Flood Control And Water Conservation District. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

APPENDIX C

ENDORSEMENT NO. 40

This endorsement, effective 12:01 AM: July 1, 2015

Forms a part of policy no.: PROP 14247216

Issued to: CRA HOLDINGS U.S. INC.

By: AIG SPECIALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COVERAGES A, B and C ADDITIONAL INSURED -
STATE OR POLITICAL SUBDIVISIONS - PERMITS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY AND
PROFESSIONAL LIABILITY COVERAGE FORM**

SCHEDULE

State or Political Subdivision:


As required by written contract.

Solely as respects Coverages A, B and C, **SECTION II - WHO IS AN INSURED** is amended to include as an insured any state or political subdivision scheduled above, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
2. This insurance does not apply to:
 - a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or municipality; or
 - b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to the coverage afforded the additional insured, this insurance is primary and non-contributory, and our obligations are not affected by any other insurance carried by such additional insured whether primary, excess, contingent, or on any other basis.

All other terms, conditions and exclusions remain the same.



Authorized Representative
or countersignature (where required by law)

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://acgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

FIRM IS **NOT** A CERTIFIED SLEB AND WILL SUBCONTRACT 10 % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: Biological survey and agency consultation.

SLEB Subcontractor Business Name: Pacific Biology, LLC

SLEB Certification #: 11-00149 SLEB Certification Expiration Date: 8/31/15

SLEB Certification Status: Small / Emerging

NAICS Codes Included in Certification: 541620

SLEB Subcontractor Principal Name: Josh Phillips

SLEB Subcontractor Principal Signature: [Signature] Date: 8/3/15

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Peter Masson, Associate, GHD Services, Inc.

Street Address: 5900 Hollis Street, Ste A City Emeryville State CA Zip Code 94608

Firm Signature: [Signature] Date: 8/7/15

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://ucgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually prosper as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationssys.com/elationssys/index.htm>).

<input type="checkbox"/> FIRM IS A CERTIFIED SLEB (sign at bottom of page)
SLEB FIRM Business Name: _____
SLEB Certification #: _____ SLEB Certification Expiration Date: _____
NAICS Codes Included in Certification: _____

<input checked="" type="checkbox"/> FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT ¹⁰ % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: <u>CEQA support and senior review.</u>
SLEB Subcontractor Business Name: <u>Grassetti Environmental Consulting</u>
SLEB Certification #: <u>09-00133</u> SLEB Certification Expiration Date: <u>5/31/16</u>
SLEB Certification Status: <input checked="" type="checkbox"/> Small / <input type="checkbox"/> Emerging
NAICS Codes Included in Certification: <u>541820, 541690, 541990</u>
SLEB Subcontractor Principal Name: <u>Richard Grassetti</u>
SLEB Subcontractor Principal Signature: <u>[Signature]</u> Date: <u>8/3/15</u>

Upon award, PRIME CONTRACTOR and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Peter Masson, Associate, GHD Services, Inc.
Street Address: 5900 Hollis Street, Ste A City Emeryville State CA Zip Code 94608
Firm Signature: [Signature] Date: 8/7/15

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://accgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsvs.com/elationsvs/index.htm>).

FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT 5 % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: Biological Resource Surveys & Documentation

SLEB Subcontractor Business Name: Vollmar Natural Lands Consulting, Inc.

SLEB Certification #: 07-91089 SLEB Certification Expiration Date: 09/30/2015

SLEB Certification Status: Small / Emerging

NAICS Codes Included in Certification: 541020, 541690

SLEB Subcontractor Principal Name: John E. Vollmar

SLEB Subcontractor Principal Signature: [Signature] Date: 08/03/2015

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Peter Masson, Associate, GHD Services, Inc.

Street Address: 5900 Hollis Street, Ste A City Emeryville State CA Zip Code 94608

Firm Signature: [Signature] Date: 8/03/15

APPENDIX E

EXHIBIT L

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

DEBARMENT AND SUSPENSION CERTIFICATION

For Procurements Over \$25,000

The firm, under penalty of perjury, certifies that, except as noted below, firm, its Principal, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining firm responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

FIRM: GHD Services, Inc.

PRINCIPAL: Peter T Masson TITLE: Planning Lead

SIGNATURE:  DATE: 9/14/15

APPENDIX F

EXHIBIT M

(for contracts of \$1,000,000 or more)

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

The Iran Contracting Act (ICA) of 2010

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

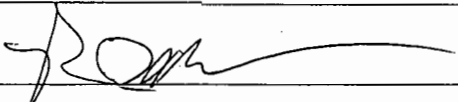
1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of submitting for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to submit for or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

NAME: GHD Services, Inc.

PRINCIPAL: Peter T Masson TITLE: Planning Lead

SIGNATURE:  DATE: 9/16/15

APPENDIX G

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT CONFLICT OF INTEREST STATEMENT

The following provisions of Government Code Section 1090 on Conflict of Interest and Section 87100 (the Political Reform Act of 1974) shall be used by all Alameda County departments and agencies that use staff and/or community volunteers to rate, rank or evaluate requests for proposals/qualifications (RFP/RFQ) or invitations for bids (IFB) on behalf of County departments and agencies.

It is the duty of a volunteer to resign from a rating, ranking or evaluation panel if participating in any way in the making of a funding decision would have a "material financial interest" on his/her personal financial interest or those of close relatives and/or private entities that the volunteer directly or indirectly represents.

The County's officers, employees and agents, including contractors, their agents and volunteers shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. In addition, no employee, officer or agent shall participate in the selection, award or administration of a contract where any of the following has a financial or other substantial interest in that contract:

1. The employee, officer or agent.
2. Any member of his or her immediate family.
3. His or her business partner.
4. An organization in which any of the above is/has been during the previous 18-24 months an officer, director, board member, employee or consultant.
5. A person or organization with whom any of the above individuals is negotiating employment or has any arrangement concerning prospective employment.

Definitions

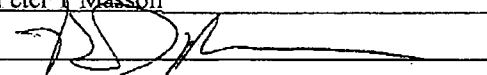
For the purpose of this procedure the following definitions shall apply:

- a. "Member(s) of the immediate family" include: wife, husband, daughter, son, mother, father, sister, brother, grandparent, grandchild, uncle, niece, nephew, stepparent, stepchild, mother-in-law, father-in-law, daughter-in-law and son-in-law.
- b. "Organization" means the sponsoring entity of any program or contract activity with which Alameda County enters into a contractual or subcontractual relationship.
- c. "Program" is any separate and distinct activity engaged in by an organization, which may have more than one program.
- d. "Substantial interest" is any direct or indirect reasonably foreseeable financial interest in a transaction with Alameda County or with any Alameda County funded program, distinguishable from the effect on the public generally, including but not limited to the receipt of commission, fee, share of proceeds or profits, prospect of promotion or advancement, bonus, profit, or any other form of economic or tangible reward, or any of the following interests in a for-profit business entity that is supplying goods, space or services to Alameda County or to an Alameda County funded organization: (1) ownership; (2) partnership or other interest of 5% or more; (3) ownership of 5% or more of the stock of a corporation; (4) employment as an executive or managerial officer; and/or (5) membership on a board of directors or other governing body.

Consistent with Government Code Section 82030(b) (2), salaries and expense reimbursements paid by a federal, state or local governmental entity to an employee of that entity are not considered "income" or a "financial interest" for the purpose of this procedure.

The Alameda County Flood Control and Water Conservation District has requested the services of the individual named below as a rater/ranker/evaluator for its Biological and Broad Range On-Call Services.

"I have read the above definitions of conflicts of interest and by my signature below, I attest that I do not have a conflict of interest as defined above for the purpose of participating in the above referenced RFP/RFQ:"

Name: Peter T Masson Employer: GHD Services, Inc.
Signature:  Date: 9/11/15
E-mail address: peter.masson@ghd.com Phone: 510-420-3349
QIC Code: _____

Professional Services Agreement

With

MIG

for

BIOLOGICAL AND BROAD RANGE PROFESSIONAL SERVICES

Contract No. 12652

Alameda County Flood Control and Water Conservation District

AGREEMENT BETWEEN
THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
MIG

This Agreement is made this the _____ day of October, 2015, in the City of Oakland, State of California, by and between MIG, 800 Hearst Ave, Berkeley CA 94710, hereinafter referred to as "Consultant" and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as "District."

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "B-1", "C", "D", "E", "F" and "G", attached hereto.

CONSULTANT MIG

DISTRICT Alameda County Flood Control and Water Conservation District

Project The District's project – Biological and Broad Range Professional Services - as further described in Appendix "A", Scope of Services.

Services All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

Subconsultants Consultant's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from October 6, 2015 through June 30, 2018. District has the option to renew this Agreement for an additional two-year term. District may exercise this renewal option in its sole discretion.

3. Services Consultant Agrees to Perform

- 3.1 Consultant shall perform all Services described in Appendix "A", "Scope of Services" to be Provided by Consultant, attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Consultant and District shall mutually agree upon a specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks will be performed on a "time and material" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be shown in the Fee Schedule Appendix B-1. Consultant shall complete all Services required by this Agreement within the times specified by mutual agreement. Consultant shall achieve its agreed-upon time frames unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when

acting at District's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the District's satisfaction. (For example, and not by way of limitation, contract punch list and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of critical importance in the performance of this Agreement.

4. Compensation

- 4.1 District shall pay Consultant compensation according to the Payment Terms established in Appendix "B", Payments to Consultant. District shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until District receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then District may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.
- 4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amount(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Consultant's transmittal of all deliverables to District required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to District. All amounts paid by District to Consultant shall be subject to audit by District. Payment shall be made by District to Consultant at the address stated hereinabove.
- 4.5 District may set off against payments due Consultant under this Agreement any sums that District determines that Consultant owes to District because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by District, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and

supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

- 5.3 District shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through (MIG, Laura Moran, Director of Ecosystems Restoration Services, 800 Hearst Ave, Berkeley CA 94710) and Consultant shall direct all communications to "District" through District Project Manager.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", "Scope of Services" to be provided by consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the "Payment Terms" to Consultant established in Appendix "B", Billing rates to Consultant shall be from the "Fee Schedule Rate" established in Appendix B-1. "
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to the time such licenses and/or permits are required. Consultant also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by District to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by District, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

8.1(a) To the fullest extent allowed by law, Consultant shall indemnify and hold harmless the District and County of Alameda, their Board of Supervisors, officers, employees, and representatives from and against any and all claims, actions, including administrative actions, penalties, fees or fines, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, District or County employees, and the public, or damage to property, or any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District or County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

(b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2782.8 of the California Civil Code.

(c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by an applicable statute of repose or statute of limitation.

8.2 [Intentionally Omitted]

8.3 [Intentionally Omitted]

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.

8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", Scope of Services to be provided by Consultant.

9. Liability of District

9.1 Except as provided in Appendix "A", Scope of Services to be Provided by Consultant, and Appendix "C", Insurance, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes, and Other Expenses

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

- 11.1 Prior to execution of this Contract, Consultant shall furnish to District satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse District for such expense).

12. Suspension of Services

- 12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may be failing to complete the Services as required by this Agreement, or District has provided written notice of observed deficiencies in Consultant's performance, District may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable

remedies available to District, terminate Consultant's right to proceed under the Agreement, for cause:

- 13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
 - 13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan); or
 - 13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan.)
- 13.3 In the event of termination by County as provided herein for cause:
- 13.3.1 District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
 - 13.3.2 Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
 - 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.
- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

14. Termination of Agreement for Convenience

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - 14.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District.
 - 14.2.7 Use its best efforts to assist District in selling, in the manner, at times, to the extent, and at a price or prices that District directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by District. All proceeds from the foregoing shall be applied to reduce payments to be made by District to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as District may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which District has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Consultant's written request made within such 3-month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. District shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or

- amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments Terms". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the District that Consultant has no present, and will have no future, conflict of interest between providing the District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the District hereunder.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Consultant agrees to notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the District's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notice to the Parties

- 17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.
- 17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:
- (a) When personally delivered to the recipient, notice is effective on delivery.
 - (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
 - (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To District:
Kwablah Attiogbe, Environmental Manager
399 Elmhurst Street
Hayward, CA 94544

To Consultant:
MIG
Laura Moran, Director of Ecosystems Restoration Services
800 Hearst Ave, Berkeley, CA 94710

- 17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to District at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. District shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from District's use of Consultant's documents on work for which Consultant is not retained.
- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to District. With the prior written approval of the District, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising District and allowing District to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with District requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to Consultant's activities under this Agreement. Consultant will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from District's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon District's request and at Consultant's sole cost and expense, make such items available to District, and District's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay District its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section.
- 19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/ District Employees

- 20.1 Consultant and District agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the Subconsultants for the scopes of work listed in Appendix A attached hereto, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the District in writing.
- 20.3 To the extent Consultant is permitted by District in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section §3321. Consultant shall

remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.

- 20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

21. Drug-Free Workplace Policy

- 21.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on a County facility or work site. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents, or assigns shall be deemed a material breach of this Agreement.
- 21.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the District department/agency for which the contract services are performed.

22. Compliance with Americans with Disabilities Act

- 22.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

23. Debarment and Suspension Certification (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- 23.1 (a) By signing this agreement and Appendix F, Debarment and Suspension Certification, Consultant/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, and Executive Order 12549.
- (b) By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

24. Small, Local, and Emerging Business (SLEB) Participation

Small Local and Emerging Business (SLEB) Participation: Consultant shall subcontract with Vollmar and Applied Marine for services to be provided under this Agreement in an amount equal to twenty percent (20%) of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:

- 24.1 SLEB subcontractor(s) is (are) independently owned and operated (*i.e.*, is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 24.2 As is applicable, Consultant shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this Agreement.
- 24.3 Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County contract representative identified under Section 6.1 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- 24.4 All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation Compliance System. Consultant and Consultant's small and/or emerging local businesses participating subcontractors on the awarded contract are required to use the Elation web-based Compliance System to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation Compliance System. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.
- 24.5 County will be under no obligation to pay Consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.
- 24.6 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

25. First Source Program

- 25.1 For contracts over \$100,000, Consultant shall provide District ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the District that Consultant has available during the contract term before advertising to the general public.

26. Disputes

- 26.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.
- 26.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

26.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

27. Agreement Made in California; Venue

27.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

27.2 The parties shall execute one original and three copies of this Agreement.

28. Compliance with Laws

28.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.

28.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

29. Construction

29.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

30. Miscellaneous

30.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections 337.1 and 337.15, shall continue to apply.

30.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

- 30.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 30.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 30.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

31. Entire Agreement; Modifications of Agreement

- 31.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 31.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 31.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 31.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 31.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 31.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.
- 32.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.

32. Labor Code Requirements

- 32.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals by the County will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 32.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 32.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 32.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 32.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 32.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 32.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 32.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 32.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon

compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.

32.12 In accordance with Section 1776 of the Labor Code:

- 32.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
 - 32.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
 - 32.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 32.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
 - 32.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
 - 32.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
 - 32.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
 - 32.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
 - 32.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
 - 32.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 32.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 32.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
 - 32.13.2 This provision applies to all classifications, including truckers.
- 32.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.

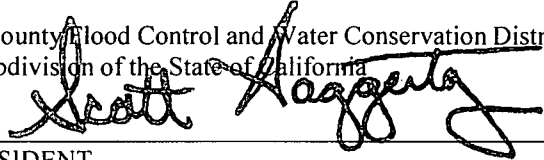
- 32.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 32.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 32.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

- 32.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
 - 32.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - 32.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
 - 32.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 32.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 32.17.1 If District finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the District will notify the Consultant in writing of the sanctions to be imposed.
 - 32.17.2 In addition, the District shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein
- 32.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:
- 32.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
 - 32.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
 - 32.18.3 Terminate the contract and collect appropriate damages from the Consultant.
 - 32.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future District contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

“DISTRICT”

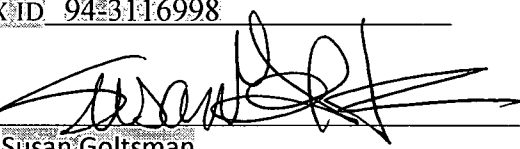
Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California

By: 
PRESIDENT
BOARD OF SUPERVISORS

Date: OCT 15 2015

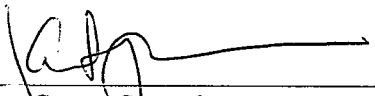
“CONSULTANT”

TAX ID 94-3116998

By: 
Susan Goltsman
PRESIDENT

Date: 9-15-15

Approved as to form:
Donna R. Ziegler, County Counsel


By Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

END OF DOCUMENT

APPENDIX A

CONTRACT NO-12652

SCOPE OF SERVICES

BIOLOGICAL AND BROAD RANGE SERVICES

During the period of this contract, Consultant will provide professional Biological consulting services, labor, equipment and/or materials as needed to support Public Works Agency and Flood Control District activities. It is anticipated that District's associated work will involve primarily transportation and flood control activities in upland, riparian and wetland areas.

District requires "On-Call" professional environmental support services to assist District staff in delivery of the District Capital improvement projects (CIP) in compliance with state and federal environmental laws (CEQA/NEPA) and other environmental regulations. Consultant will provide biological services, including project site surveys and assessment, special status species surveys (including protocol level surveys per USFWS guidelines); Army Corps of Engineers (AOE) wetland delineations and jurisdiction determinations; project impact analyses; mitigation studies, concept level and detailed mitigation design, installation, and monitoring; preparation of permit applications and coordination with permitting agencies (AOE, Section 404, Regional Water Quality Control Board (RWQCB) Section 401 and Department of Fish and Wildlife Section (DFW) 1600). Consultant shall advise and assist District staff with respect to compliance with environmental permit conditions including pre-construction project site surveys; construction site monitoring; and preparation of associated reports. Consultant shall provide Broad Range Service, including noise and vibration, air quality, aesthetics, and land use analyses and other such studies as is required and the firm is qualified to perform.

All work and materials shall meet the standards and requirements of all applicable Federal, State, and local government laws and the regulations and guidelines of their agencies, and shall also comply with the prevailing standards and practices of the profession. Use of subcontractors is subject to pre-approval by District.

It is possible that Consultant may not be called upon to do any work pursuant to this agreement at the discretion of the District.

Consultant and District shall mutually agree upon specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks would be performed on a "time and materials" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be as shown in the Fee Schedule Appendix B-1.

APPENDIX B

PAYMENT TERMS

This is an appendix attached to, and made a part of the Agreement dated October 13, 2015, between the Alameda County Flood Control and Water Conservation District (“District”) and MIG. (“Consultant”), providing for professional services.

1. Amount of Compensation for Services of Consultant

- 1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed Six Hundred Thousand Dollars (\$600,000) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services. If District elects to exercise its right to renew this Agreement, the amount of compensation to be paid to Consultant shall not exceed Two Hundred Thousand Dollars (\$200,000) for each year of the renewal term.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by District.

2. Monthly Billing Breakdown

- 2.1 District shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for District’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

3. Methods of Payment to Consultant

- 3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.
- 3.2 For Additional Services. The District shall pay Consultant for Additional Services, as defined below, as follows:
 - 3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at District’s option, based on hourly rates per Consultant’s billing schedule with an agreed not-to-exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

4. Definitions

- 4.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.
- 4.2 The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Services (Appendix A). The Fee Schedule Rates (Appendix B-1) shall remain constant through June 30, 2016, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. After June 30, 2016, the consultant may propose fee adjustments during subsequent year(s) of the Agreement period due to normal salary increases. Upon review of the request of fee adjustments and acceptance by the District, it shall become a part of this Agreement and remain in full force and effect.
5. The markup cost for material and services required for the Project shall not exceed ten percent of the original cost (10%).

END OF APPENDIX B

APPENDIX B-1



TRA ENVIRONMENTAL
SCIENCES

BILLING RATES – 2015

Unless specified otherwise by prior agreement, invoices are submitted monthly showing time and charges for professional services by staff category and a separate figure for expenses. Invoices are payable upon receipt. Invoices unpaid past 30 days are subject to interest at 1 1/2% per month.

MIG|TRA Environmental Sciences, Inc., Labor (includes all overhead).

STAFF BILLING RATES

CATEGORY	\$/HR
Senior Principal/CEO	295
Principal	210
Senior Project Manager III	180
Senior Project Manager II	160
Senior Project Manager I	145
Project Manager II	130
Project Manager I	115
Senior Landscape Architect	175
Landscape Architect	140
Landscape Designer	110
Senior Planner	175
Cultural Resources Planner	140
Planner	140
ADA Specialist	130
Associate Planner	115
Senior Facilitator	175
Outreach Specialist (bilingual)	115
Associate Facilitator	100
Senior Biologist II/Senior Analyst II	145
Senior Biologist I/Senior Analyst I	130
Biologist III/Analyst III	115
Biologist II/Analyst II	100
Biologist I/Analyst I	85
Strategic Communications Expert	190
Arts Director	175
Senior Web Designer	150
Graphic Designer	130
GIS Analyst	110
CAD/GIS/Graphic Specialist	90
Support Staff	85
Field Crew	50

PLANNING | DESIGN | COMMUNICATIONS | MANAGEMENT | TECHNOLOGY | SCIENCE

545 Middlefield Road, Suite 200 • Menlo Park, CA 94025 • 650-327-0429 • www.migcom.com • www.traenviro.com

Offices in: California • Colorado • New York • North Carolina • Oregon • Texas

APPENDIX B-1

MIG|TRA Rates
2015

EXPENSES

CATEGORY	BASIS
Commercial travel	Cost+10%
Automobile travel	current IRS rate
Lodging/Meals	Cost+10%
Photocopy (A and B sizes)	\$0.10/image
Color copies	\$0.50/image
Commercial report reproduction	Cost+10%
Noise meter setup	\$50/unit/day
Subcontractors	Cost+10%
Other (lab, aerial photos, etc.)	Cost+10%

Rates subject to revision effective January 1 of each year

APPENDIX B-1

A P P L I E D

marine

S C I E N C E S

ACCWP Year 1 Detailed Rates and Payment Schedule for Applied Marine Sciences (AMS)

Tables 1 provides proposed cost schedules for AMS team labor categories. Table 2 provides proposed cost schedule for equipment expenses expected to be incurred during project implementation. AMS will administer the contract and will apply a general and administrative overhead rate of 15% to all direct costs with the exception of subcontractor charges, where a 10% general administrative fee will be applied.

Table 1: Labor Schedule for AMS Team personnel

Firm	Billing Category	Hourly Range
AMS	Sr. Principal Scientist	\$165-\$180
AMS	Principle Scientist	\$127-\$165
AMS	Staff Scientist	\$60-\$125
AMS	Administrative	\$70-\$85

APPENDIX B-1

Applied Marine Sciences, Inc. Equipment & Miscellaneous Fee Rate Sheet 2015-2016

Equipment	Rate
Water Sampler (Niskin Bottles)	\$ 25.00/day ¹
Water Sampler (Peristaltic Pump)	\$ 35.00/day ¹
Water Sampler (Large Volume Impeller Pump)	\$ 40.00/day ¹
Stream/Estuary Autosampler	\$ 175.00/week ²
Plankton Sampler	\$ 20.00/day ¹
Beach/Shallow Water Seine	\$ 50.00/day ¹
Fish Gill Net	\$ 75.00/day ¹
Fish Fyke Net	\$ 100.00/day ¹
Otter trawl	\$ 150.00/day ¹
Bottom Sampler/Dredge (Bivalve Sampler)	\$ 50.00/day ¹
Large Benthic/Sediment Sampler (Coated Van Veen Grab)	\$ 130.00/day ¹
Small Benthic/Sediment Sampler (Eckman Dredge)	\$ 25.00/day ¹
Benthic Wash Table and Screens	\$ 100.00/day ¹
Shallow Sediment Auger	\$ 25.00/day ¹
Piston Push Corer (2.5 inch ID core tube)	\$ 75.00/day ¹
Water Quality Recorder (Temp, DO, depth, pH, conductivity, chlorophyll, and other select parameters).	\$ 425.00/day ¹
Scuba Equipment	\$ 125.00/day ¹
Underwater Communication Equipment	\$ 100.00/day ¹
Underwater Digital Still and Video Camera	\$ 100.00/day ¹
Surface Video Camera	\$ 35.00/day ¹
Handheld GPS	\$ 10.00/day ¹
Depth Echosounder	\$ 10.00/day ¹
12' Inflatable Boat w/trailer	\$ 300.00/day ¹
2-way radios	\$ 10.00/week ¹
B/W Photocopies	\$.10/copy
Color Photocopies and Pictures	\$ 0.50/copy
On-line Literature Search Access	\$ 20.00/hour
Automobile Mileage	\$ Current Federal Government mileage rate

¹ Reduced rates for periods of a week or longer.

² Pro-rated for shorter periods of use; reduced rate for extended usage.

Charges for third-party equipment, supplies, services or facilities will be billed at cost plus 18% fee or as established by the contract. Such outside expenses will include: provision of watercraft, aircraft, and oceanographic equipment; travel and subsistence; copy, reproduction and binding services; communication charges (including telephone, telex cables, and courier services); chemical, taxonomic, sedimentological, and other laboratory services; and outside contractors and consultants.

APPENDIX B-1



Project Billing Rates and Direct Expenses:

All work will be performed on a time and materials basis. Hourly rates by staff categories are as follows:

- Principal/Project Manager: \$150/hour
- Senior Ecologists: \$120/hour
- Senior GIS Specialists: 120/hour
- Staff Ecologists/GIS Analysts: \$90/hour.

The follows rates will apply for direct project expenses:

- ATV/Trailer: \$100/day
- Professional GPS Unit: \$100/day
- Water Quality Meter: \$100/day
- Vehicle Mileage: \$0.575/mile

APPENDIX C

Client#: 2042

MOOREIACO

ACORDTM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	CONTACT NAME: Jo Lusk PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS: jlusk@dealeyrenton.com														
INSURED Moore Iacofano Goltsman, Inc. 800 Hearst Ave. Berkeley, CA 94710	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; font-size: small;">INSURER(S) AFFORDING COVERAGE</td> <td style="text-align: center; font-size: small;">NAIC #</td> </tr> <tr> <td>INSURER A : Travelers Indemnity Co. of Conn</td> <td style="text-align: center;">25682</td> </tr> <tr> <td>INSURER B : Travelers Property Casualty Co</td> <td style="text-align: center;">25674</td> </tr> <tr> <td>INSURER C : Sentinel Insurance Co. LTD</td> <td style="text-align: center;">11000</td> </tr> <tr> <td>INSURER D : ACE American Insurance Company</td> <td style="text-align: center;">22667</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Travelers Indemnity Co. of Conn	25682	INSURER B : Travelers Property Casualty Co	25674	INSURER C : Sentinel Insurance Co. LTD	11000	INSURER D : ACE American Insurance Company	22667	INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6802G239267	08/31/2015	08/31/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	X	X	BA2G258325	08/31/2015	08/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	X	CUP2G258454	08/31/2015	08/31/2016	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) <input checked="" type="checkbox"/> N N/A If yes, describe under DESCRIPTION OF OPERATIONS below		X	57WEDD8525	04/01/2015	04/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liability			G21656434012	07/01/2015	07/01/2016	\$2,000,000 per claim \$2,000,000 annl agr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
General Liability policy excludes claims arising out of the performance of professional services.
Note: 30 days notice of cancellation will be given except 10 days for non-payment.
Re: Project #10729.00, ACFCWC - Biological & Broad Range Professional Services
 The County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are named as additional insureds as respects general and (See Attached Descriptions)

CERTIFICATE HOLDER Alameda County Public Works Agency Attn: James Yoo 399 Elmhurst Street Hayward, CA 94544	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

APPENDIX C

DESCRIPTIONS (Continued from Page 1)

auto liability for claims arising from the operations of the named insured. Insurance is primary and non contributory.

APPENDIX C

POLICY NUMBER: 6802G239267

COMMERCIAL GENERAL LIABILITY
ISSUE DATE: 08/31/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S): Alameda County Public Works Agency
Attn: James Yoo
399 Elmhurst Street
Hayward, CA 94544

PROJECT/LOCATION OF COVERED OPERATIONS:

Name of additional insureds, cont'd: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives

PROVISIONS

A The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, property damage or personal injury caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that contract or agreement requiring insurance to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

APPENDIX C

COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

APPENDIX C

POLICY NUMBER: BA2G258325

COMMERCIAL AUTO
CA 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 08/31/2015	
Named Insured Moore Iacofano Goltsman, Inc.	Countersigned by <i>Michael C...</i>

(Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s):

Name of additional insureds, cont'd: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

APPENDIX C

Insured: Moore Iacofano Goltsman, Inc.

Policy Number: 57WEDD8525

Effective Date: 04/01/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be _____ % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Alameda County Public Works Agency
Attn: James Yoo
399 Elmhurst Street
Hayward, CA 94544

Job Description

Name of person or organization cont'd: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives

Countersigned by



Authorized Representative

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://acgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT 10 % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: Biological Resource Surveys & Documentation

SLEB Subcontractor Business Name: Vollmar Natural Lands Consulting, Inc.

SLEB Certification #: 07-91084 SLEB Certification Expiration Date: 09/30/2015

SLEB Certification Status: Small / Emerging

NAICS Codes Included in Certification: 541620, 541690

SLEB Subcontractor Principal Name: John E. Vollmar

SLEB Subcontractor Principal Signature: [Signature] Date: 08/03/2015

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Moore Jacobano Goltsman, Inc. (MIG, Inc.)
Street Address: 800 Hearst Ave City Berkeley State CA Zip Code 94710
Firm Signature: [Signature] Date: 8/4/15

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://acgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT 10 % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: Marine/Aquatic Biology | Water Quality

SLEB Subcontractor Business Name: APPLIED MARINE SCIENCES

SLEB Certification #: 05-90724 SLEB Certification Expiration Date: 09/30/15*

SLEB Certification Status: Small / Emerging *RENEWAL BEING SUBMITTED

NAICS Codes Included in Certification: 541712, 541620, 541690

SLEB Subcontractor Principal Name: JAY R. JOHNSON

SLEB Subcontractor Principal Signature: _____ Date: 8/4/15

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Moore Iacofano Goltsman, Inc
Street Address: 800 Hearst Avenue City Berkeley State CA Zip Code 94710
Firm Signature: John Bava Date: 8/4/15

APPENDIX E

EXHIBIT L

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

DEBARMENT AND SUSPENSION CERTIFICATION

For Procurements Over \$25,000

The firm, under penalty of perjury, certifies that, except as noted below, firm, its Principal, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

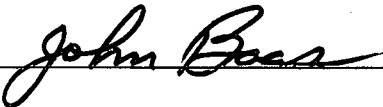
If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining firm responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

FIRM: Moore Iacofano Goltsman, Inc.

PRINCIPAL: John Baas TITLE: Principal

SIGNATURE:  DATE: 8/4/15

APPENDIX F

EXHIBIT M

(for contracts of \$1,000,000 or more)

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

The Iran Contracting Act (ICA) of 2010

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

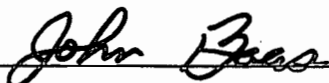
1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of submitting for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to submit for or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

NAME: Moore Iacofano Goltsman, Inc.

PRINCIPAL: John Baas TITLE: Principal

SIGNATURE:  DATE: 8/4/15

APPENDIX G

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT CONFLICT OF INTEREST STATEMENT

The following provisions of Government Code Section 1090 on Conflict of Interest and Section 87100 (the Political Reform Act of 1974) shall be used by all Alameda County departments and agencies that use staff and/or community volunteers to rate, rank or evaluate requests for proposals/qualifications (RFP/RFQ) or invitations for bids (IFB) on behalf of County departments and agencies.

It is the duty of a volunteer to resign from a rating, ranking or evaluation panel if participating in any way in the making of a funding decision would have a "material financial interest" on his/her personal financial interest or those of close relatives and/or private entities that the volunteer directly or indirectly represents.

The County's officers, employees and agents, including contractors, their agents and volunteers shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. In addition, no employee, officer or agent shall participate in the selection, award or administration of a contract where any of the following has a financial or other substantial interest in that contract:

1. The employee, officer or agent.
2. Any member of his or her immediate family.
3. His or her business partner.
4. An organization in which any of the above is/has been during the previous 18-24 months an officer, director, board member, employee or consultant.
5. A person or organization with whom any of the above individuals is negotiating employment or has any arrangement concerning prospective employment.

Definitions

For the purpose of this procedure the following definitions shall apply:

- a. "Member(s) of the immediate family" include: wife, husband, daughter, son, mother, father, sister, brother, grandparent, grandchild, uncle, niece, nephew, stepparent, stepchild, mother-in-law, father-in-law, daughter-in-law and son-in-law.
- b. "Organization" means the sponsoring entity of any program or contract activity with which Alameda County enters into a contractual or subcontractual relationship.
- c. "Program" is any separate and distinct activity engaged in by an organization, which may have more than one program.
- d. "Substantial interest" is any direct or indirect reasonably foreseeable financial interest in a transaction with Alameda County or with any Alameda County funded program, distinguishable from the effect on the public generally, including but not limited to the receipt of commission, fee, share of proceeds or profits, prospect of promotion or advancement, bonus, profit, or any other form of economic or tangible reward, or any of the following interests in a for-profit business entity that is supplying goods, space or services to Alameda County or to an Alameda County funded organization: (1) ownership; (2) partnership or other interest of 5% or more; (3) ownership of 5% or more of the stock of a corporation; (4) employment as an executive or managerial officer; and/or (5) membership on a board of directors or other governing body.

Consistent with Government Code Section 82030(b) (2), salaries and expense reimbursements paid by a federal, state or local governmental entity to an employee of that entity are not considered "income" or a "financial interest" for the purpose of this procedure.

The Alameda County Flood Control and Water Conservation District has requested the services of the individual named below as a rater/ranker/evaluator for its Biological and Broad Range "On-Call Services".

"I have read the above definitions of conflicts of interest and by my signature below, I attest that I do not have a conflict of interest as defined above for the purpose of participating in the above referenced RFP/RFQ:"

Name: Adele Torrealba Employer: MIG
Signature: Adele JTB Date: 9/21/15
E-mail address: atorrealba@mig.com.com Phone: 510-845-7549
QIC Code: _____

Professional Services Agreement

With

Questa Engineering, Corp

for

BIOLOGICAL AND BROAD RANGE PROFESSIONAL SERVICES

Contract No. 12651

Alameda County Flood Control and Water Conservation District

AGREEMENT BETWEEN
THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
Questa Engineering Corp

This Agreement is made this the _____ day of October, 2015, in the City of Oakland, State of California, by and between Questa Engineering Corp, 818 Mendocino Ave, Berkeley, CA 94707, hereinafter referred to as "Consultant" and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as "District."

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "B-1", "C", "D", "E", "F" and "G" attached hereto.

CONSULTANT Questa Engineering, Corp

DISTRICT Alameda County Flood Control and Water Conservation District

Project The DISTRICT's project – Biological and Broad Range Professional Services - as further described in Appendix "A", Scope of Services.

Services All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

Subconsultants Consultant's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from October 13, 2015 through June 30, 2020.

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix "A", "Scope of Services" to be Provided by Consultant, attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant and District shall mutually agree upon a specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks will be performed on a "time and material" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be shown in the Fee Schedule Appendix B-1. Consultant shall complete all Services required by this Agreement within the times specified by mutual agreement. Consultant shall achieve its agreed-upon time frames unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when

acting at District's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the District's satisfaction. (For example, and not by way of limitation, contract punch list and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of critical importance in the performance of this Agreement.

4. Compensation

- 4.1 District shall pay Consultant compensation according to the Payment Terms established in Appendix "B", Payments to Consultant. District shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".
- 4.2 District shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until District receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then District may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon District.
- 4.3 District will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). District will make payment for questioned amount(s) upon District's receipt of any requested documentation verifying the claimed amount(s) and District's determination that the amount is due under the terms of this Agreement. District shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of District including, without limitation, Consultant's transmittal of all deliverables to District required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to District. All amounts paid by District to Consultant shall be subject to audit by District. Payment shall be made by District to Consultant at the address stated hereinabove.
- 4.5 District may set off against payments due Consultant under this Agreement any sums that District determines that Consultant owes to District because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages. Prior to exercising such right, District must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by District, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the District's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section.

5. Maximum Costs

- 5.1 District's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, District has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and

supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

- 5.3 District shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through Questa Engineering Corp, Jeffery H. Peters, 818 Mendocino Ave, CA 94707. and Consultant shall direct all communications to "District" through District Project Manager.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of District. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge District for the cost of training or "bringing up to speed" replacement personnel. District may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", "Scope of Services" to be provided by consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the "Payment Terms" to Consultant established in Appendix "B", Billing rates to Consultant shall be from the "Fee Schedule Rates" established in Appendix B-1.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by District to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by District, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of District or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

8.1(a) To the fullest extent allowed by law, Consultant shall indemnify and hold harmless the District and County of Alameda, their Board of Supervisors, officers, employees, and representatives from and against any and all claims, actions, including administrative actions, penalties, fees or fines, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, District or County employees, and the public, or damage to property, or any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District or County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

(b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2782.8 of the California Civil Code.

(c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceeding for professional negligence would be barred by an applicable statute of repose or statute of limitation.

8.2 [Intentionally Omitted]

8.3 [Intentionally Omitted]

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.

8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", Definition of Services to be provided by Consultant.

9. Liability of District

9.1 Except as provided in Appendix "A", Scope of Services to be Provided by Consultant, and Appendix "C", Insurance, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Notwithstanding any other provision of this Agreement, 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, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of District.

- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes, and Other Expenses

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between District and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be District employees, and shall not be entitled to receive any benefits conferred on District employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to District staff during the District's normal working hours or as otherwise requested by District. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

- 11.1 Prior to execution of this Contract, Consultant shall furnish to District satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, District may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse District for such expense).

12. Suspension of Services

- 12.1 District may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as District may determine in its sole discretion. District shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, District may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 13.2 Consultant shall be in default of this Agreement and District may, in addition to any other legal or equitable remedies available to District, terminate Consultant's right to proceed under the Agreement, for cause:

- 13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- 13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan acceptable to District to cure said breach, and then diligently commence and continue such cure according to the written plan); or
- 13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from District to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide District within the 10 day period a written plan to cure said violation acceptable to District, and then diligently commence and continue performance of such cure according to the written plan.)
- 13.3 In the event of termination by County as provided herein for cause:
- 13.3.1 District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
- 13.3.2 Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to; all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.
- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

14. Termination of Agreement for Convenience

- 14.1 District may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever District shall determine that termination is in the District's best interests. Termination shall be effected by District delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by District, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - 14.2.4 Assign to District in the manner, at times, and to the extent directed by District, all right, title, and interest of Consultant under orders and subcontracts so terminated. District shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of District to the extent District may require. District's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to District, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by District, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to District.
 - 14.2.7 Use its best efforts to assist District in selling, in the manner, at times, to the extent, and at a price or prices that District directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by District. All proceeds from the foregoing shall be applied to reduce payments to be made by District to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as District may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as District may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which District has or may acquire an interest.

- 14.3 After receiving a Notice of Termination, Consultant shall submit to District a termination claim, in the form and with the certification District prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by District upon Consultant's written request made within such 3-month period or authorized extension. However, if District determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, District may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. District shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Section 14.3, Consultant and District may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of—
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments Terms" to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.
- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the District that Consultant has no present, and will have no future, conflict of interest between providing the District the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the District, as determined in the reasonable judgment of the District. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the District hereunder.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the District's interests where such confidential information could be used adversely to the District's interests. Consultant agrees to notify the District immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the District's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without District's prior written consent. Consultant shall have the right, however, without District's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the District hereunder.

17. Notice to the Parties

- 17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.
- 17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:
- (a) When personally delivered to the recipient, notice is effective on delivery.
 - (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
 - (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
 - (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.
- 17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.
- 17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To District:
Kwablah Attiogbe, Environmental Manager
399 Elmhurst Street
Hayward, CA 94544

To Consultant:
Questa Engineering Corp
Jeffery H. Peters, Principal
818 Mendocino Ave, Berkeley, CA 94707

- 17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to District at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. District shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from District's use of Consultant's documents on work for which Consultant is not retained.
- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to District. With the prior written approval of the District, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to District, and District's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising District and allowing District to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with District requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to District during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to District or relative to Consultant's activities under this Agreement. Consultant will furnish to District, its authorized agents, officers and employees such other evidence or information as District may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit District, and District's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from District's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon District's request and at Consultant's sole cost and expense, make such items available to District, and District's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay District its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon District by this Section.
- 19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/ District Employees

- 20.1 Consultant and District agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by District in a written instrument executed and approved by the District in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the Subconsultants for the scopes of work listed in Appendix A attached hereto, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the District in writing.
- 20.3 To the extent Consultant is permitted by District in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section §3321. Consultant shall

remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.

- 20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by District or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of District.

21. Drug-Free Workplace Policy

- 21.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on a County facility or work site. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents, or assigns shall be deemed a material breach of this Agreement.
- 21.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the District department/agency for which the contract services are performed.

22. Compliance with Americans with Disabilities Act

- 22.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

23. Debarment and Suspension Certification (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- 23.1 (a) By signing this agreement and Appendix E, Debarment and Suspension Certification, Consultant/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, and Executive Order 12549.
- (b) By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

24. Small, Local, and Emerging Business (SLEB) Participation

SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: Consultant has been certified by the County as a small or emerging local business. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision. If during the term of this Agreement, Consultant's certification status changes, Consultant shall notify the County within three business days.

Should Consultant's status as a certified small or emerging local business change at any time during the term of this Agreement, Consultant shall negotiate with County to be in compliance with the County's Small and Emerging Local Business provision, including but not limited to:

- 24.1 Consultant must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- 24.2. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 24.3. As is applicable, Consultant shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this agreement.
- 24.4 For any subcontractors retained to comply with this provision, Consultant shall not substitute any such small and/or emerging local business(s) subcontractor without prior written approval from the County. Said requests to substitute shall be submitted in writing to the County department contract representative identified under Item #13 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC). Further approval from the Board of Supervisors may also be required.
- 24.5. If subcontractors are added to the agreement, all SLEB participation, except for prime contractor, must be tracked and monitored utilizing the Elation compliance System (see Exhibit F). SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

Consultant shall meet the requirements above within 15 business days of the County notifying Consultant that it is no longer in compliance with the program. County will be under no obligation to pay consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

25. First Source Program

- 25.1 For contracts over \$100,000, Consultant shall provide District ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the District that Consultant has available during the contract term before advertising to the general public.

26. Disputes

- 26.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.
- 26.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue

Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.

- 26.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

27. Agreement Made in California; Venue

27.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

27.2 The parties shall execute one original and three copies of this Agreement.

28. Compliance with Laws

28.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.

28.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

29. Construction

29.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

30. Miscellaneous

30.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

30.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

- 30.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 30.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 30.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

31. Entire Agreement; Modifications of Agreement

- 31.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 31.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 31.3 Consultant and its Subconsultants shall, upon request by District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 31.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 31.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both District and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 31.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

32. Labor Code Requirements

- 32.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the County, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 32.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 32.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 32.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 32.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 32.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 32.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 32.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 32.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 32.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the

Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.

32.12 In accordance with Section 1776 of the Labor Code:

- 32.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 32.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
 - 32.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 32.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
 - 32.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
- 32.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 32.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 32.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 32.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 32.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 32.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
 - 32.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
 - 32.13.2 This provision applies to all classifications, including truckers.
- 32.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.

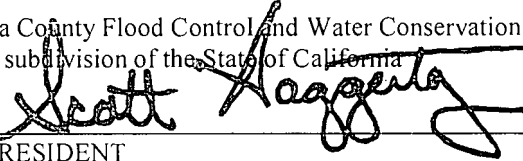
- 32.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with District representatives may result in conditioning amounts of any progress payment due.
- 32.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 32.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 32.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 32.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 32.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 32.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 32.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 32.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 32.17.1 If District finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the District will notify the Consultant in writing of the sanctions to be imposed.
- 32.17.2 In addition, the District shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein
- 32.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:
- 32.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 32.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 32.18.3 Terminate the contract and collect appropriate damages from the Consultant.

32.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future District contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

“DISTRICT”

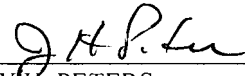
Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California

By: 
PRESIDENT
BOARD OF SUPERVISORS

Date: OCT 15 2015

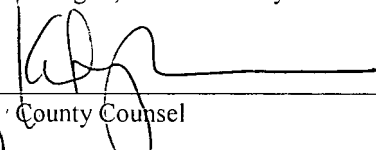
“CONSULTANT”

TAX ID 94287533

By: 
JEFFERY H. PETERS
PRINCIPAL

Date: 9/21/15

Approved as to form:
Donna R. Ziegler, County Counsel

By 
Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

END OF DOCUMENT

APPENDIX A

CONTRACT NO-12651

SCOPE OF SERVICES

BIOLOGICAL AND BROAD RANGE SERVICES

During the period of this contract, Consultant will provide professional Biological consulting services, labor, equipment and/or materials as needed to support Public Works Agency and Flood Control District activities. It is anticipated that District's associated work will involve primarily transportation and flood control activities in upland, riparian and wetland areas.

District requires "On-Call" professional environmental support services to assist District staff in delivery of the District Capital improvement projects (CIP) in compliance with state and federal environmental laws (CEQA/NEPA) and other environmental regulations. Consultant will provide biological services, including project site surveys and assessment, special status species surveys (including protocol level surveys per USFWS guidelines); Army Corps of Engineers (AOE) wetland delineations and jurisdiction determinations; project impact analyses; mitigation studies, concept level and detailed mitigation design, installation, and monitoring; preparation of permit applications and coordination with permitting agencies (AOE, Section 404, Regional Water Quality Control Board (RWQCB) Section 401 and Department of Fish and Wildlife Section (DFW) 1600). Consultant shall advise and assist District staff with respect to compliance with environmental permit conditions including pre-construction project site surveys; construction site monitoring; and preparation of associated reports. Consultant shall provide Broad Range Service, including noise and vibration, air quality, aesthetics, and land use analyses and other such studies as is required and the firm is qualified to perform.

All work and materials shall meet the standards and requirements of all applicable Federal, State, and local government laws and the regulations and guidelines of their agencies, and shall also comply with the prevailing standards and practices of the profession. Use of subcontractors is subject to pre-approval by District.

It is possible that Consultant may not be called upon to do any work pursuant to this agreement at the discretion of the District.

Consultant and District shall mutually agree upon specific work requirements, time frames for completion and cost in writing prior to commencement of each task. It is anticipated that most tasks would be performed on a "time and materials" basis and in such cases, proposed cost should be expressed as an "estimated cost", and rates of payment shall be as shown in the Fee Schedule Appendix B-1.

APPENDIX B

PAYMENTS TERMS

This is an appendix attached to, and made a part of the Agreement dated October 13, 2015, between the Alameda County Flood Control and Water Conservation District (“District”) and Questa Engineering, Inc. (“Consultant”), providing for professional services.

1. Amount of Compensation for Services of Consultant

- 1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed *One Million Dollars* (\$1,000,000) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by District.

2. Monthly Billing Breakdown

- 2.1 District shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for District’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

3. Methods of Payment to Consultant

- 3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.
- 3.2 For Additional Services. The District shall pay Consultant for Additional Services, as defined below, as follows:
 - 3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at District’s option, based on hourly rates per Consultant’s billing schedule with an agreed Not-to-Exceed amount.
 - 3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the District.

4. Definitions

- 4.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.
- 4.2 The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the Definitions of Services (Appendix A). The Fee Schedule Rates (Appendix B-1) shall remain constant through June 30, 2016, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. After June 30, 2016, the consultant may propose fee adjustments during subsequent year(s) of the Agreement period due to normal salary increases. Upon review of the request of fee adjustments and acceptance by the District, it shall become a part of this Agreement and remain in full force and effect.
5. The markup cost for material and services required for the Project shall not exceed ten percent of the original cost (10%).

END OF APPENDIX B

APPENDIX B-1



QUESTA 2015 FEE SCHEDULE

LABOR

QUESTA STAFF	HOURLY RATE
Principals.....	\$170.00 – 185.00
Senior Professional	\$145.00 – 165.00
Professional	\$130.00 – 145.00
Associate Professional	\$95.00 – 125.00
Technical Staff	\$80.00 – 95.00
CAD Drafting, GIS & Technical Writing	\$80.00 – 95.00
Administrative Staff	\$65.00 – 80.00

SUBCONSULTANTS	HOURLY RATE
Sam McGinnis, PhD, Consulting Wildlife Biologist	100.00
Kristen Hopper, Oaktown Nursery, Plant List Consultation	50.00
Kristen Hopper, Oaktown Nursery, Seed Collection or Monitoring	35.00
Josh Abrams, Transportation Planner	95.00
Brian Fulfroost, GIS Specialist	120.00
Scott Cressey, Sr. Fisheries Biologist	125.00
Geoffrey H. Hornek, Air Quality and Noise Specialist	100.00

Our typical subconsultant mark-up rate is 10%.

TRAVEL TIME

Travel time is charged at regular hourly rates.

DIRECT COSTS

All reimbursable, "out-of-pocket" expenses, not included in hourly labor rates, are billed as incurred at cost plus 10 percent. In-house charges, company equipment rental, and field supplies will be charged as used in accordance with the **Schedule of Fees**.

TERMS

Terms: Due and payable upon receipt. A 1.0% per month (12% per annum) late fee will be charged on all overdue balances. Current billings represent charges accrued through the last day of the indicated billing period. Unless marked as a "Final Invoice," subsequent charges may be pending and will be billed in the following month.

IN-HOUSE CHARGES

Blueprints	\$2.00 per sheet
Reproduction	0.15 per page
Facsimiles	1.00 per page
Plots (Line/Bitmap, Color, Black & White).....	2.00 / 4.00 / 8.00 per plot
Diskettes / Zip Disks / CD ROMS	0.75 / 12.00 / 2.00 per disk
Tolls	(at cost)
Postage	(at cost)
Vehicles	(\$22 per day, plus mileage)
Mileage	Current IRS Mileage Rate

RATE SCHEDULE – 2015*

PERSONNEL

Personnel categories and corresponding hourly rates are as follows:

Personnel Category	Hourly Rate
Principal/Senior Project Manager	\$130.00
Senior Land Planner/Permitting Specialist	\$125.00
Senior Permitted Biologist/Botanist/Wetlands Regulatory Scientist	\$115.00
Associate Biologist/Botanist	\$85.00
Staff Biologist/Botanist	\$70.00
Senior GIS/AutoCAD/LANDCAD	\$80.00
Technical Editor	\$60.00
Administrative	\$50.00

DIRECT EXPENSES

Transportation Rates - Current IRS standard mileage rate.

Travel Per Diem - Billed at the government Standard for the Geographic Area

Equipment fees-Trimble GPS Unit billed at \$125.00 per day.

Garmin hand-held GPS Unit billed at \$6.00 per day.

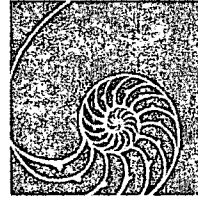
Small mammal traps- billed at \$0.50 per trap night.

**There are no changes in rates for nights or weekends.*

**Overtime is required by law for any hours over 8 hours in a day, or over 40 hours in a week.*

APPENDIX B-1

URBAN PLANNING
ENVIRONMENTAL ANALYSIS



2015 HOURLY RATE SCHEDULE

Scott Gregory, President	\$225/hour
Senior Planner	\$180/hour
Associate Planner	\$170/hour
Planner	\$140/hour
Administrative Support Staff	\$90/hour

COST AND PAYMENT SCHEDULE:

Rates provided are valid through the end of 2015. New rates, based on reasonable cost-of-living increases may apply in January 2016 and annually thereafter.

Payment is due within 30 days of receipt of invoices. Reimbursable expenses and subconsultant fees are invoiced at cost plus 10%.



APPENDIX C

QUESENG-01 THOMPSONC

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/21/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0E67768 IOA Insurance Services 3875 Hopyard Road Suite 240 Pleasanton, CA 94588	CONTACT NAME: Cassandra Thompson PHONE (A/C, No, Ext): (925) 416-7862 E-MAIL ADDRESS: Cassandra.Biglow@ioausa.com	FAX (A/C, No): (925) 416-7869
	INSURER(S) AFFORDING COVERAGE	
INSURED Questa Engineering Corporation 1220 Brickyard Cove Road, Suite 206 Point Richmond, CA 94801-4171	INSURER A: National Fire Insurance Co of Hartford	NAIC # 20478
	INSURER B: Continental Casualty Company	NAIC # 20443
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			B6016629863	09/10/2015	09/10/2016	EACH OCCURRENCE \$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 2,000,000
							GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
							\$
							\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			B6016629913	09/10/2015	09/10/2016	EACH OCCURRENCE \$ 2,000,000
							AGGREGATE \$ 2,000,000
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			PER STATUTE OTH-ER
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Professional Liab.			EEH004312784	08/01/2015	08/01/2016	Per Claim 2,000,000
B	Professional Liab.			EEH004312784	08/01/2015	08/01/2016	Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Evidence of Insurance

CERTIFICATE HOLDER Alameda County Public Works Department Attn: Anita Franklin 399 Elmhurst Street Hayward, CA 94544	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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APPENDIX C

QUEST-1 OP ID: MA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/16/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Diablo Valley Insurance Agency 801 Ygnacio Valley Rd, Ste 100 Walnut Creek, CA 94596 McGowan and Associates	CONTACT NAME: Melissa Rivera, CISR PHONE (A/C, No, Ext): 925-210-1717 E-MAIL ADDRESS: melissa@diablovalleyinsurance.com	FAX (A/C, No): 925-210-1818
	INSURER(S) AFFORDING COVERAGE	
INSURED Questa Engineering Corp. P.O. Box 70356 Point Richmond, CA 94807	INSURER A: American Fire & Casualty	NAIC # 24066
	INSURER B: Everest National Ins. Co.	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

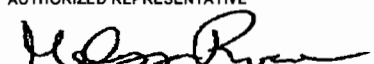
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPI/OP AGG \$ \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			BAA56726262	10/01/2015	10/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	7600014673151	04/01/2015	04/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Insurance

CERTIFICATE HOLDER ALAME-7 Alameda County Public Works Department Attn: Anita Franklin 399 Elmhurst Street Hayward, CA 94544	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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APPENDIX C

SB-146968-A
(Ed. 01/06)



Policy Number: B6016629863

IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED ENDORSEMENT
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE
&
BLANKET WAIVER OF SUBROGATION
Architects, Engineers and Surveyors**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS**

- A. WHO IS AN INSURED (Section C.)** of the Businessowners Liability Coverage Form is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:
1. Currently in effect or becoming effective during the term of this policy; and
 2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."
- B.** The insurance provided to the additional insured is limited as follows:
1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.
 2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
 3. The coverage provided to the additional insured within this endorsement and section titled **LIABILITY AND MEDICAL EXPENSE DEFINITIONS - "Insured Contract"** (Section F.9.) within the Businessowners Liability Coverage Form, does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.
 4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
 - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
 5. This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:
 - a. The construction or demolition work while you are acting as a construction or demolition contractor. This exclusion does not apply to work done for or by you at your premises.
- C. BUSINESSOWNERS GENERAL LIABILITY CONDITIONS - Duties In The Event of Occurrence, Offense, Claim or Suit (Section E.2.)** of the Businessowners Liability Coverage Form is amended to add the following:
- An additional insured under this endorsement will as soon as practicable:
1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;

APPENDIX C

SB-146968-A
(Ed. 01/06)

2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
4. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

D. OTHER INSURANCE (Section H. 2. & 3.) of the Businessowners Common Policy Conditions are deleted and replaced with the following:

2. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing to the additional insured's own coverage. This insurance is excess over any other insurance to which the additional insured has been added as an additional insured by endorsement.
3. When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured

against that "suit" If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

E. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (Section K.2.) of the Businessowners Common Policy Conditions is deleted and replaced with the following:

2. We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included within the "products-completed operations hazard."

10020099040241206902060



APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://acgov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

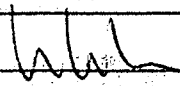
Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

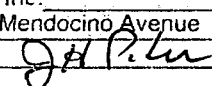
FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____
SLEB Certification #: _____ SLEB Certification Expiration Date: _____
NAICS Codes Included in Certification: _____

FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT 5-10 % WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: species consultation on planting plans and mitigation and monitoring plans

SLEB Subcontractor Business Name: Oaktown Native Plant Nursery
SLEB Certification #: 11-00199 SLEB Certification Expiration Date: 11/30/2015
SLEB Certification Status: Small / Emerging
NAICS Codes Included in Certification: 111421, 113210
SLEB Subcontractor Principal Name: Kristen Hopper
SLEB Subcontractor Principal Signature:  Date: 8/5/15

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Questa Engineering Corporation/Jeffrey Peters, Principal
Street Address: 818 Mendocino Avenue City Berkeley State CA Zip Code 94707
Firm Signature:  Date: 8/5/15

APPENDIX D

EXHIBIT F

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFQ No. 2015EJY

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFQ, all firms must complete this form as required below.

Firms not meeting the definition of a SLEB (<http://ag.gov.org/auditor/sleb/overview.htm>) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated proposal amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that firms will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Firms are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually propose as a prime on their own.

Once a contract has been awarded, firms will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

FIRM IS A CERTIFIED SLEB (sign at bottom of page)

SLEB FIRM Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT 20-30% WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: Biological services, wetland delineations, permitting

SLEB Subcontractor Business Name: California Environmental Services, LLC

SLEB Certification #: 12-00117 SLEB Certification Expiration Date: 8/31/2015

SLEB Certification Status: Small / Emerging

NAICS Codes Included in Certification: 541620

SLEB Subcontractor Principal Name: Gretchen E. Padgett-Flohr, Ph.D

SLEB Subcontractor Principal Signature:  Date: 07/31/2015

Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this proposal process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Firm Printed Name/Title: Questa Engineering Corporation/Jeffrey Peters, Principal

Street Address: 818 Mendocino Avenue City Berkeley State CA Zip Code 94707

Firm Signature:  Date: 8/15/15

APPENDIX E

EXHIBIT L

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

DEBARMENT AND SUSPENSION CERTIFICATION

For Procurements Over \$25,000

The firm, under penalty of perjury, certifies that, except as noted below, firm, its Principal, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

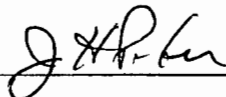
Exceptions will not necessarily result in denial of award, but will be considered in determining firm responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

FIRM: Questa Engineering Corporation

PRINCIPAL: Jeffrey Peters

TITLE: Principal

SIGNATURE: 

DATE: 8/5/15

APPENDIX F

EXHIBIT M

(for contracts of \$1,000,000 or more)

COUNTY OF ALAMEDA

SPECIFICATIONS, TERMS & CONDITIONS

For

BIOLOGICAL AND BROAD RANGE ENVIRONMENTAL SERVICES NO. 2015EJY

The Iran Contracting Act (ICA) of 2010

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

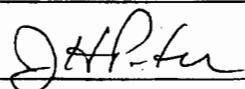
1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of submitting for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to submit for or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

NAME: Questa Engineering Corporation

PRINCIPAL: Jeffrey Peters TITLE: Principal

SIGNATURE:  DATE: 8/5/15

APPENDIX G
ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
CONFLICT OF INTEREST STATEMENT

The following provisions of Government Code Section 1090 on Conflict of Interest and Section 87100 (the Political Reform Act of 1974) shall be used by all Alameda County departments and agencies that use staff and/or community volunteers to rate, rank or evaluate requests for proposals/qualifications (RFP/RFQ) or invitations for bids (IFB) on behalf of County departments and agencies.

It is the duty of a volunteer to resign from a rating, ranking or evaluation panel if participating in any way in the making of a funding decision would have a "material financial interest" on his/her personal financial interest or those of close relatives and/or private entities that the volunteer directly or indirectly represents.

The County's officers, employees and agents, including contractors, their agents and volunteers shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. In addition, no employee, officer or agent shall participate in the selection, award or administration of a contract where any of the following has a financial or other substantial interest in that contract:

1. The employee, officer or agent.
2. Any member of his or her immediate family.
3. His or her business partner.
4. An organization in which any of the above is/has been during the previous 18-24 months an officer, director, board member, employee or consultant.
5. A person or organization with whom any of the above individuals is negotiating employment or has any arrangement concerning prospective employment.

Definitions

For the purpose of this procedure the following definitions shall apply:

- a. "Member(s) of the immediate family" include: wife, husband, daughter, son, mother, father, sister, brother, grandparent, grandchild, uncle, niece, nephew, stepparent, stepchild, mother-in-law, father-in-law, daughter-in-law and son-in-law.
- b. "Organization" means the sponsoring entity of any program or contract activity with which Alameda County enters into a contractual or subcontractual relationship.
- c. "Program" is any separate and distinct activity engaged in by an organization, which may have more than one program.
- d. "Substantial interest" is any direct or indirect reasonably foreseeable financial interest in a transaction with Alameda County or with any Alameda County funded program, distinguishable from the effect on the public generally, including but not limited to the receipt of commission, fee, share of proceeds or profits, prospect of promotion or advancement, bonus, profit, or any other form of economic or tangible reward, or any of the following interests in a for-profit business entity that is supplying goods, space or services to Alameda County or to an Alameda County funded organization: (1) ownership; (2) partnership or other interest of 5% or more; (3) ownership of 5% or more of the stock of a corporation; (4) employment as an executive or managerial officer; and/or (5) membership on a board of directors or other governing body.

Consistent with Government Code Section 82030(b) (2), salaries and expense reimbursements paid by a federal, state or local governmental entity to an employee of that entity are not considered "income" or a "financial interest" for the purpose of this procedure.

The Alameda County Flood Control and Water Conservation District has requested the services of the individual named below as a rater/ranker/evaluator for its Biological and Broad Range On-Call Services.

"I have read the above definitions of conflicts of interest and by my signature below, I attest that I do not have a conflict of interest as defined above for the purpose of participating in the above referenced RFP/RFQ:"

Name: Jeffrey H Peters Employer: Questa Engineering
Signature: JH Peters Date: 9/9/15
E-mail address: jpeters@questaec.com Phone: 510-236-6114 X206
QIC Code: _____