

# **REQUEST FOR Qualifications**

## **RFQ No. FLO20210390**

*for*

### **On-call Hydrology and Hydraulic Analysis and Drainage Master Plan Services**

#### **Alameda County SLEB Provisions Apply**

Consultants not meeting the definition of a small or emerging local business must commit to subcontracting with at least one County Certified SLEB for at least 20% of the contract amount.

#### **Optional Pre-SOQ Meeting**

**Thursday August 18, 2022, at 10:00 am**

**Meeting will be held virtually**

<https://bit.ly/3vBladi>

**Or call in (audio only)**

**+1 415-915-3950,,74161978# United States, San Francisco**

**Phone Conference ID: 74161978#**

#### **Response Due**

**Friday, September 16, 2022 by 2:00 pm**

**Alameda County Flood Control and Water Conservation District  
399 Elmhurst Street, Room 113  
Hayward, CA 94544**

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## I. Need for Professional Services

### A. Agency Seeking Services

The Alameda County Flood Control and Water Conservation District (District) provides flood protection for Alameda County residents and businesses. The District analyzes, plans, designs, constructs, and maintains flood control infrastructure and facilities such as natural creeks, engineered channels, levees, pump stations, dams, and reservoirs.

With this Request for Qualifications (RFQ), the District seeks to contract with up to three (3) qualified consultants or teams of consultants to provide specialized services to address District needs beyond that which current staff can handle. These needs generally include watershed studies (both hydrology and hydraulic); the preparation of drainage master plans; associated infrastructure condition assessments; preliminary plans, specifications, and estimates (PS&E); reviewing, identifying and documenting potential impacts to District infrastructure that would result from proposed third party projects; and grant applications and management for watersheds and infrastructure projects in specific District service areas. Project assignments will be established through individual scopes of work, on a rotational basis, but with consideration for the consultant's current workload and ability finish the assignment within in the timeframe required, and any other legitimate reason to select a particular consultant for a particular assignment. Overall, the goal of the District is to balance the work, as much as possible, between all three consultants.

The most current supporting information and addenda for this and other procurements can be found on the ACPWA business webpage <https://www.acpwa.org/business/current-opp.page?#profservices>.

It is the responsibility of a Proposer to be familiar with all specifications, terms, and conditions of the RFQ. By the submission of a Statement of Qualifications, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.

Any questions regarding this RFQ shall be submitted in writing via email to the contact person listed below by the date and time specified as the *Deadline for Questions* on the *Schedule of Events* (Section III-E).

Contact: Anita Franklin  
E-mail: [anita@acpwa.org](mailto:anita@acpwa.org)  
Phone: 510-670-5569  
Address: Alameda County Flood Control and Water  
Conservation District  
399 Elmhurst Street, Hayward, CA 94544

The District reserves the right to amend this RFQ or the criteria for consultant selection in any manner, to cancel this RFQ, or to reject any one or all Statements of Qualifications at its discretion, thus not awarding a contract to any firm.

**B. Project Description**

There are ten Flood Control Zones (2, 2A, 3A, 4, 5, 6, 7, 9, 12, and 13) in Alameda County. However, this RFQ is limited to western Alameda County and does not include work in Zone 7. The District prepares Drainage Master Plans to define the existing 1% (100-year) and 7% (15-year) annual exceedance probability deficiencies and improvements needed to convey the appropriate annual exceedance probability flood water within the open channels and major conduit systems under the District's jurisdiction.

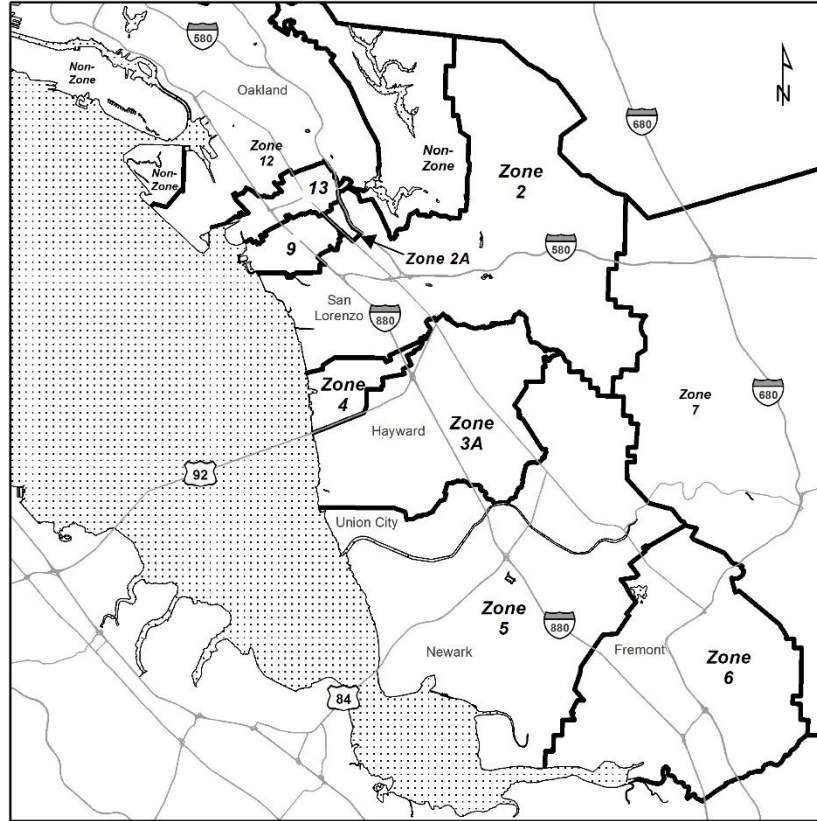
The information derived from the drainage master plans helps the District identify and prioritize those segments or portions of its drainage system that require upgrades to reduce flood risk to the County's residents and businesses. The drainage master plans, as such, serve as the basis for projects that the District includes in its Capital Improvement Program (CIP). Because the most critical projects are included as a higher priority in the CIP, the drainage master plans help ensure the best value is derived for the taxpaying public.

In recent years, the District has prepared Drainage Master Plans for some of its Zones. The purpose of this procurement is to retain the most qualified consultant(s) to perform:

- Updates to the existing Drainage Master Plans for Zones 3A and 6
- New Drainage Master Plans for Zones 2, 2A, 4, 5, 9, and 13 building on existing watershed studies

Additionally, the District may desire the consultant(s) to:

- Perform conditions assessments to catalogue and inventory the physical condition of select District facilities
- Perform hydrology and hydraulics analyses for specific projects to support the District's capital improvement program, including but not limited to surveys of pipe sizes and invert elevations at manholes, modeling, data analysis, GIS interface and hydrologic mapping, developing hydraulic profiles, and mapping the extent of any floodplains
- Prepare preliminary plans, specifications, and estimates for select projects
- Review, identify and document potential impacts to District infrastructure that would result from proposed third party projects
- Assisting and advising on applications for grants to augment District project funding and managing such grants



### C. Services Needed

In general, the services required for this contract will include the following:

**Project Management:** Consultant will establish a strategy, budget, and schedule to meet the District's goals, and then manage the work to deliver the project in a manner acceptable to the District.

**Model Development and Verification:** InfoWorks ICM (or equivalent) urban water modeling software, coupled with an ArcGIS (or equivalent) geodatabase, will be used to perform hydrologic and hydraulic modeling. Consultant will obtain and review all existing drainage project plans, geographic information system-based geodatabases of District facilities, and existing watershed hydrologic information; identify data gaps and obtain and verify the accuracy of pipe sizes and invert elevations or any other new data entered into the geodatabase; calibrate and verify the model against appropriate historical storm events.

**Drainage System Evaluation and Recommendations:** Based on the hydrologic and hydraulic modeling, Consultant will evaluate the drainage systems and the ability of District facilities to perform under the requisite performance criteria. Consultant will deliver a drainage master plan for necessary improvement projects, including alternative solutions for identified deficiencies. Consultant should expect that upon review of the plans the District may find a need for alternative

preferred solutions. The workplan and budgeting should account for such possibilities. All modeling and analyses must conform with the District's Alameda County Hydrology & Hydraulics Manual, which can be downloaded from the District's website at <https://acfloodcontrol.org/>.

**Drainage Facilities Conditions Assessment:** As an optional task, Consultant will perform condition assessments to document the physical condition of select District facilities. The condition assessment will be performed by visual inspection and structural assessments, as necessary. Consultant will deliver conditions assessment reports and a database of deficiencies and required improvements, along with estimated cost of repairs.

**Review of Third Party Projects:** As an optional task, Consultant will assist the District in reviewing, identifying and documenting potential impacts to District infrastructure that would result from proposed third party projects.

**Grant Application and Management:** As an optional task, Consultant will assist the District in identifying grant opportunities to help offset the cost for implementing capital improvement projects. At the District's direction, Consultant will seek out applicable grant opportunities (such as FEMA and/or Cal OES grants), prepare grant applications and supporting documentation, and track status and deadlines.

Note that work to be performed under this contract will require payment of prevailing wages and State of California Department of Industrial Relations registration.



## **II. Statement of Qualifications Requirements**

### **A. Minimum Qualifications**

To qualify for consideration, a proposer must possess adequate resources to perform all of the work needed to complete all stages of the project described in Section I-C. This includes possessing the required licensing, experience, software, and financial systems.

**LICENSING:** The consultant must have all required licenses, certifications, and registrations to perform the work. All engineering and/or surveying work must be performed under the responsible charge of a California registered professional engineer and/or land surveyor specializing in the applicable disciplines of engineering and/or surveying in accordance with the California Professional Engineers Act ([https://www.bpelsg.ca.gov/laws/pe\\_act.pdf](https://www.bpelsg.ca.gov/laws/pe_act.pdf)).

**EXPERIENCE:** Staff must possess substantial experience in hydrology, hydraulics, modeling, and conditions assessment. Staff must also possess experience in engineering and development of plans, specifications, and estimates for flood control projects; performing systematic conditions assessments of existing flood control infrastructure; and applying for and managing grants from federal, state, and regional agencies.

**SOFTWARE:** The software utilized by any potential consultant and its team must produce deliverables that are fully compatible, readable and useable by District software, requiring no modification or translation of the Consultant's deliverables. Software standards currently used by the District are as follows:

- Operating System: Windows 10 Enterprise
- GIS: ESRI ArcGIS
- Hydrologic modeling: InfoWorks ICM, or equivalent
- Word Processing, Spreadsheets, Presentations, et cetera: Microsoft Office 2016
- Project Scheduling: Microsoft Project 2013
- CADD: AutoCAD 2019. All drawings that include Civil improvements or survey data shall utilize AutoCAD Civil3D 2019

Alternative software can be proposed, but its acceptability will be at the sole discretion of the District. A qualified consultant is expected to minimally possess and maintain a professional level of proficiency with respect to all software products. Expert proficiency is desired for CADD programs.

## **B. Optional Pre-SOQ Meeting**

The virtual pre-SOQ meeting will be held at the date, time and link specified in the ‘Schedule of Events’ (Section III-E). Only one pre-SOQ meeting is scheduled. This meeting will be held primarily to provide an overview of the RFQ and to provide an opportunity for large and small firms to network and to potentially develop subcontracting relationships. Meeting notes, including a list of attendees, will be issued as an RFQ addendum following the meeting.

## **C. Written Statement of Qualifications**

### **1. Format**

The submitted response must include one original in an 8½ x11 format (a reasonable number of 11x17 foldout sheets may be included for presenting large tables, charts, and schedule diagrams). An exact duplicate, electronic copy must also be submitted on a USB-drive in a single PDF file. A PDF file created with searchable text is required.

RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. Statements of Qualification submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.

The original Statement of Qualifications must be unbound (or provided in an operable three ring binder), printed on plain white paper, and clearly identified as the original.

The District appreciates brevity. Please keep your Statement of Qualifications submission, excluding transmittal letter, title page, table of contents, plain section dividers, resumes, and required exhibits/attachments, to a total of 20 printed pages. Clarity and conciseness are essential and will be considered in assessing the Consultant’s capabilities.

To support environmental sustainability, it is recommended that all printed copies be double-sided and consist of a minimum 30% post-consumer recycled content paper. This is merely a suggestion, however. Adherence will not impact the evaluation or scoring of the Statement of Qualifications.

### **2. Content**

In order to simplify the process and to obtain the maximum degree of comparability, the Statement of Qualifications should be organized and divided into sections.

The following is a description of each section:

- a. **Transmittal letter:** Transmittal letter shall include a description of Proposer’s capabilities and approach in providing its services to the District and provide a brief synopsis of the highlights of the Statement of Qualifications. The transmittal letter should not exceed two (2) pages in length and should be easily understood. The letter must also identify the authorized signatories for the proposer and include his/her/their signature(s).

Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

b. **Title page:** The title of the Statement of Qualifications. This should include the RFQ subject, the name of the proposer's firm, location address, telephone number, name of the contact person, e-mail address, and the date. Indicate Small, Local and Emerging Business (SLEB) firm(s) and other firms serving as sub-consultants. Include the **Department of Industrial Relations (DIR) registration number** for registered consultants and sub-contractors covered by DIR prevailing wages, if any.

c. **Table of Contents:** Statements of Qualification shall include a table of contents listing the individual sections of the Statement of Qualifications and their corresponding **page numbers**.

d. **Statement of Qualifications Content:**

- 1) **Overview and Summary.** This section shall clearly convey the Consultant's understanding of the work. Consultant shall address their understanding of the District's objectives and the purpose of the project as well as the project challenges.

Statement of Qualifications must identify prime consultant, subconsultants, and the qualifications of each entity to perform the scope described herein. Due to the breadth of disciplines covered by this scope, please be as detailed as possible, and provide an organizational chart to show flow of communication and how the individual entities will be managed by the prime consultant.

The description of consultant's team shall (1) discuss how the team will meet or exceed the requirements of the District; (2) explain any special resources, procedures, or approaches that make the services of Consultant particularly advantageous to the District; (3) identify any limitations or restrictions of Consultant in providing the services that the District should be aware of in evaluating Consultant's Statement of Qualifications; and (4) discuss how the team will meet Alameda County's Small Local and Emerging Business (SLEB) required minimum 20% participation. The District will look favorably on SLEB participation at a percentage higher than 20%.

- 2) **Key Personnel.** Statements of Qualification shall include a complete list of all key personnel who will provide services on the projects. For each person on the list, the following information shall be included:

- 1) The Person's relationship with Consultant, including job title and years of employment with Consultant.
- 2) Brief one- to two-paragraph description of expertise and experience.
- 3) The role that the person will play on the project.
- 4) Address, telephone number, and e-mail address.
- 5) Person's educational background.
- 6) Person's relevant experience, certifications, and/or merits.

Detailed resumes for key staff may be included as an attachment and will not count towards the page total.

- 3) **Description of Consultant's Experience and Expertise.** Statements of Qualification shall include a detailed explanation of relevant experience including descriptions of similar project work. Consultant shall demonstrate a clear understanding of the project.

The Proposer shall provide a minimum of 3 references for similar projects. The Proposer and its sub-consultants shall indicate if its firm was involved with any litigation in connection with past or present projects. If so, a brief description of the nature of the litigation and the status/result shall be included. Please state in your submittal if you have none.

- 4) **Contract Negotiation Authorization and Financial Responsibility.** Include the name(s), e-mail addresses, and phone numbers of individuals authorized to negotiate this contract and contractually bind the Proposer and who may be contacted during the period of evaluation. A copy of the District's Professional Services Agreement and insurance requirement are enclosed for advanced review. The District shall have the right to request changes to the project team before execution of the contract. District shall have the right to reject any and all Statements of Qualification for any reason.

In this section the Proposer should also effectively demonstrate financial responsibility. At a minimum, the Proposer must certify, by including the following statement: "Our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the Uniform Guidance, 2 CFR Part 200, to the extent applicable to the Consultant." Provide brief explanation on how your markup(s) are financially responsible and competitive. Proposer should demonstrate how to manage expenses and keep costs at a minimum.

Submission of sealed fee schedules will be required at the time of contract negotiation.

5) **Exhibits/Attachments**

Statement of Qualifications shall include a complete set of the following forms:

- **Attachment A** - RFQ and Addendum Acknowledgement form
- **Attachment B** - 'Exceptions and Amendments' form: If the Proposer requests any exceptions or amendments to the RFQ or any associated documents, this form should be completed and attached at the end of the Statement of Qualifications. **Please note that the District is under no obligation to accept any exceptions and such exceptions may be a basis for Statement of Qualifications disqualification.**
- **Attachment C** – Alameda County Small, Local and Emerging Business (SLEB) forms.
- **Attachment D** – Vendor First Source Agreement.
- **Attachment E** – Sample Scope of Services.

- **Attachment F** – Standard Professional Services Agreement (Draft- For Information Only).

Proposers must not modify required forms or qualify their Statements of Qualification.

Printed Statements of Qualification must include physical dividers with labeled tabs between each section. Statements of Qualification in PDF form should have a bookmark link for the start of each section.

Statements of Qualification that do not include the required completed forms will be disqualified from further consideration.

The RFQ response must be submitted in its entirety within one securely sealed, sufficiently sized, envelope or box and received by the District by the deadline stated in the *Schedule of Events* (Section III-E). No part of any response will be accepted via email or fax. Unsealed or late responses will be rejected.

The District's timestamp will be the official record of receipt. In person deliveries should plan extra time for searching and/or paying for limited available parking.

Statements of Qualification must be addressed and delivered as indicated below:

Proposers Name

Return Address

**SEALED STATEMENT OF QUALIFICATIONS – DO NOT OPEN WITH REGULAR MAIL**

To: **Anita Franklin**

**Alameda County Flood Control and Water Conservation District  
399 Elmhurst Street, Room 113  
Hayward, CA 94544**

Contents: On-call Drainage Master Plan Services

Only one Statement of Qualifications will be accepted from any one person, corporation, or partnership. For purposes of this requirement, "partnership" shall mean, and is limited to, a legal partnership formed under one or more of the provisions of the California or other state's Corporations Code or an equivalent statute.

The District reserves the right to reject any Statement of Qualifications, but all qualifying Statements of Qualification shall remain open to acceptance and are irrevocable for a period of one hundred eighty (180) calendar days.

All costs associated with the preparation and submission of the written Statement of Qualifications shall be fully borne by the Proposer. All submitted materials become the property of the District and will not be returned.

Every Statement of Qualifications received will become part of public record and will not be treated as proprietary.

**D. Oral Presentation/Interview**

The District reserves the right to conduct an oral interview with up to five (5) of the highest scoring proposers. If the District elects to conduct oral interviews, additional details will be provided to those who are invited to participate. At the interview, the selection team will expect the Consultant team to present its team members and their qualifications. The project manager and key staff persons who will be working on the project on a daily basis must be present for the interview/presentation. The presentation will be followed by a question-and-answer period by the District Selection Committee.

Due to the COVID-19 pandemic, all oral interviews, if held, will be held virtually.

### III. Process of Selection

#### A. District Selection Committee

All Statements of Qualification will be evaluated by the District Selection Committee (DSC). It will be composed of District staff, County staff, and/or outside agency staff having expertise in such fields as civil engineering, hydrology, hydraulics, and/or modeling. The DSC will score and rank the Proposers in accordance with the evaluation criteria set forth in this RFQ; the evaluation of the Statements of Qualification shall be within the sole judgment and discretion of the DSC.

All contacts during the evaluation phase shall be through the District's contact only. Consultants shall neither contact nor lobby evaluators during the evaluation process. Attempts by Consultant to contact and/or influence members of the DSC may result in disqualification of Consultant.

Consultants should bear in mind that any Statement of Qualifications that is unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District's requirements as set forth in this RFQ.

#### B. Evaluation Criteria

As a result of this RFQ, the District intends to contract with up to three (3) qualified consultants or teams of consultants. The following evaluation criteria will be used in ranking and determining the quality of the Statements of Qualification. The District reserves the right to adjust the evaluation criteria and maximum points if it elects to conduct oral presentation/interviews.

Criteria for Written Statements of Qualification	Maximum Points
<p><b>Initial Criteria</b></p> <p>Responses to this RFQ must be complete. Responses that do not include the RFQ content requirements and subsequent Attachment requirements and do not address each of the items listed will be considered incomplete, be rated a Fail in the evaluation criteria and will receive no further consideration.</p> <p>Responses that are rated a Fail and are not considered may be picked up by the Consultant at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.</p>	Pass/Fail
<p><b>Understanding of the Project:</b></p> <ol style="list-style-type: none"> <li>1. The proposer demonstrated a thorough understanding of the purpose and scope of the project.</li> <li>2. The proposer's team demonstrated that it will meet the District's objectives.</li> </ol>	20

<b>Relevant Experience of Key Personnel:</b>  1. Assigned project manager's experience in managing a consultant team and delivery of projects similar to the required scope work. 2. Assigned project engineers', modelers', and other key staff's individual project experience is similar to the required scope work. 3. Consultant team structure (including maximizing the effective utilization of SLEBs) and working relationship on projects is effective for the required scope work.		40
<b>Experience and Expertise</b>  1. The proposer has performed projects of a similar nature and size to the District's project. 2. The proposer effectively demonstrated technical ability of the consultant team to perform the required tasks consistent with the proposed scope of work.		40
<b>TOTAL</b>		100
<b>LOCAL <u>OR</u> SLEB PREFERENCES (to be applied to the three top-ranked prime consultants)</b>		
1.	<b>Local Preference Points:</b> Equaling five percent (5%) of Consultant's total score will be added. This will be the Consultant's <u>final score</u> for purposes of award evaluation; <u>OR</u>	5% added to Total
2.	<b>County Certified Small and Local, or Emerging and Local Preference Points:</b> Equaling ten percent (10%) of Consultant's total score will be added. This will be the Consultant's <u>final score</u> for purposes of award evaluation.	10% added to Total

<b>Criteria for Reference and Oral Presentation (Optional)</b>		<b>Maximum Points</b>
1.	References:  Reference checks will only be performed on the short-listed consultants.	25
2.	Oral Presentation and Interview:  The oral presentation by each consultant shall not exceed sixty (60) minutes. The oral interview will consist of a 10-15 minute consultant presentation followed by standard	75



	questions asked of each of the consultants and specific questions regarding the desired services and team expertise.	
<b>TOTAL</b>		100

### C. Notice of Recommendation to Award

At the conclusion of the contract negotiation process with the highest ranked consultant(s), the District will notify all proposers by e-mail of the contract award recommendation, if any. The announcement will be titled ‘*Notice of Recommendation to Award.*’ It will provide the name of the proposer(s) being recommended for contract award and the names of all other parties that submitted Statements of Qualification.

At the conclusion of the Statement of Qualifications evaluation process, debriefings for unsuccessful proposers will be scheduled and provided only upon written request. A debriefing will generally be restricted to discussion of a proposer’s unsuccessful Statement of Qualifications. Under no circumstances will any discussion be conducted with regard to the successful proposer’s contract negotiations.

The submitted Statements of Qualification will be made available upon request no later than five (5) calendar days before approval of the award and contract is scheduled to be considered for award by the Board of Supervisors.

### D. Protest/Appeals Process

The District prides itself on the establishment of fair and competitive contracting procedures and the commitment made to follow those procedures. The following is provided in the event that proposers wish to protest the process or the recommendation to award a contract for this project once the Notice of Recommendation to Award has been issued. Protests submitted prior to issuance of the Notice of Recommendation to Award will not be accepted by the District.

1. Any protest by any proposer regarding any other Statement of Qualifications must be submitted in writing to the Flood Control District General Manager located at 399 Elmhurst St, Hayward, CA 94544, before 5:00 p.m. of the fifth business day following the date of issuance of the Notice of Recommendation to Award, not the date received by the protester. A protest received after 5:00 p.m. is considered received as of the next business day.
  - a. The protest must contain a complete statement of the reasons and facts for the protest.
  - b. The protest must refer to the specific portions of all documents that form the basis for the protest.
  - c. The protest must include the name, address, email address, and telephone number of the person representing the protesting party.

- d. The District will transmit a copy of the protest to all proposers as soon as possible after receipt of the protest.

2. Upon receipt of a written protest, the District General Manager, or designee, will review and evaluate the protest and issue a written decision. The District General Manager may, at his or her discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting proposer and others (as appropriate) to discuss the protest. The decision on the protest will be issued at least ten (10) business days prior to the District Board of Supervisors meeting for award.

The decision will be communicated by e-mail and certified mail and will inform the proposer whether the recommendation to the Board of Supervisors in the Notice of Recommendation to Award is going to change. A copy of the decision will be furnished to all proposers affected by the decision. As used in this paragraph, a proposer is affected by the decision on a Statement of Qualifications protest if a decision on the protest could have resulted in the proposer not being an apparent successful proposer on the RFQ.

3. The decision of the District General Manager on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502. The proposer whose Statement of Qualifications is the subject of the protest, all proposers affected by the District General Manager decision on the protest, and the protestor have the right to appeal if not satisfied with the District General Manager decision. All appeals to the Auditor-Controller's OCC shall be in writing and submitted within five (5) business days following the issuance of the decision by the District General Manager, not the date received by the appellant. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the fifth business day following the date of issuance of the decision by the District General Manager shall not be considered under any circumstances by the Auditor-Controller OCC.

- a. The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
- b. In reviewing protest appeals, the OCC will not re-judge the Statement of Qualifications(s). The appeal to the OCC shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFQ or, where appropriate, District contracting policies or other laws and regulations.
- c. The appeal to the OCC also shall be limited to the grounds raised in the original protest and the decision by the District General Manager. As such, an appellant is prohibited from stating new grounds for a protest in its appeal. The Auditor-Controller (OCC) shall only review the materials and conclusions reached by the District General Manager and will determine whether to uphold or overturn the protest decision.

d. The Auditor's Office may overturn the results of a Statement of Qualifications process for ethical violations by District staff, selection committee members, subject matter experts, or any other staff participating in the competitive process, regardless of timing or the contents of a Statement of Qualifications protest.

e. The decision of the Auditor-Controller's OCC is the final step of the appeal process. A copy of the decision of the Auditor-Controller's OCC will be furnished to the appellant, the proposer whose Statement of Qualifications is the subject of the protest, and all proposers affected by the decision.

4. The District will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award a contract is considered by its Board of Supervisors.

5. The procedures and time limits set forth in this paragraph are mandatory and are each proposer's sole and exclusive remedy in the event of a Statement of Qualifications protest. A proposer's failure to timely complete both the Statement of Qualifications protest and appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the Statement of Qualifications protest, including filing a government code claim or legal proceedings.

**E. Schedule of Events**

<b>EVENT</b>	<b>DATE • TIME • LOCATION</b>
Issuance of Request for Statement of Qualifications	Friday, August 5, 2022
Optional Pre-SOQ meeting	Thursday August 18, 2022 at 10:00 am
Deadline for Questions	Monday, August 22, 2022 by 2:00 pm
Issuance of Final RFQ Addendum if necessary	Thursday, August 25, 2022
<b>Written Statement of Qualifications Due</b>  * * * IMPORTANT * * * Follow all submission requirements stipulated in Section II-B	<b>Friday, September 16, 2022 by 2:00 pm</b> Attn: Anita Franklin Alameda County Flood Control and Water Conservation District 399 Elmhurst St, Room 113 Hayward, CA 94544 <i>Deliveries will be received and time stamped at            the reception desk.</i>
Oral Presentation/Interviews (optional)	Week of September 26 <sup>th</sup> , if held*
Notice of Recommendation to Award	Week of October 3, 2022*
Protest Deadline	5 business days following the issuance of the Notice of Recommendation to Award
Contract Consideration and Anticipated Award by Board of Supervisors	October 25, 2022*

\*Tentative Dates

## IV. Terms and Conditions for Agreement

Prior to acting upon this opportunity, qualifying proposers should review all applicable County, State, and Federal policies, terms, and conditions normally included as contractual requirements for projects of this type. The actual contract terms and conditions may differ from those presented here based on contract negotiations or changes in policy or law that might occur prior to executing a final agreement.

Some District projects may be funded, either partially or in whole, by State of California or other grants. Proposers will be expected to comply with State contracting requirements and the terms and conditions of those grants. For such grant funded projects, the exact grant contracting requirements will be spelled out in the scope of work for that project, and the consultant will have to approve of those requirements in writing before a notice to proceed will be issued. The scope of work for each project assignment, any special grant contracting requirements, the agreement to those requirements by the consultant, and the notice to proceed shall all be considered to be incorporated into the agreement with the consultant. If the consultant is unwilling to comply with the grant contracting requirements, the District will move on to another of the consultants for that work.

Proposers who wish to request exceptions or amendments to this RFQ or associated documents must complete the Exceptions and Amendments Form (Attachment B) and submit it with the Statement of Qualifications. The District is under no obligation to accept any exceptions and such exceptions may be a basis for Statement of Qualifications disqualification.

### A. General: Standard Professional Services Agreement

District's Professional Services Agreement is provided here as Attachment F. Potential proposers should review the agreement's Appendices for supplementary requirements and familiarize themselves with those provisions.

The District has adopted Alameda County policies on general and environmental requirements. Those additional policy requirements can be found at the webpages below:

1. *Alameda County's General Policy Requirements*  
<https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/general-requirements/>
2. *Alameda County's General Environmental Requirements*  
<https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/general-environmental-requirements/>

### B. Project Specific

Specific terms and conditions presented in this section will supplement or supersede those of the standard agreement.

## 1. Contract Term and Renewal

The contract that may be awarded as a result of this RFQ is expected to span a period of three (3) years, plus two optional one (1)-year periods.

## 2. Pricing

Final scope of work and contract price will be determined during negotiations between the Consultant(s) and the District.

All labor rates pricing will be as negotiated during the initial term of the contract that may be awarded as a result of this RFQ. Any price increases or decreases for subsequent contract terms may be negotiated between the Consultant and the District only after the completion of the initial term. Maximum labor rate escalation will be limited to three percent (3%) per year.

Federal and State minimum wage laws apply. The District has no requirements for living wages. The District is not imposing any additional requirements regarding wages.

Prevailing Wages: Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

## 3. SLEB Requirements

**Local Participation:** The District utilizes the County of Alameda's Small Local and Emerging Business (SLEB) Program. It is a requirement for award that all contracts such as this one include local (defined as Alameda County based) businesses to the maximum extent possible consistent with the nature of the services to be provided. The SLEB Program requires that to be awarded this contract the lead firm must be a SLEB or, if the lead firm is not a SLEB, the lead firm must partner with SLEBs to the maximum extent reasonable and possible, with a **minimum of 20% SLEB participation required.**

- a. Small, Local & Emerging Business Program: The District is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the District's purchase of goods and services. As a result of the District's commitment to advance the economic opportunities of these businesses, **Firms must meet Alameda County's Small, Local & Emerging Business Program requirements in order to be considered for the contract award.** These requirements can be found online at: <http://acgov.org/auditor/sleb/overview.htm>.

For purposes of this Statement of Qualifications, applicable industries include, but are not limited to, the following NAICS Code(s): 541330 Engineering Services

A small business is defined by the United States Small Business Administration (SBA) as having no more than the number of employees or average annual gross receipts over the last three (3) years required per SBA standards based on the small business's appropriate NAICS code.

An emerging business, as defined by the County, is one that has less than one-half (1/2) of the preceding amount and has been in business less than five (5) years.

b. Compliance with the SLEB program is required for goods, services and professional services contracts, including but not limited to architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services projects.

c. The District utilizes Alameda County's Elation Systems contract compliance application as part of its commitment to assist contractors to conveniently comply with legal and contractual requirements. Elation Systems, a secure web-based system, was implemented to monitor compliance and to track and report SLEB participation in District and County contracts.

d. The prime contractor and all participating local and SLEB subcontractors awarded contracts as a result of this bid process for this project are required to use Elation to submit SLEB Program information including, but not limited to, monthly progress payment reports and other information related to SLEB participation. Use of Elation Systems, support and training is available at no charge to prime and subcontractors participating in District and County contracts.

Upon contract award

- 1) The District will provide contractors and subcontractors participating in any contract awarded as a result of this bid process, a code that will allow them to register and use Elation Systems free of charge.
- 2) Contractors should schedule a representative from their office/company, along with each of their subcontractors, to attend Elation training.
  - Free multi-agency Elation Systems one-hour training sessions require reservations and are held monthly in the Pleasanton, California area.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize Elation Systems. For further information, please contact Elation Systems at (925) 924-0340.

If you have any other questions regarding the utilization of Elation Systems please contact the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak Street, Room 249, Oakland, CA 94612 at Tel: (510) 891-5500 or via e-mail through the website.

- e. Compliance Information and Records: As needed and upon request, for the purposes of determining compliance with the SLEB Program, the Contractor shall provide the District with access to all records and documents that relate to SLEB participation and/or certification. Proprietary information will be safeguarded. All subcontractor Submittals must be through the prime contractor.

#### **4. State Requirements:**

Department of Industrial Relations Registration: A contractor or subcontractor shall not be qualified to bid on, be listed in a bid Statement of Qualifications, or engage in the performance of any contract for public work, as defined in this chapter, unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5. As noted above, the proposer must include the DIR registration number for registered consultants and subconsultants covered by DIR prevailing wages.

If you have any questions concerning this Request for Qualifications, please contact Anita Franklin at (510) 670-5569 or email at [anita@acpwa.org](mailto:anita@acpwa.org).

We look forward to receiving your Statement of Qualifications.

\* \* \* END OF REQUEST FOR QUALIFICATIONS \* \* \*



## **ATTACHMENTS**

- A. RFQ and Addendum Acknowledgement Form
- B. Exceptions and Amendments Form
- C. Alameda County Small, Local, and Emerging Business (SLEB) Forms
- D. Vendor First Source Agreement
- E. Sample Scope of Services
- F. Standard Professional Services Agreement (Draft - For Information Only)

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## ATTACHMENT A – RFQ and Addendum Acknowledgement

The Alameda County Flood Control and Water Conservation District is soliciting Statements of Qualification from qualified firms to furnish its requirements per the specifications, terms and conditions contained in the above referenced RFQ. This Acknowledgement must be completed, signed by a responsible officer or employee, dated and submitted with the response. Obligations assumed by such signature must be fulfilled.

1. **Preparation of Statements of Qualification:** (a) All Statement of Qualifications responses must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing Statement of Qualifications. No alterations or changes or any kind shall be permitted to Exhibits attached herein unless indicated otherwise in writing. Responses that do not comply shall be subject to rejection in total.
2. **Award:** (a) Unless otherwise specified by the proposer or the RFQ gives notice of an all-or-none award, the County may accept any item or group of items of any Statement of Qualifications. (b) Statements of Qualification are subject to acceptance at any time within one hundred eighty (180) calendar days of opening, unless otherwise specified in the RFQ/SOQ. (c) The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
3. **Patent indemnity:** Firms who do business with the District shall hold the Alameda County Flood Control and Water Conservation District, its officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
4. **California Government Code Section 4552:** In submitting a Statement of Qualifications to a public purchasing body, the proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the proposer for sale to the purchasing body pursuant to the Statement of Qualifications. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the proposer.
5. **Addendum Acknowledgement:** The Proposer has verified that the following is a complete list of addenda issued prior to the submittal deadline. Receipt of the following addenda is hereby acknowledged and all changes have been incorporated in the Statement of Qualifications. Failure to acknowledge will cause the Statement of Qualifications to be considered non-responsive.

Addendum No. \_\_\_\_, dated \_\_\_\_\_      Addendum No. \_\_\_\_, dated \_\_\_\_\_  
Addendum No. \_\_\_\_, dated \_\_\_\_\_      Addendum No. \_\_\_\_, dated \_\_\_\_\_

The undersigned acknowledges receipt of above referenced RFQ and/or Addenda and offers and agrees to furnish the articles and/or services specified on behalf of the firm indicated below, in accordance with the specifications, terms and conditions of this RFQ Acknowledgement.

Firm:
Address:
State/Zip
What advertising source(s) made you aware of this RFQ?

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Title: \_\_\_\_\_

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**ATTACHMENT B – Exceptions and Amendments****Proposer's Name:** \_\_\_\_\_

In the table below, list any requests for exceptions and amendments to the RFQ and associated documents, and then submit this sheet with the proposal.

The District is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

Reference to:			Description
Page No.	Section	Item No.	
p. 18	D	1.d.	Consultant takes exception to...

\*Print additional pages as necessary

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**Attachment C**  
**Alameda County Small, Local, and Emerging Business (SLEB) Forms**

1. SLEB Certification Instructions
2. East Bay Inter-agency Alliance (EBIA) Common Application for Local Certification

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**COUNTY OF ALAMEDA**  
**SMALL, LOCAL AND EMERGING BUSINESS PROGRAM**  
**SLEB**  
**CERTIFICATION INSTRUCTIONS**

---

**1. Complete the application form**

*3 Easy Steps*

Program Definitions

**Local Business:** A business having a fixed office with a street address in Alameda County for a minimum period of 6 months and a valid business license issued by Alameda County or a City within Alameda County

**Small Business:** A business which has been certified by the County as local and meets the U.S. Business Administration (SBA) size standards for its classification. Size standards and classification codes information available at <https://www.naics.com/>

**Emerging Business:** A business which has been certified by the County as local and meet less than one half of the U.S. SBA size standards for its classification and has been in business less than 5 years.

If you own less than 51% interest in your business, please indicate other owner(s) name(s), title(s) and percentage of ownership. List all current business and professional licenses. If you have been in business for less than three years, please provide your actual gross receipts received for the period that you have been in business. If you have not been in business for a complete tax year, please provide actual gross receipts to date. If any item on the application form is not applicable, please put "N/A" in the designated area. If additional space is needed, please attach additional sheet(s).

**2. Please sign\* and mail Application to:**

Alameda County Auditor-Controller Agency  
Office of Contract Compliance  
1221 Oak Street, Room 249  
Oakland, CA 94612

\*The application form must be signed by the owner, principal partner or authorized officer of the corporation. We will contact you within 10 days to schedule a site visit upon receipt of your application.

**3. On-site Visit**

The following items must be available for our review during the visit to your business address:

- ☐ Signed Federal Tax Returns showing Gross Business Receipts for the last 3 years\*\*
- ☐ Business Licenses
- ☐ Current Identification (i.e. Driver's License, Identification Card)
- ☐ Deed, Rental or Lease Agreement showing Business Address

\*\*Personal Net Worth Statement (if the business has never filed taxes)

If you have questions regarding your certification, please contact:

Office of Contract Compliance Tel: (510) 891-5500 Fax: 510-272-6502 or Email: [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org)

*Thank you for your interest in doing business with Alameda County.*





**COUNTY OF ALAMEDA**  
**SMALL, LOCAL AND EMERGING BUSINESS PROGRAM**  
**SLEB**  
**CERTIFICATION INSTRUCTIONS**

**East Bay Interagency Alliance (EBIA)**  
**COMMON APPLICATION for**  
**LOCAL CERTIFICATION**

Alameda County – Alameda County Transportation Commission – City of Oakland – Port of Oakland

Submittal Date: \_\_\_\_\_

**Check Certifying Agency and click link to download Supplemental:**

- ☐ Alameda County – No supplemental required
- ☐ Alameda County Transportation Commission – Complete Supplemental B
- ☐ City of Oakland – Complete Supplemental C
- ☐ Port of Oakland – Complete Supplemental D
- ☐ All the above

**The Common Application is a sharing of information between agencies and NOT a reciprocal certification.**

**1) Contact Information**

Legal Name of Entity		Contact Person (Name & Title)	
Street Address of Entity (No P.O. Box)			
City		State	Zip Code
Telephone ( )		Fax # ( )	Cell# ( )
Email Address		Web Site	

**2) Company Profile**

Primary Service undertaken/offered:		Specialty Service undertaken/offered:	
Date Entity was established (mm/dd/yr)	Does the entity have one or more additional offices outside the city of Oakland, CA? <input type="checkbox"/> Y <input type="checkbox"/> N If yes, list other location(s)	Date Oakland office was established (mm/dd/yr)	
Method of Acquisition	<input type="checkbox"/> New <input type="checkbox"/> Merger or consolidation	<input type="checkbox"/> Purchased existing <input type="checkbox"/> Inherited	Federal ID Number:
Has this entity operated under a different name during the past five years? Y			
Type of Firm <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Publicly traded entity <input type="checkbox"/> Non-Profit or Church <input type="checkbox"/> Other _____		Ethnicity Group of owners(s) that own greater than 50% of the business. (for tracking purposes only) <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Asian Pacific /Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Caucasian <input type="checkbox"/> Filipino <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Multi ethnic ownership <input type="checkbox"/> Multi ethnic minority ownership <input type="checkbox"/> Other _____	
Gross Receipts for the last three recent fiscal years: Please attach copies of appropriate tax returns: (e.g. Form 990, Form 1040, Form 1120, etc)		Gender (for tracking purposes only) Y Male Y Female	
Year Ended _____ Year Ended _____ Year Ended _____		Total Receipts \$ _____ Total Receipts \$ _____ Total Receipts \$ _____	



**COUNTY OF ALAMEDA**  
**SMALL, LOCAL AND EMERGING BUSINESS PROGRAM**  
**SLEB**  
**CERTIFICATION INSTRUCTIONS**

**2) Company Profile:** (Continued)

Number of Employees at the local office Permanent Full time ____  Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____
TOTAL Number of Employees at all locations. Permanent Full time ____ Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____

**3) Certifications:**

Name of Issuing Authority	Type	Number	Expiration Date
City / County Business Tax Certificate			
Internal Revenue Service (required) – If your firm is a Non-Profit, submit the Letter of Determination of Not For Profit Status.			
State of CA /CUCP Certification for DBE/ACDBE firm			
State of CA /SBA Certification for Small firm			
Other Certification			
Other Certification			
Other Certification			

**4) Professional Licenses, Permits and/or Certificates** (e.g. contractor, architect, engineer, etc. – list all that apply - attach copies. List on a separate page if additional space is needed)

Name of Issuing Authority	Type	Number	Expiration Date
State of CA Contractor's License Board – Contractor's License:			
State of CA Professional Service License or Permit:			
State of CA Service Provider License or Permit:			
Other:			
Other:			

**5) NAICS Codes:** Please review the NAICS<sup>1</sup> listing of work codes and indicate below your areas of expertise ranked in order of importance (begin with primary and specialty areas as indicated in the Company Profile section) NAICS Codes can be found at: <https://www.naics.com/> Add separate sheet for additional NAICS codes if needed.

NAICS Code	Description of Work

**6) Additional Information:**

<sup>1</sup> North American Industry Classification System – <https://www.naics.com/>  
Rev. 05/2011



**COUNTY OF ALAMEDA**  
**SMALL, LOCAL AND EMERGING BUSINESS PROGRAM**  
**SLEB**  
**CERTIFICATION INSTRUCTIONS**

---

Are you a Trucking Firm? ☐ Yes ☐ No      Are you a Truck Broker? ☐ Yes ☐ No      Both? ☐ Yes ☐ No  
A supplier? ☐ Yes ☐ No

**7) When submitting this application to any of the checked Certification Taskforce members, I consent to the sharing of information contained herein and declare under penalty of perjury that statements in this application are true and correct.** ☐ Yes ☐ No \_\_\_\_\_

\_\_\_\_\_  
Signature                      Print Name                      Title                      Date

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**Attachment D**  
**ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**  
**VENDOR FIRST SOURCE AGREEMENT**

**VENDOR INFORMATION**

ALCOLINK Vendor Number (if known): \_\_\_\_\_ SLEB Vendor Number: \_\_\_\_\_

Full Legal Name: \_\_\_\_\_ DBA: \_\_\_\_\_

Type of Entity: ☐ Individual ☐ Sole Proprietor ☐ Partnership  
☐ Corporation ☐ Tax-Exempted ☐ Government or Trust

Check the boxes that apply:

☐ Goods Only ☐ Goods & Services ☐ Rents/Leases ☐ Legal Services  
☐ Rents/Leases paid to you as the agent ☐ Medical Services ☐ Non-Medical Services –  
Describe \_\_\_\_\_ ☐ Other \_\_\_\_\_

Federal Tax ID Number (required): \_\_\_\_\_

P.O. Box/Street Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Vendor Contact's Name: \_\_\_\_\_

Vendor Contact's Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Vendor Contact's E-mail address: \_\_\_\_\_

***Please check all that apply:***

LOC	<input type="checkbox"/>	Local Vendor (Holds business license within Alameda County)
SML	<input type="checkbox"/>	Small Business (as defined by Small Business Administration)
I	<input type="checkbox"/>	American Indian or Alaskan Native (>50%)
A	<input type="checkbox"/>	Asian (>50%)
B	<input type="checkbox"/>	Black or African American (>50%)
F	<input type="checkbox"/>	Filipino (>50%)
H	<input type="checkbox"/>	Hispanic or Latino (>50%)
N	<input type="checkbox"/>	Native Hawaiian or other Pacific Islander (>50%)
W	<input type="checkbox"/>	White (>50%)

Number of Entry Level Positions available through the life of the contract: \_\_\_\_\_

Number of other positions available through the life of the contact: \_\_\_\_\_

This information to be completed by County:

Contract # \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Contract Term: \_\_\_\_\_

**Vendor** agrees to provide Alameda County (through East Bay Works and Social Services Agency), ten (10) working days to refer to Vendor, potential candidates to be considered by Vendor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County, that Vendor has available during the life of the contract before advertising to the general public. Vendor will also provide the County with specific job requirements for new or vacant positions. Vendor agrees to use its best efforts to fill its employment vacancies with candidates referred by the District, but final decision of whether or not to offer employment, and the terms and conditions thereof, to the candidate(s) rest solely within the discretion of the Vendor.

## **Alameda County FLOOD CONTROL AND WATER CONSERVATION**

**DISTRICT** (through East Bay Works and the Alameda County Social Services Agency) agrees to only refer pre-screened qualified applicants, based on vendor specifications, to vendor for interviews for prospective employment by Vendor (see Incentives for Vendor Participation under Vendor/First Source Program located on the Small Local Emerging Business (SLEB) Website, <http://www.acgov.org/auditor/sleb/>).

If compliance with the First Source Program will interfere with Vendor's pre-existing labor agreements, recruiting practices, or will otherwise obstruct Vendor's ability to carry out the terms of the contract, Vendor will provide to the District a written justification of non-compliance in the space provided below.

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Vendor Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(East Bay Works / One-Stop Representative  
Signature)

\_\_\_\_\_  
(Date)

Justification of Non-Compliance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## Attachment E

### Sample Scope of Services

#### B. SCOPE OF SERVICES

##### 1. Project Management.

Consultant will establish a strategy, budget, and schedule to meet the District's goals, and then manage the work to deliver the project in a manner acceptable to the District. Activities will include, but are not limited to:

- a) Prepare and regularly update a project schedule (Microsoft Project or equivalent) at a sufficient level of detail to show a clear understanding of the precise work required to meet the project goals, objectives and delivery timeline. The schedule shall show the interdependencies among tasks and interim and final milestones for project completion.
- b) Regularly communicate and coordinate with District staff. Consultant shall schedule, attend and conduct meetings with District staff and others to discuss issues relevant to the project(s). Consultant shall prepare presentation materials (slides, handouts, maps, charts, etc.) for use in meetings with the District and others, as applicable. Consultant shall record meeting minutes, including issues discussed and agreements made.
- c) Coordinate the project team, including staff and subconsultant firms, and manage all work to satisfy District goals.
- d) Monitor all project activities and implement quality assurance and quality control protocols and standards to ensure that the District's quality goals are met.
- e) Assemble and maintain project files that include all documentation and data resulting from or related to Consultant's services for the projects, including but not limited to survey files, engineering computations, documented assumptions, working drawings, meeting minutes, all correspondence, digital image and video libraries, etc.

*Deliverables: Weekly or bi-weekly meetings with minutes, and monthly progress reports with sufficient detail for District staff to determine whether the Consultant is performing to expectations and is on schedule and on budget. The monthly progress reports shall also communicate interim findings and provide information about any difficulties or special issues that need to be remedied. Select project files, in a comprehensive and organized manner, at major interim milestones and/or at the completion of the project.*



## 2. Hydrologic and Hydraulic Modeling

Consultant shall use InfoWorks ICM (or equivalent) urban water modelling software, coupled with an ArcGIS (or equivalent) geodatabase, to perform hydrologic and hydraulic modeling of the watersheds to be studied. Activities will include, but are not limited to:

- a) The District estimates that data for a large majority of its facilities in each of the Zones to be studied will be included in the District's existing geodatabase. Consultant will identify any significant data gaps in the geodatabase and devise a strategy to obtain additional requisite data. In general, the data gaps will most likely be for the District's closed conduits, although some cross-sectional surveys of the District's open channels may be necessary. Consultant will be responsible for verifying the accuracy of any new data entered into the geodatabase, and for verifying the accuracy of existing data based on Consultant's professional judgement and recommendations. Consultant will populate existing geodatabase with any District facilities missing from the District's geodatabase. All data input and output formats shall be consistent with protocols established for previous District drainage master plans.
- b) Obtain select existing precipitation and stream flow databases from the District and obtain other requisite input data such as land use, soil types, etc., from credible sources.
- c) Calibrate and verify the model against appropriate historical storm events.

*Deliverables: Technical memorandum presenting discussion of data sets, description of data verification and additional data collection, and results of model calibration and verification.*

## 3. Drainage System Evaluation and Recommendations.

Based on the hydrologic and hydraulic modeling, Consultant shall evaluate the District's drainage systems and the ability of District facilities to perform under the requisite performance criteria.

- a) Perform hydrologic and hydraulic modeling of the District's drainage networks and facilities. Identify deficiencies in the District's open channels (including levees), conduit and street conveyance systems that would cause flooding.
- b) For deficient facilities, develop preliminary engineering alternatives to increase system capacity to convey a minimum of the appropriate runoff event and thereby decrease the risk of flooding.

*Deliverables: (1) Draft technical memorandum for new hydrologic modeling, including modeling results, along with recommended alternatives plus cost estimates, and a prioritized list of projects by watershed and between watersheds for each District Zone studied. The priorities should include the*

*projects identified during the structural evaluation of all facilities. (2) Draft and final completed drainage master plans. (3) Supporting digital assets for the project in a format specified by the District, including but not limited to, geodatabase, models, model results, and maps. The deliverables shall be organized so that they are fully accessible and usable by the District.*

**4. Optional Task: Design and Preparation of Construction Documents.**

At the District's direction, Consultant shall prepare preliminary and final design documents for select alternatives. Activities will include, but are not limited to:

- a) Meet regularly with District staff to discuss District priorities and proposed approach.
- b) Complete any necessary geotechnical investigations, hazardous materials investigation, and land surveys required for completion of preliminary design.
- c) Prepare and submit a preliminary design report, presenting a summary of the basis for design, recommended improvements that balance cost, reliability, feasibility, and meet all environmental and permitting constraints, an implementation plan, cost estimate, and lists of required plans and specifications.
- d) Prepare 30% construction documents, including plans, specifications, and estimates, and a proposed construction schedule for District review and approval. Consultant shall also prepare and submit preliminary design calculations for all equipment and facility improvements.
- e) Prepare 60%, 95%, and 100% construction documents, including plans, specifications, and estimates; a final construction schedule for District review and approval; and other appropriate supporting bid documents and information, at the District's request, which may include project descriptions, scopes of services, bid advertising material, etc. Project plans shall be developed to ensure compliance with regulatory requirements. Consultant shall also prepare and submit final design calculations for all facility improvements.
- f) Perform community outreach, coordination with other public agencies, and preparation of draft FEMA applications for Letter of Map Revisions, as necessary and as requested by District staff.

**5. Optional Task: Grant Application and Management.**

At the District's direction, Consultant shall prepare preliminary and final design documents for select alternatives. Activities will include, but are not limited to:

- a) Identify potential grant funding opportunities (such as FEMA and/or Cal OES grants) that would offset the costs of completing capital improvement

projects (including additional evaluations, design, and construction) as such projects may be identified by the drainage master plan studies. .

- b) Prepare grant applications along with any supporting documentation, such as notices of intent, benefit/cost analyses, etc. that may be required to complete an application package.
- c) Manage the grant application process, including tracking submittal deadlines and drafting submittals as may be appropriate, until such time the administering agency notifies the District that either its application has been rejected, or a grant(s) has been awarded.

END OF ATTACHMENT E

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## **ATTACHMENT F – “Draft” Standard Professional Services Agreement**

**Professional Services Agreement**

**with**

**(CONSULTANT NAME)**

**for the**

**\_\_\_\_\_SERVICES**

**FOR**

**Contract No. \_\_\_\_\_**

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# Alameda County Flood Control and Water Conservation District

## AGREEMENT BETWEEN THE ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND (CONSULTANT NAME)

This Agreement is made this (Day) of \_\_\_\_\_, 2022, in the City of Oakland, State of California, by and between (CONSULTANT NAME), (CONSULTANT ADDRESS), 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.

<b>Agreement</b>	This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "C", "D", "E", and "F" attached hereto.
<b>CONSULTANT</b>	(Consultant)
<b>COUNTY</b>	Alameda
<b>DISTRICT</b>	Alameda County Flood Control and Water Conservation District
<b>Project</b>	The DISTRICT's project - (Project Title) - as further described in Appendix "A", Scope of Services.
<b>Services</b>	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.
<b>Subconsultants</b>	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 (Day, Month, Year) through (Day, Month, Year).

#### 3. Services Consultant Agrees to Perform

- 3.1 Consultant shall perform all Services described in Appendix "A", "Services to be Provided by Consultant", attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix "A". Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for District's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) 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

District, 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 non-excusable 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 not entitle Consultant to extra costs.)
- 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 Compensation Schedule 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 (Consultant's Project Manager's full name and address); and Consultant shall direct all communications to District through District Project Engineer.
- 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", "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 Compensation Schedule established in Appendix "B", Payments to Consultant, and within the times specified in the Milestone Schedule.
- 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 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify and hold harmless the District, and their officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, losses, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expenses, liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise from, or are brought for, or on account of any loss or cost arising out of, pertaining to, relating to or resulting from Consultant's negligence, recklessness, or willful misconduct in connection with the performance of any work performed under this Contract by the Consultants as a design professional; provided that this duty shall not apply to injuries or damages for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness or willful misconduct.
- 8.2 Consultant shall defend (with legal counsel reasonably acceptable to the District), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for 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 any of the other Indemnitees, of Articles or Services to be supplied in the performance of this Agreement.
- 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 District and other Indemnitees in the exact form and substance of those contained in this Agreement. Consultant shall require all subconsultants to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit C. Consultant shall verify subconsultant's compliance.
- 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", Services To Be Provided By Consultant.

## **9. Liability of District**

- 9.1 Except as provided in Appendix "A", 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.

- 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, City of Oakland business 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 District 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 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 District; 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:  
Alameda County Flood Control and Water Conservation District  
399 Elmhurst Street  
Hayward, CA 94544  
Attn: Arthur Valderrama, Supervising Civil Engineer

To Consultant:  
(Consultant's Project Manager's Full Name).  
(Full Address)

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. SMALL LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:

### **OPTION 1: If Prime is subcontracting with SLEBs use provision below:**

SMALL LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: Contractor shall subcontract with company name (street address, city, state; Principal, name), for services to be provided under this Agreement in an amount equal to twenty percent (20%) *(or adjust percentage if more than or less than 20%. If less than 20% a copy of approved GSA Waiver or Board approval is required )* of the contract value of this Agreement in accordance with District's Small and Emerging Local Business provision, which includes but is not limited to:

- a. 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.
- b. As is applicable, Contractor shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this contract.
- c. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the District. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the District contract representative identified under Item #17.1.3 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Auditor–Controller Agency, Office of Contract Compliance (OCC).
- d. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the Elation web-based compliance system as described in Exhibit D (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.

District will be under no obligation to pay contractor for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

Consultant shall complete one SLEB Partnering Form for each SLEB subconsultant.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the District and County Contract Compliance System (the District utilizes the County system) contact OCC via e-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

**OPTION 2 – If Prime is a SLEB use provision below:**

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

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

- a. Contractor must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- b. 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.
- c. As is applicable, Contractor shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this contract.
- d. For any subcontractors retained to comply with this provision, Contractor shall not substitute any such small and/or emerging local business(s) subcontractor without prior written approval from the District. Said requests to substitute shall be submitted in writing to the District's contract representative identified under Item #17.1.3 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Auditor Controller Agency, Office of Contract Compliance (OCC). Further approval from the District Board of Supervisors may also be required.
- e. If subcontractors are added to the contract, all SLEB participation, except for prime contractor, must be tracked and monitored utilizing the Elation compliance System (see Exhibit E). SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

Contractor shall meet the requirements above within 15 business days of the District notifying Contractor that it is no longer in compliance with the program. District will be under no obligation to pay contractor 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](mailto:ACSLEBcompliance@acgov.org).

## 22. First Source Program

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.

### **23. Non-Discrimination, Equal Employment Opportunity and Business Practices**

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, District and Alameda County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

### **24. Drug-Free Workplace Policy**

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 District and Alameda County premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

### **25. Compliance with Americans with Disabilities Act**

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.

### **26. Disputes**

- 26.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District General Manager or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the District representative, and principal of the Consultant shall then take place within five days of the request.

- 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. The 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 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 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. The 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 four originals 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**

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.

### **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, which 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. Debarment and Suspension Certification**

- 32.1 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.

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; and (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.

**33. Labor Code Requirements**

- 33.1 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 District, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 33.2 The Consultant and any subcontractor shall be currently registered to perform public work. 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.
- 33.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, Alameda County Flood Control and Water Conservation District, 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.4 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.
- 33.5 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.
- 33.6 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.
- 33.7 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.
- 33.8 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.

- 33.9 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.
- 33.10 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 Two-Hundred Dollars (\$200.00) 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.
- 33.11 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.
- 33.12 In accordance with Section 1776 of the Labor Code:
- 33.12.1 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.
- 33.12.2 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:
- 33.12.2.1 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.
- 33.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer at 399 Elmhurst Street, 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.



- 33.12.2.3 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.
- 33.12.3 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.
- 33.12.4 Unless otherwise provided by law, 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.
- 33.12.5 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.
- 33.12.6 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 One-Hundred Dollars (\$100.00) 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.
- 33.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 33.13 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.
- 33.13.1 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.
- 33.13.2 This provision applies to all classifications, including truckers.
- 33.14 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 399 Elmhurst Street, Hayward, CA 94545.
- 33.15 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.
- 33.16 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.

- 33.16.1 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.
- 33.16.2 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.
- 33.16.3 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.
- 33.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 33.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 33.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 33.16.7 **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.
- 33.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 33.17.1 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.
- 33.17.2 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.
- 33.18 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:
- 33.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the District Board of Supervisors that the condition of non-compliance has been corrected.

33.18.2 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.

33.18.3 Terminate the contract and collect appropriate damages from the Consultant.

33.18.4 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 District 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.

Alameda County Flood Control  
& Water Conservation District

By: Keith Carson  
President, Board of Supervisors

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Kathy Lee, Deputy County Counsel

“Consultant”

By: \_\_\_\_\_

Date: \_\_\_\_\_

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 STANDARD AGREEMENT \* \* \*

## APPENDIX A

**SERVICES TO BE PROVIDED BY CONSULTANT**

1. This is an appendix attached to, and made a part of the Agreement dated \_\_\_\_ (Day) of \_\_\_\_, 2022, between the Alameda County Flood Control and Water Conservation District (“District”) and (CONSULTANT NAME) (“Consultant”), providing for professional services.

1.1 The District’s Proposed Project—  (“Project Title”)  in Alameda County.

1.2 Consultant Team

Consultant’s team consists of

(CONSULTANT NAME), (CONSULTANT ADDRESS),

(ALL SUBCONSULTANT NAMES), (ALL SUBCONSULTANT ADDRESSES),

Consultant shall provide civil engineering services, and is the prime consultant, with the other consultants serving as subconsultants.

1.3 Scope of Project

Refer to Appendix A Exhibit A-1 attached hereto.

1.4 Consultant’s Milestone Schedule and Deliverables

The Milestone Schedule shall be in accordance with Appendix A Exhibit A-1 attached hereto. The deliverables shall be as specified in Appendix A Exhibit A-1 attached hereto.

1.5 Personnel and Subconsultants

Consultant shall use only the personnel and subconsultants identified herein.

2. General Requirements

2.1 General Criteria Governing Consultant’s Service

- 2.1.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the District grants a written exemption to a specific standard or regulation.
- 2.1.2 Consultant shall review existing District data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the District concerning existing conditions (including, but not limited to, existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its own independent investigations and not on information provided by District. Consultant shall review supplied design information and advise District of its adequacy for Consultant’s work and advise District of any further design or other services necessary to complete the Project.

- 2.1.3 Unless otherwise permitted in writing by District, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.

## 2.2 General Scope of Consultant's Services

- 2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit A-1. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.
- 2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with District staff, with other governmental agencies, and with such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).
- 2.2.3 Consultant shall engage all appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the consultants as specified in Exhibit A-1, at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure District's approval for any subconsultants not listed in Exhibits 1 and this Appendix. Consultant shall require each of its subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold District harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide District with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project, including but not limited to, all requirements imposed by the Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including, but not limited to, Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

## 2.3 Coordination of Services with the Project, District's Consultant Team, and District Staff

- 2.3.1 Consultant shall fully coordinate its services with the services of all disciplines and subconsultants involved in completing the Project. Consultant shall immediately advise District in writing if any District staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-coordination.

- 2.3.2 Consultant shall provide appropriate training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate procedures for work. Consultant shall provide all safety equipment (if needed) for Consultant's personnel.

2.4 Deliverables and Completion Dates Required Under this Agreement

Required deliverables are discussed in Consultant's proposed scope of work annexed as Exhibit A-1. Each deliverable shall be reviewed with representatives of the District. The District shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that District reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof is included in the fee. (If Consultant should disagree with District's determination, Consultant shall make the changes requested by District under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge).

2.5 Monthly Progress Update

With each request for payment, Consultant shall provide District with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, District, or any third party) of which Consultant becomes aware.

3. Consultant's Proposal

- 3.1 The consultant has prepared and supplied District with a proposed scope of work dated (mm/dd/2020) which is attached to this Appendix as its Exhibit A-1 and incorporated herein by this reference ("Proposal"). Consultant's Proposal represents Consultant's initial proposed scope of services. This Agreement (and its appendices) and the Proposal are deemed complementary; what is called for by one is as binding as if called for in both, and shall be performed by Consultant. In the case of direct conflict between this Agreement and the Proposal, then the following rules apply:
- 3.2 Regarding any conflict (direct or indirect) between the Proposal and either the Agreement general terms or appendices, the terms of the Agreement general terms and/or appendices shall have precedence.
- 3.3 Regarding any conflict (direct or indirect) between the Proposal and this Appendix A, the more stringent requirements providing the District with the broader scope of services shall have precedence, such that the scope of work described in this Appendix "A" and the scope of work described in the Proposal shall both be performed to the greatest extent feasible.
- 3.4 The services provided under this agreement are on-call, with no guaranteed minimum amount of work. Each project assigned to the Consultant by the District under this Agreement shall commence with a request from the District for a Scoping Meeting. This meeting shall be attended by representatives from the District, the Consultant and their sub-consultants to determine which tasks will be performed for that particular project.
- 3.5 After the Scoping Meeting, the Consultant shall prepare a proposal with task descriptions and deliverables, estimated hours and cost per task and sub-tasks, and project schedule for the District's review. The District will issue a Notice to Proceed upon approval of the proposal or portion(s) of the proposal. The County's Notice to Proceed may include additional terms and project-specific

requirements. The Notice to Proceed shall be incorporated and made a part of this Agreement upon acceptance by Consultant. The Notice to Proceed will cover only the tasks listed in the proposal. Additional work will be assigned through the same process outlined in this section.

END OF APPENDIX A

## APPENDIX B

## PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of the Agreement dated \_\_\_\_ (Day) of \_\_\_\_, 2022, between the Alameda County Flood Control and Water Conservation District (“District”) and (CONSULTANT NAME) (“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 (Amount written in numerical words) (\$\_\_\_\_\_) 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 cannot exceed 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 Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage, by hours and by cost, 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 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. The Billing Rates may be raised by 3% at the end of the first year and again by 3% at the end of the second year. Billing rates shall remain constant through the first year, shall remain constant through the second year at 1.03 times the first year rates, and remain constant for the third at 1.03 times the second year rates.

END OF APPENDIX B



**APPENDIX C****ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

<b>TYPE OF INSURANCE COVERAGES</b>		<b>MINIMUM LIMITS</b>
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability; Abuse, Molestation, Sexual Actions, and Assault and Battery	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
<b>E</b>	<b><u>Endorsements and Conditions:</u></b> <ol style="list-style-type: none"> <li><b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Alameda County Flood Control and Water Conservation District, its Board of Supervisors, the individual members thereof, and all District officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li><b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the District. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li><b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the District. Acceptance of Contractor's insurance by District shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li><b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li><b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> <li>Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li><b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the District of cancellation.</li> <li><b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to District, evidencing that all required insurance coverage is in effect. The District reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>	

**END OF APPENDIX C**

**APPENDIX D****ALAMEDA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT  
CONTRACT COMPLIANCE REPORTING REQUIREMENTS****CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

District project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the District within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

District Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the District should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

END OF APPENDIX D

**APPENDIX E****ALAMEDA COUNTY FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT****DEBARMENT AND SUSPENSION CERTIFICATION****For Procurements Over \$25,000**

The Consultant, under penalty of perjury, certifies that, except as noted below, Consultant, its Principals, and any named and unnamed subconsultants/subcontractors:

- 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 bidder 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.

CONSULTANT: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_ TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**END OF APPENDIX E**

**APPENDIX F****SMALL LOCAL EMERGING BUSINESS (SLEB)  
PARTNERING INFORMATION SHEET**

Alameda County Flood Control and Water Conservation District utilizes the Alameda County Small Local Emerging Business (SLEB) program to help grow and build capacity with businesses in Alameda County. In order to meet the 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) (<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).

Alameda County Flood Control and Water Conservation District and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <https://www.elationsys.com/APP/>).

☐ **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 \_\_\_\_\_% WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES:** \_\_\_\_\_

SLEB Subcontractor Business Name: \_\_\_\_\_

SLEB Certification #: \_\_\_\_\_ SLEB Certification Expiration Date: \_\_\_\_\_

SLEB Certification Status: ☐ Small / ☐ Emerging

NAICS Codes Included in Certification: \_\_\_\_\_

SLEB Subcontractor Principal Name: \_\_\_\_\_

SLEB Subcontractor Principal Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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: \_\_\_\_\_

— Street Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

Zip Code \_\_\_\_\_

Firm Signature: \_\_\_\_\_

Date: \_\_\_\_\_

For Information Only

END OF APPENDIX F