



REQUEST FOR Qualifications

RFQ No. CON202302108

for

On Call Construction Management Professional Services

Minimum County SLEB Participation Requirement: 20%

Pre-SOQ Meeting

Wednesday, March 8, 2023 at 10:00 am

Meeting will be held in person

951 Turner Court, Room 230

Hayward, CA 94544

Response Due

Tuesday, April 4, 2023 by 2:00 pm

Alameda County Public Works Agency

951 Turner Court, Room 300

Hayward, CA 94544

Alameda County Public Works Agency

951 Turner Court, Hayward, CA 94544

Issued: February 24, 2023

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ATTACHMENTS

- A. RFQ and Addendum Acknowledgement Form
- B. Iran Contracting Act Compliance Certification Form
- C. Exceptions and Amendments Form
- D. *Standard Professional Services Agreement (Draft - For Information Only)*
 - 1. *Appendix A – Services to be Provided by Consultant*
 - 2. *Appendix B – Payments to Consultant*
 - 3. *Appendix C – Insurance Requirements*
 - 4. *Appendix D – Debarment & Suspension Certificate*
 - 5. *Appendix E – Contract Compliance Reporting*
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 - 7. *Appendix G – List of Test Performed by Material Testing*
- E. Alameda County Small, Local and Emerging Business (SLEB) Program Forms
 - 1. SLEB Certification Instructions
 - 2. East Bay Inter-agency Alliance (EBIA) Common Application for Local Certification
 - 3. SLEB Partnering Information Sheet
 - 4. County of Alameda - Request for Preference

I. Need for Professional Services

A. Agency Seeking Services

The Alameda County Public Works Agency (ACPWA) is seeking proposals from firms (Proposers) that are interested in providing on-call construction management (resident engineering, inspection, materials testing, storm water support) services for Agency projects. Agency projects include but are not limited to flood control and roadway improvement projects. Alameda County Public Works Agency (ACPWA) is the division of the County of Alameda (County) government responsible for developing, operating, and maintaining public works infrastructure projects, such as county roadways. ACPWA also serves the Alameda County Flood Control and Water Conservation District (District).

ACPWA performs this function with a dedicated team of program managers, professional engineers, skilled technicians and other talented support staff. Sometimes large and complex projects require the agency to supplement its staff with the additional expertise and resources of specialized consultants. When this is the case, ACPWA seeks competitive proposals for professional services by issuing a request for qualifications (RFQ).

The County intends to enter into a contract with up to three (3) Consultants for a period of three years each, with the option to extend for two years, for a total period of up to five (5) years. The County will administer the contracts for the County and District

The response to this solicitation shall be in the form of a Statement of Qualifications (SOQ).

It is the responsibility of a Consultant to be familiar with all of the specifications, terms and conditions of the RFQ—including those contained in addenda. By the submission of an SOQ, the Consultant certifies, that if awarded a contract, it will make no claim against the County based upon ignorance of conditions or misunderstanding of the requirements.

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

Contact: Jami Conley, Administrator

E-mail: jami@acpwa.org

Phone: 510-670-5268

Address: Alameda County Public Works Agency
951 Turner Court, Hayward, 94544

ACPWA 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 proposals at its discretion, thus not awarding a contract to any firm.

The most current supporting information and addenda for this RFQ can be found on the ACPWA business webpage: [Current Opportunities | Doing Business with Us | ACPWA Alameda County Public Works Agency](#). It shall be the Consultant's responsibility to check this webpage to obtain any addenda that may be issued.

B. General Project Descriptions

Alameda County Public Works Agency (ACPWA) is the division of the County of Alameda (County) government responsible for developing, operating, and maintaining public works infrastructure projects, such as county roadways. ACPWA also serves the Alameda County Flood Control and Water Conservation District (District).

With this RFQ, ACPWA seeks on-call construction management (resident engineering, inspection, materials testing, and stormwater) services for Agency projects. The Capital improvement projects that are anticipated but not limited to during the contract period include the following categories.:

- i. Site grading and low impact development improvements
- ii. Floodwall improvements
- iii. Levee improvements
- iv. Creek restoration
- v. Channel desilting
- vi. Culvert crossing improvements under roadways, freeways and rail tracks
- vii. Flood control pump station rehabilitation: Electrical and mechanical projects
- viii. Streetscape improvements
- ix. Sidewalk construction
- x. Roadway reconstruction
- xi. Bridge retrofit/reconstruction

C. Services Needed

ACPWA expects to contract with three qualified firms on an on-call basis. Task Orders will be issued for specific projects. Prior to the assignment of any project, the ACPWA will request the pre-qualified consultants to provide proposals including budget and schedule for the scope of services for that specific project. Selected firm will be expected to perform tasks in stages as outlined below.

Firms responding to this RFQ are encouraged to demonstrate their understanding and capabilities of performing the various tasks as outlined in each stage as part of their response to this RFQ.

Stage 1: Preconstruction Phase

Stage 2: Construction Phase

It should be noted that selected consultants may only be asked to perform certain tasks within each stage. Some projects may have certain tasks that have previously been completed, for example, topographic surveys, and will be made available to the selected consultant for design.

Work by consultants will commence following a *Notice to Proceed* issued by ACPWA. Regardless of how the work ultimately proceeds, the SOQ is to include both stages of work.

1. Stage 1: Preconstruction Phase

During Stage 1, the consultants:

- Confer with ACPWA to determine inspection standards that will be applied during construction,
- Review contract plans and specifications for constructability and make recommendations for necessary or desirable changes,
- Participate in pre-construction meetings and take and distribute accurate and complete minutes.

2. Stage 2: Construction Phase

During Stage 2, the Consultants expected services may include, but are not limited to:

- Review the contractor's schedule for conformance to the specifications, logic, tasks, definition and duration, critical activities, float, submittal review, material procurement, and coordination with other contracts. Review monthly updates including schedule, variance reports, cash flow reports, and material status reports. Attend meetings with the contractor to resolve disputes. Identify the potential for future conflicts, change orders, or claims.
- Review the contractor's procurement schedule and prepare written responses.
- Review, analyze, and respond to all requests for information, change order, and/or extensions of contract time.
- Submit recommendations on construction issues which include considerations of time and budget impacts, possible compensable delays, and possible mitigations.
- Review the contractor's staffing and equipment, and submit written report and recommendations.
- Maintain a daily log of all construction activities, contractors, subcontractors, including visits, meetings, progress, manpower, equipment, weather, delays, and material deliveries.
- Conduct regular meetings with the contractor. Prepare and distribute meeting minutes.
- Coordinate with all necessary regulatory agencies and municipalities involved with the project.
- Maintain a claim file for any issue that may result in a claim for additional time or costs. The Consultant shall immediately notify ACPWA of all such claims or potential claims. The claim file shall include all correspondence and meeting minutes, and shall include "what if" scenarios, schedule analysis, and recommendations for resolution.
- Maintain a photographic and high definition video record of the site and construction progress.
- Provide estimating services for verifying contractor's requests for extra work, change orders and claims.
- Maintain an independent schedule in order to verify the feasibility of the contractor's schedule.
- Assist ACPWA in resolution of construction conflicts arising from design conflicts, clarifications, or issues, contract coordination, site changes, etc.
- Document and resolve unanticipated field conditions, disputes, and claims in accordance with our Specifications and any applicable laws.
- Assist ACPWA in analyzing value-engineering proposals submitted during construction.

- Prepare change orders and all associated supporting documentation, including analysis of schedule and budget impacts, and submit with recommendations to ACPWA.
- Assist ACPWA in processing submittals, test reports, RFIs and other documents for transmittal to the contractor, and maintain records for construction contract.
- Prepare and maintain a master log of contractor's submittals, RFIs and change order requests.
- Monitor and verify the contractor's preparation of record drawings.
- Assist ACPWA to review and process contractor's monthly progress payments.
- Conduct final inspections and reports on the results. Make recommendations for resolution of disputed items. Assist ACPWA in the preparation of the final punch list. Review and process Project Close-out documents.
- Perform project close-out including completion and signoff of record drawings.
- Comply with documentation format as required by ACPWA.
- Provide document control services for any revisions to drawings and specifications.
- Provide inspection services necessary to monitor and inspect the methods, workmanship, and materials used by the contractor to assure compliance with the ACPWA's contract documents and all applicable codes. ACPWA reserves the right to perform some or all of the inspection.
- Perform materials services, included herein as part of Appendix G (a list of the type of tests that the ACPWA is mostly likely to perform). Proposer may submit Proposals even if they cannot perform all tests listed, though ability to perform the tests will be included in ACPWA's evaluation of the Proposer.
- Perform specialized inspections, such as welding and coating inspections, and prepare applicable reports for County records.
- Provide all necessary testing equipment, tools, materials, safety equipment, and cell phones needed for each of the personnel assigned to perform the assigned tests and inspections.
- Stormwater discharge and control inspections and enforcement. Inspections focus on the proper installation, function, and maintenance of construction site related Best Management Practices (BMPs) involving erosion control, run-on and run-off control, sediment control, active treatment systems, good site management, and non-stormwater management.
- Review Stormwater Pollution Plan, input information into SMARTS, if requested.

II. SOQ Requirements

A. Minimum Qualifications

Proposer shall possess all professional licenses, certifications and experience necessary to perform civil engineering construction management (resident engineering, inspection, storm water compliance, and materials testing) services for public agencies in California as specified under this RFP. Furthermore, the Proposer shall demonstrate the following:

- Successful completion of and/or on-going construction management contracts with public agencies within the last five (5) years. References (including agency names, project manager, phone number, email address, etc.) shall be provided.
- Successful completion of construction management for a minimum of six (6) capital improvement projects similar to those listed in Section IA, with construction contract award values of \$750,000 or more. Identify the referenced minimum of six (6) projects including project names, contracting agencies, agencies' project managers, phone numbers and emails. Successful completion is defined as the period between project award for construction and construction acceptance by the awarding agency.
- Proposer's special skills related to construction management, inspection, materials testing, dispute resolution, etc.
- Proposer's capability of providing sufficient level of staff for on-call construction management services.
- The Proposer's personnel shall be capable, competent, and experienced in performing all aspects of required field and office construction engineering work including, but not limited to the following: inspection of nonstructural construction operations; inspection of traffic control plan; contract change order preparation, review, and analysis; and review and enforcement of Water Pollution Control Plan (WPCP) and Storm Water Pollution Prevention Plan (SWPPP). The proposer's team shall include a QSD (Qualified Stormwater Developer) and QSP (Qualified Stormwater Preparer) certification.
- The Consultant Project Manager shall be knowledgeable about all Caltrans current Standard Plans, Standard Specifications, Construction Manual, Local Assistance Procedures Manual, policies and procedures.
- Each Proposer shall submit resumes of Key Personnel and, if applicable, subconsultant personnel. This information shall indicate sufficient evidence satisfactory to ACPWA that the proposed Key Personnel/subconsultant have the qualifications and experience necessary to successfully complete the Scope of Services. For the purposes of this clause, "Key Personnel" is defined as those individuals who are essential to the successful completion and execution of this contract. Key Personnel must be available for the duration of the engagement and may not be substituted without prior written approval by ACPWA. ACPWA reserves the right to direct the removal of any individual, including Key Personnel, assigned to this contract.

SLEB: As part of its effort to foster the growth of small and local emerging businesses, Alameda County has created a Small Local Emerging Business (SLEB) Program. The program requires that for Architectural/Engineering Services agreements over \$25,000 either the prime consultant must be a

certified SLEB or at least 20-percent of the contract amount must be allocated to a certified SLEB sub-consultant. For additional SLEB information, see Section 25 of the Standard Agreement (Attachment D) and the program's webpage: <https://www.acgov.org/auditor/sleb>.

A 5-percent proposal preference is awarded to respondents who are certified by the County as a local business. An additional 5-percent proposal preference is awarded to respondents whose business is also certified by the County as small or emerging.

B. Pre-SOQ Meeting

The pre-SOQ meeting will be held at the date, time and location specified in the 'Schedule of Events' (Section III-F). 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. Submittal Requirements

Responses to this RFQ are to be straightforward, clear, concise and specific to the information requested.

In order for responses to be considered complete, the proposer must provide responses to all information requested.

1. Format

The submitted RFQ response must include one original and four copies 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 read-only CD or USB-drive in a single searchable text PDF file.

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

Statements of Qualifications, in whole or in part, are not to be marked confidential or proprietary. The Agency may refuse to consider any SOQ or part thereof so marked. SOQs submitted in response to this RFQ may be subject to public disclosure. The Agency will not be liable in any way for disclosure of any such records. Please refer to the County's website for more information regarding Proprietary and Confidential Information policies.

The website may be viewed at: <https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/proprietary-confidential-information/>

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. Adherence will not impact the evaluation or scoring of the proposal.

2. Content

In order to simplify the process and to obtain the maximum degree of comparability, the proposal should be organized and divided into the following sections:

- a) Transmittal Letter
- b) Title page
- c) Table of Contents
- d) Narrative
- e) Understanding of the work to be done
- f) Relevant Work Experience
- g) Staffing Quality
- h) Innovative Capability
- i) Procedural Familiarity
- j) Financial Responsibility
- k) Technical Skills
- l) Contract Negotiation Authorization
- m) Attachments

Do not modify required forms.

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

The following is a description of each section:

- a. **Transmittal letter:** Responses shall include a description of Proposer's capabilities and approach in providing its services to ACPWA, and provide a brief synopsis of the highlights of the SOQ and overall benefits of the proposal to ACPWA. This synopsis should not exceed two (2) pages in length. The letter must also identify the authorized signatories for the proposer and include 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 SOQ. This should include the RFQ subject, the name of your firm, place of business, telephone number, DIR number, contact person name, e-mail address, and the date. Indicate Small, Local and Emerging Business (SLEB) firm(s) and other firms serving as sub-consultants.
- c. **Table of Contents:** An SOQ must include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections.

- d. Narrative:** A one-page narrative highlighting the reasons why your firm should be selected to provide the requested services.

The following sections should contain your best effort to identify how your firm, together with any supporting sub-consultant, satisfactorily meets the Agency's requirements and possesses superior qualifications.

IMPORTANT: The first page of each section should be a summary of the information contained on the pages that follow within that section. It should be a synopsis of the most important points that the Proposer wants an evaluator to consider when comparing the information of that section with similar information of competing SOQs.

e. Understanding of the work to be done

In this section the proposer should effectively demonstrate a thorough understanding of the delivery of various types of public works projects:

- Generally identifying how the firm, and any sub-consulting firms, are appropriately qualified and particularly well suited for the delivery of public works projects similar to those listed earlier. (Expanded details of experience, staffing, et cetera should be provided in subsequent sections as appropriate.)
- Provide the consultant's approach in developing scope of work and delivery approaches and methodologies, including anticipated tasks, assumptions, challenges and concerns, and deliverables.

The consultants' approaches and methodologies to project delivery shall cover all phases from project inception to construction, for projects similar to those listed on page 2 of the RFQ.

f. Relevant Work Experience

In this section the proposers should effectively demonstrate applicable experience by describing similar work previously performed to the clients' satisfaction. Pertinent members of the proposers' team are expected to have been involved with public works projects, similar to those listed in section I-B, "General Projects Descriptions" on page 2, in the last 5-years.

Provide a list of three (3) client references who would be able to discuss your involvement and contribution to projects similar to those listed in Section I-B. For each reference, provide the company's name and address, a contact person's name, phone number and email, and services provided with dates of services. Verify that the contact information for all references provided is current and valid.

Successful completion of construction management for a minimum of six (6) capital improvement projects similar to those listed in Section I-B, with construction contract award

values of \$750,000 or more. Identify the referenced minimum of six (6) projects including project names, contracting agencies, agencies' project managers, phone numbers and emails. The Agency may contact some or all of the references provided in order to determine your performance record.

- g. Staffing Quality:** Bid responses shall include a complete list of all key personnel associated with the RFQ. This list must include all key personnel who will provide services to ACPWA staff and all key personnel who will provide support services. For each professional/technical staff on the list, the following information shall be included:
1. Their name, job title, years of experience, years with the firm, and the city of the office in which the individual will work should also be included;
 2. The role that person will play in connection with the RFQ;
 3. Their address, telephone, fax numbers, and email address;
 4. Their education background;
 5. Their relevant experience, certifications, and/or merits.

This information can be provided in the form of one or more lists or organizational charts. An organizational chart showing the reporting relationships and individual staff resumes are required in this section.

The consultant is responsible for performing the work required under the contract in a manner acceptable to ACPWA. The consultant's organization and all associated consultants and sub-consultants must be identified at the time of the SOQ submittal. If the consultant wishes to use a sub-consultant not specified in the SOQ, prior written approval must be obtained from the ACPWA. Sub-contracts must contain all required provisions of the prime contract.

- h. Innovative Techniques:** In this section describe your capability of developing innovative or advanced techniques. These techniques may be associated with the manner in which project conditions are assessed, surveyed, studied and modeled, how stakeholder participation efforts are accomplished, how design elements and alternatives are best derived, presented and vetted, or the manner by which features of design or their implementation push the envelope of creativity while at the same time remaining practical, economical, and safe. Capability is best demonstrated by past practice; however, proposing innovative and advanced ideas not previously implemented may also be evaluated favorably.
- i. Procedural Familiarity:** Describe your familiarity with local, state and federal procedures applicable to public works projects. One aspect of particular importance is that you demonstrate an informed understanding of the requirements of the County's SLEB Program.
- j. Financial Responsibility:** Describe your firm's financial responsibility. At a minimum, you must certify, by including the following statement in your proposal: "Our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR (48 CFR Part 31) or Title 2 CFR 200 to the extent applicable to the Consultant." SOQs that do not include this statement will be disqualified from further

consideration. Provide brief explanation on how your markup(s) are financially responsible and competitive. You should explain how you manage expenses and keep costs at a minimum.

- k. Technical Skills:** In this section the proposers should effectively demonstrate technical skills to perform the required tasks to deliver public works projects.
- l. Contract Negotiation Authorization:** Include the name(s), e-mail address(es), and phone number(s) of the individual(s) authorized to negotiate this contract and contractually bind your firm and who may be contacted during the period of evaluation. A copy of the Agency's Standard Agreement form and insurance requirement are enclosed for advance review. Identify any agreement and insurance waivers requested. The Agency has the right to request changes to the project team before execution of the contract. The Agency has the right to reject any and all proposals for any reason.
- m. Attachments:** Attachments at the end of the Proposal must include a completed 'RFQ and Addendum Acknowledgement' form (Attachment A) as well as a completed 'Iran Contracting Act Compliance Certification' form (Attachment B) and Debarment and Suspension Certification (Attachment D, Appendix D). If the Proposer requests any exceptions or amendments to the RFQ or any associated documents, an 'Exceptions and Amendments' form (Attachment C) should also be completed and attached at the end of the SOQ. Please note that the Agency is under no obligation to accept any exceptions and such exceptions may be a basis for disqualifying a proposal.

Attention is directed to Attachment E, which includes Alameda County's Small, Local and Emerging Business (SLEB) Program Forms:

1. SLEB Certification Instructions
2. East Bay Inter-agency Alliance (EBIA) Common Application for Local Certification
3. SLEB Partnering Information Sheet
4. Request for Preference

SOQs 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 Agency by the deadline stated in the Schedule of Events (Section III-F). No part of any response will be accepted via email or fax. Unsealed or late responses will be rejected.

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

SOQs must be addressed and delivered as indicated below:

Proposers Name
Return Address

SEALED STATEMENT OF QUALIFICATIONS – DO NOT OPEN WITH REGULAR MAIL

To: **Jami Conley**
Alameda County Public Works Agency
951 Turner Court, Room 300
Hayward, CA 94544

Contents: Proposal for On-Call Construction Management Professional Services

Only one SOQ 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 County reserves the right to reject any SOQ, but all qualifying SOQs shall remain open to acceptance and are irrevocable for a period of one hundred eighty (180) days.

All costs associated with the preparation and submission of the written SOQ shall be fully borne by the proposer. All submitted materials become the property of the County and will not be returned.

Every SOQ received will become part of public record and will not be treated as proprietary. Each SOQ will be open to public inspection following the award of the contract.

D. Oral Presentation/Interview

Following an evaluation of the written SOQs, at least three of the highest scoring proposers will be invited to participate in an oral presentation/interview process. Participants must submit at the time of the interview, a sealed cost proposal containing the fee rate schedule for all staff/team members and subconsultants. Additional details will be provided to those who are invited to participate.

All costs associated with the preparation for, the travel to, and attendance of an oral presentation/interview shall be fully borne by the proposers.

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III. Process of Selection

A. Selection Committee

All written proposals that pass the initial Evaluation Criteria which are determined on a pass/fail basis (Completeness of Response, Financial Stability, and Debarment and Suspension) will be evaluated by the Agency's Selection Committee (ASC). The ASC may be composed of ACPWA staff and other parties that may have expertise or experience in the professional services described herein. The ASC will score each SOQ and make a consultant recommendation in accordance with the evaluation criteria set forth in this RFQ. The evaluation of the proposal shall be within the sole judgment and discretion of the ASC.

All contact during the evaluation phase shall be through the Agency designated representative only. You must not contact or lobby evaluators during the evaluation process. Any attempt to contact and/or influence members of the ASC may result in disqualification.

The ASC will evaluate each SOQ that meets the qualification requirements set forth in this RFQ. Bear in mind that any SOQ that is unrealistic in terms of technical or other commitments will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the ACPWA's requirements as set forth in this RFQ.

B. Evaluation Criteria

The Agency intends to select the most qualified responsible proposers whose response conforms to the RFQ.

Each of the Evaluation Criteria below will be used in ranking and determining the quality of proposers' SOQs. SOQs will be evaluated according to each Evaluation Criterion and scored on the zero to five-point scale outlined below. The scores for all Evaluation Criteria will then be added, according to their assigned weight (below), to arrive at a weighted score for each SOQ. A statement of qualifications with a high weighted total will be deemed of higher quality than one with a lesser-weighted total.

The evaluation process is a two-stage approach. The first stage is initial evaluation of the written proposal based on the criteria for the written proposal, reference checks, and preliminary scoring. The proposers receiving the highest score on the written proposal and with at least 350 points will be invited to an oral presentation and interview. All other bidders will be deemed eliminated from the process. All proposers will be notified of the short list participants; however, the preliminary scores at that time will not be communicated to proposers.

C. Interviews

Generally, the oral presentation/interviews can be expected to occur approximately 5-6 weeks after the deadline to submit a written proposal, as reflected in the Schedule of Events (Section III-F). 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 selection team.

The zero to five-point scale range is defined as follows:

0	Not Acceptable	Non-responsive, fails to meet RFQ specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of submittal.
1	Poor	Below average, falls short of expectations; is substandard to the average or expected norm, has a low probability of success in achieving objectives per RFQ.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFQ specification. This will be the baseline score for each item with adjustments based on interpretation of the SOQ by members of the ASC.
4	Above Average/Good	Very good probability of success, better than the average or expected as the norm. Achieves all objectives per RFQ requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success in achieving all objectives and meeting RFQ specification.

The Evaluation Criteria and their respective weights are as follows:

Written Evaluation Criteria	Weight
<p>A. Completeness of Response Responses to this RFQ must be complete. Responses that do not include the content required by this RFQ and any subsequent addenda and do not address each of the items listed below 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 at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.</p>	Pass / Fail
<p>B. Debarment and Suspension</p>	Pass / Fail

Written Evaluation Criteria	Weight
You, your principal and named subcontractors are not identified on the list of Federally debarred, suspended or other excluded parties found at www.sam.gov .	
<p>C. Understanding of Work to be Done</p> <ul style="list-style-type: none"> • You demonstrated a thorough understanding of the purpose and scope of the procurement and the Agency's typical projects. • You identified pertinent issues and potential problems related to the Agency's typical project • You demonstrate an understanding of the deliverables required for the typical project. 	25
<p>D. Relevant Work Experience</p> <ul style="list-style-type: none"> • The individuals assigned to the project have experience on similar projects (roles and tasks on said projects should at least be similar) 	20
<p>E. Staffing Quality</p> <ul style="list-style-type: none"> • The personnel designated to work on the projects have extensive applicable education, experience and the certification required. 	15
<p>F. Innovative Capability</p> <ul style="list-style-type: none"> • You demonstrated your capability of developing innovative or advanced techniques. 	10
<p>G. Procedural Familiarity</p> <ul style="list-style-type: none"> • You demonstrated your familiarity with local, state and federal procedures applicable to the project. • You demonstrated an informed understanding of the requirements of the County's SLEB Program. 	5
<p>H. Financial Responsibility</p> <ul style="list-style-type: none"> • Your SOQ includes the required statement certifying your financial management system meets the standards set forth in the RFQ. • You demonstrated how your markups are financially responsible and competitive. • You demonstrated your ability to manage expenses and keep costs at a minimum. 	5
<p>I. Technical Skills: You effectively demonstrate technical ability to perform the required tasks consistent with the proposed scope of work.</p>	15

Written Evaluation Criteria	Weight
J. References: References will be asked about their experience working with you on work similar to that described in this RFQ. Former clients will be asked about your role in the project, the methods, techniques or solutions the consultant offered, and if the project was completed on time and within budget.	5
Subtotal:	100

Interview Evaluation Criteria	Weight
K. Presentation by Team	25
L. Q&A Response to Panel Questions	25
Subtotal:	50
TOTAL:	150

LOCAL <u>OR</u> SLEB PREFERENCES		
1.	Local Preference Points: Equaling five percent (5%) of your total score will be added. This will be your final score for purposes of evaluation; <u>OR</u>	5% added to Total
2.	County Certified Small and Local, or Emerging and Local Preference Points: Equaling ten percent (10%) of your total score will be added. This will be your final score for purposes of evaluation.	10% added to Total

Notice of Recommendation to Award

At the conclusion of the RFQ response evaluation process, the Agency will notify all proposers by e-mail or US Postal Service 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 being recommended for contract award and the names of all other parties that submitted proposals.

At the conclusion of the RFQ response evaluation process, debriefings for unsuccessful proposers may be scheduled and provided upon written request and will be restricted to discussion of the unsuccessful offeror’s proposal. The debriefing may include review of the successful offeror’s proposal, but it will not include any discussion of successful proposer’s contract negotiations.

The submitted proposals shall be made available upon request no later than five 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 Agency utilizes fair and competitive contracting procedures.

The following is provided in the event that proposers wish to protest the process or the recommendation to award a contract 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 County.

- A. Any protest by any proposer regarding any other proposal must be submitted in writing to the Director of ACPWA, Alameda County Public Works Agency, 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, fax number and telephone number of the person representing the protesting party.
 - d. ACPWA will transmit a copy of the protest to all proposers as soon as possible after receipt of the protest.
- B. Upon receipt of a written protest, the Director of ACPWA or designee will review and evaluate the protest and issue a written decision. The Director of ACPWA, may, at his 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 Board hearing.

The decision will be communicated by e-mail or fax, and certified mail, and will inform the proposer whether or not 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 proposal protest if a decision on the protest could have resulted in the proposer not being the apparent successful proposer on the RFQ.

- C. The decision of the Director of ACPWA 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 proposal is the subject of the protest, all proposers affected by the Director of ACPWA decision on the protest, and the protestor have the right to appeal if not satisfied with the Director of ACPWA 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 Director of ACPWA, 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 Director of ACPWA 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 proposal(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, County 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 Director of ACPWA. 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 Director of ACPWA, and will determine whether to uphold or overturn the protest decision.
 - d. The Auditor's Office may overturn the results of a proposal process for ethical violations by ACPWA staff, selection committee members, subject matter experts, or any other County staff managing or participating in the competitive process, regardless of timing or the contents of a proposal 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 proposal is the subject of the protest, and all proposers affected by the decision.
- D. The County will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award a contract is considered by the Board of Supervisors.
- E. 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 proposal protest. A proposer's failure to timely complete both the proposal 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 proposal protest, including filing a government code claim or legal proceedings.

E. Award

SOQs will be evaluated by a committee and will be ranked in accordance with the RFQ Sections III.A and III.B. The committee will recommend award to the bidder(s) who, in its opinion, has submitted the SOQ that best serves the overall interests of the ACPWA and attains the highest overall point score.

The ACPWA reserves the right to reject any or all responses that materially differ from any terms contained in this RFQ or from any Exhibits attached hereto, to waive informalities and minor irregularities in responses received, and to provide an opportunity for bidders to correct minor and immaterial errors contained in their submissions. The decision as to what constitutes a minor irregularity shall be made solely at the discretion of the ACPWA.

The ACPWA reserves the right to award to a single or multiple consultants.

The ACPWA has the right to decline to award this contract or any part thereof for any reason.

Board approval to award a contract is required.

A contract must be negotiated, finalized, and signed by the recommended awardee prior to Board approval.

Final Standard Agreement terms and conditions will be negotiated with the selected consultant(s).

The RFQ specifications, terms, conditions and Exhibits, RFQ Addenda and Bidder's SOQ, may be incorporated into and made a part of any contract that may be awarded as a result of this RFQ.

F. Schedule of Events

EVENT	DATE • TIME • LOCATION
Issuance of Request for Qualifications	Friday, February 24, 2023
Pre-SOQ Meeting	Wednesday, March 8, 2023 at 10:00 am Meeting Location: 951 Turner Court, Room 230 A Hayward, CA 94545
Deadline for Questions	Friday, March 17, 2023 by 5:00 pm
Issuance of Final RFQ Addendum if necessary	Tuesday, March 21, 2023
Statement of Qualifications Due * * * IMPORTANT * * * Follow all submission requirements stipulated in Section II-C-2	Tuesday, April 4, 2023 by 2:00 pm Attn: Jami Conley Alameda County Public Works Agency 951 Turner Court, Room 300 Hayward, CA 94545 <i>Deliveries will be received and time-stamped at the reception desk.</i>
SOQ Evaluation Period	April 4 through April 18, 2023*
Oral Presentation/Interviews	Week of May 1, 2023*
Identify Preferred Proposal and Negotiate Agreement with Proposer	Week of May 15, 2023*
Notice of Recommendation to Award	June 2023*
Protest Deadline	5 business days following the issuance of the Notice of Recommendation to Award
Contract Consideration and Anticipated Award by Board of Supervisors	June 2023*
Contract Start Date	June 2023*

***Tentative Dates**

Submittals received after the time and date specified above will be considered nonresponsive and will be returned to the Consultant.

Any statement of qualifications received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified SOQ must be received by the due date and time.

The prospective Consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the Board of Supervisors.

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IV. Terms and Conditions for Agreement

Prior to acting upon this opportunity, you 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.

Exceptions and Amendments

If you wish to request exceptions or amendments to this RFQ or associated documents, you must complete the Exceptions and Amendments Form (Attachment C) and submit it with the SOQ. The County is under no obligation to accept any exceptions and such exceptions may be a basis for SOQ disqualification.

A. General: Standard Professional Services Agreement

ACPWA's Standard Professional Services Agreement is provided here as Attachment D. You should familiarize yourself with its provisions (particularly the insurance requirements):

1. Definitions
2. Term of Agreement
3. Services Consultant Agrees to Perform
4. Compensation (*see the Agreement's Appendix B for invoicing requirements*)
5. Maximum Costs
6. Qualified Personnel
7. Representations
8. Indemnification and General Liability
9. Liability of County
10. Independent Contractor; Payment of Taxes, and Other Expenses
11. Insurance (*see the Agreement's Appendix C for specific coverage requirements*)
12. Suspension of Services
13. Termination of Agreement for Cause
14. Termination of Agreement for Convenience
15. Conflicts of Interest/Other Agreements
16. Proprietary or Confidential Information of County; Publicity
17. Notice to the Parties
18. Ownership of Results/Work for Hire
19. Audit and Inspection Records
20. Subcontracting/Assignment/County Employees
21. Non-Discrimination, Equal Employment Opportunity, and Business Practices
22. Drug-Free Workplace Policy
23. Compliance with Americans with Disabilities Act
24. Debarment and Suspension (*see the Agreement's Appendix D for the required certification form*)
25. Small, Local, and Emerging Business (SLEB) Participation
26. First Source Program
27. Disputes

28. Agreement Made in California; Venue
29. Compliance with Laws
30. Construction
31. Miscellaneous
32. Entire Agreement; Modification of Agreement
33. Labor Code Requirements

In addition, you should review the agreement's Appendices for supplementary requirements, including the County's contract compliance reporting requirements (*Agreement Appendix E*).

Additional County policy requirements can be found at the webpages below:

1. *Alameda County's General Policy Requirements*

[Policies & Procedures - General Services Agency - Alameda County \(acgov.org\)](#)

2. *Alameda County's General Environmental Requirements*

[General Environmental Requirements - General Services Agency - Alameda County \(acgov.org\)](#)

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 (3) three years. By mutual agreement this period may be extended for an additional (2) two years at agreed prices with all other terms and conditions remaining the same.

2. Pricing

A sealed cost proposal with fee schedule will be requested of those who are invited to participate in the oral interview/presentations, see Attachment F.

Final scope of work and contract price will be determined during negotiations.

All pricing as quoted will remain firm for 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 County only after the completion of the initial term.

The total price shall be divided and costs advised for each task listed in Section I.C, "Services Needed."

Price quotes shall include any and all payment incentives available to the County.

Federal and State minimum wage laws apply. The Agency has no requirements for living wages. As described below, the Consultant must comply with requirements for prevailing wages.

3. County Requirements

Local Participation: Note that 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 County Small Local and Emerging Business (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 County is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the County's purchase of goods and services. Because of the County's commitment to advance the economic opportunities of these businesses, firms must meet the 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 RFQ, 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. Alameda County utilizes the 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 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 County contracts.

Upon contract award:

1. The County 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, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

- 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 County 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. Labor Code Requirements:

Department of Industrial Relations Registration: A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, 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.

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.

* * * END OF REQUEST FOR QUALIFICATIONS * * *

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ATTACHMENT A – RFQ and Addendum Acknowledgement

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

1. **Preparation of proposals:** (a) All proposal 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 proposal. 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 proposal. (b) Proposals are subject to acceptance at any time within thirty (30) days of opening, unless otherwise specified in the RFQ/SOQ. 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 County shall hold the County of Alameda, 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 proposal 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 proposal. 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 Proposal. Failure to acknowledge will cause the Proposal 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 – IRAN CONTRACTING ACT COMPLIANCE CERTIFICATE
(for contracts of \$1,000,000 or more)

COUNTY OF ALAMEDA

The Iran Contracting Act (ICA) of 2010

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

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

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

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

_____.

FIRM NAME: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

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ATTACHMENT C – 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 County 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.	<i>Consultant takes exception to...</i>

*Print additional pages as necessary

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ATTACHMENT D – “Draft” Standard Professional Services Agreement

Professional Services Agreement

with

(CONSULTANT NAME)

for the

_____ **SERVICES**

FOR

Contract No. _____

For Information Only

For Information Only

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County of Alameda

AGREEMENT BETWEEN

COUNTY OF ALAMEDA AND (CONSULTANT)

This Agreement is made this (Day) of _____, 2023, in the City of Oakland, State of California, by and between (CONSULTANT NAME), (CONSULTANT ADDRESS), hereinafter referred to as “Consultant” and the County of Alameda, a political subdivision of the State of California, hereinafter referred to as “County.”

AGREEMENT

1. Definitions

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

- Agreement** This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A”, “B”, “C”, “D”, “E”, and “F” attached hereto.
- CONSULTANT** (Consultant)
- COUNTY** County of Alameda
- LOCAL AGENCY** County of Alameda
- Project** The COUNTY’s project - (Project Title) - as further described in Appendix “A”, Scope of Services.
- Services** All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
- Subconsultants** Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from (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 County’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 County or County’s agents or consultants when acting at County’s direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the

Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant- caused or other non-excusable delay, County 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 County'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 County shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B", Payments to Consultant. County 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 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project until County 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 County 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 County.
- 4.3 County 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). County will make payment for questioned amount(s) upon County's receipt of any requested documentation verifying the claimed amount(s) and County's determination that the amount is due under the terms of this Agreement. County 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 County including, without limitation, Consultant's transmittal of all deliverables to County required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated hereinabove.
- 4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by County, 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 County'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 County refuses to mediate under this Section, then County shall have satisfied its obligations under this Section.

5. Maximum Costs

- 5.1 County'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, County 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 County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through (Consultant's Project Manager's full name and address); and Consultant shall direct all communications to County through County 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 County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County'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 County. 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 County for the cost of training or "bringing up to speed" replacement personnel. County 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 County to be defective and/or not meeting the above standard.

- 7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County 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 County, the Alameda County Flood Control and Water Conservation 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 County 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 County), 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 County, 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 County 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 County 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. County 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 County's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

9. Liability of County

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C", Insurance, County'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 County 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 County 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 County. 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 County 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, County 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 County may have under this Agreement or any applicable law. All rights and remedies of County, 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 County and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County 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 County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County 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 County 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, County 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 County for such expense).

12. Suspension of Services

- 12.1 County 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 County may determine in its sole discretion. County 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 County 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, County 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 County may, in addition to any other legal or equitable remedies available to County, 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 County 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 County within the 10 day period a written plan acceptable to County 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 County 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 County within the 10 day period a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)
- 13.3 In the event of termination by County as provided herein for cause:
- 13.3.1 County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County 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 County 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 County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by

County 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 County may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County 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 County, 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 County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County 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 County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to County, 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 County, 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 County.
 - 14.2.7 Use its best efforts to assist County in selling, in the manner, at times, to the extent, and at a price or prices that County 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 County. All proceeds from the foregoing shall be applied to reduce payments to be made by County 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 County 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 County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the

form and with the certification County 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 County upon Consultant's written request made within such 3-month period or authorized extension. However, if County 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, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.

- 14.4 Subject to provisions of Section 14.3, Consultant and County 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 County 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 County, 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 County of otherwise disposed of as directed by County.
- 14.6 Except as provided in this Agreement, in no event shall County 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 County 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 County 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 County.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of

this Agreement, Consultant may file with County 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. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County 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 County'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 County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County 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 County 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 County that Consultant has no present, and will have no future, conflict of interest between providing the County 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 County, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

16. Proprietary or Confidential Information of County; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County 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 County's interests where such confidential information could be used adversely to the County's interests. Consultant agrees to notify the County 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 County'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 County's prior written consent. Consultant shall have the right, however, without County'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 County 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 County:
County of Alameda
951 Turner Court, Room 300
Hayward, CA 94544
Attn: Kyle Carbert

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 County 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. County shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from County'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 County. 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 County. With the prior written approval of the County, 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 County, and County'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 County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising County and allowing County to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with County requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to County 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 County or relative to Consultant's activities under this Agreement. Consultant will furnish to County, its authorized agents, officers and employees such other evidence or information as County may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit County, and County'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 County's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon County's request and at Consultant's sole cost and expense, make such items available to County, and County's authorized agents, officers,

and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay County 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 County 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/ County Employees

- 20.1 Consultant and County 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 County in a written instrument executed and approved by the County 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 County in writing.
- 20.3 To the extent Consultant is permitted by County 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 of 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 County 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 County.

21. 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, 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.

22. 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 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.

23. 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.

24. Debarment and Suspension Certification

- 24.1 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.
- 24.2 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.

25. Small and Local Emerging Business (SLEB) Participation:

[Select the appropriate SLEB provision below for your contract and delete the unused options:

Option 1 – If Prime is subcontracting with SLEBs

Option 2 – If Prime is a SLEB

Option 3 – If SLEB Waiver was approved by GSA, Auditor-Controller or the Board]

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

25. Small and Local 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 a just 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 County's Small and Emerging Local Business provision, which includes but is not limited to:

- 25.1 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.
- 25.2 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.
- 25.3 Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor-Controller Agency, Office of Contract Compliance (OCC).
- 25.4 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 E (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.
- 25.5 County 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.
- 25.6 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

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

25. Small and Local Emerging Business (SLEB) Participation: Contractor has been certified by the County as a small or emerging local business. As a result, there is no requirement to subcontract with another business in order to satisfy the County’s Small and Emerging Locally owned Business provision. If during the term of this contract, Contractor’s certification status changes, Contractor shall notify the County 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 County to be in compliance with the County’s Small and Emerging Local Business provision, including but not limited to:

- 25.1 Contractor must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- 25.2 SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 25.3 As is applicable, Contractor shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this contract.
- 25.4 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 County. Said requests to substitute shall be submitted in writing to the County department contract representative identified under Item #17 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC). Further approval from the Board of Supervisors may also be required.
- 25.5 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.
- 25.6 Contractor shall meet the requirements above within 15 business days of the County notifying Contractor that it is no longer in compliance with the program. County 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.
- 25.7 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.

OPTION 3 –If SLEB Waiver was approved by CSA, Auditor, Controller or the Board use provision below:

25. Small and Local Emerging Business (SLEB) Participation: Consultant has been approved by County to participate in agreement without SLEB participation (attach SLEB waiver). As a result, there is no requirement to subcontract with another business in order to satisfy the County’s Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the agreement should change, Consultant may be required to immediately comply with the County’s Small and Emerging Local Business provisions, including but not limited to:

- 25.1 Consultant must be a certified small or emerging local business (es) or subcontract a minimum 20% with a certified small or emerging local business (es).
- 25.2 SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 25.3 Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the Agreement. Consultant shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- 25.4 Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- 25.5 All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay consultant for the percent committed to a SLEB (whether SLEB is a prime or 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.

26. First Source Program

For contracts over \$100,000, Consultant shall provide COUNTY 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 COUNTY that Consultant has available during the contract term before advertising to the general public

27. Disputes

- 27.1 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 Alameda County Director of Public Works 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 County representative, and principal of the Consultant shall then take place within five days of the request.
- 27.2 Provided that County 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, County may terminate this Agreement for cause as provided herein.
- 27.3 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.

28. Agreement Made in California; Venue

28.1 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.

28.2 The parties shall execute four originals of this Agreement.

29. Compliance with Laws

29.1 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.

29.2 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.

30. 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.

31. Miscellaneous

31.1 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 County 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.

31.2 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.

31.3 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.

32. Entire Agreement; Modifications of Agreement

32.1 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.

32.2 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.

32.3 Consultant and its Subconsultants shall, upon request by County, 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.

32.4 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.

- 32.5 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 County and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 32.6 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 County. The words “approval,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

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 County, 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, County of Alameda, 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 via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the County, 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 County, 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 County, 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 County 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 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with County 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 do so by the County, 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 County, Consultant shall provide the County 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 County 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 County will notify the Consultant in writing of the sanctions to be imposed.
- 33.17.2 In addition, the County 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 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 County contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

*** END OF STANDARD AGREEMENT ***

For Information Only

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 _____, 2023, between the County of Alameda (“County”) and (CONSULTANT NAME) (“Consultant”), providing for professional services. The County is administering this Agreement for both the County and the Alameda County Flood Control and Water Conservation District (“District”). References to County in this Agreement shall be interpreted to refer to District with respect to any District-initiated tasks. District is a third-party beneficiary of this Agreement.

1.1 The County’s Proposed Project – On-call Construction Management Services.

1.2 Consultant Team

Consultant’s team consists of

(CONSULTANT NAME), (CONSULTANT ADDRESS),

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

Consultant shall provide On-Call Construction Management 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 County grants a written exemption to a specific standard or regulation.

2.1.2 Consultant shall review existing County 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 County 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 County. Consultant shall review supplied design information and advise County of its adequacy for Consultant's work and advise County of any further design or other services necessary to complete the Project.

- 2.1.3 Unless otherwise permitted in writing by County, 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 County 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. County 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 County 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 County'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 County harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide County 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, County's Consultant Team, and County Staff

- 2.3.1 Consultant shall fully coordinate its services with the services of all disciplines and subconsultants involved in completing the Project. For projects requiring the development of construction designs,

the objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for balance of the Project, with consistency in engineering standards, any construction methods anticipated, construction details, materials specifications and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise County in writing if any County 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 require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear, and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment 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 County. The County shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that County reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to County, and the cost thereof is included in the fee. (If Consultant should disagree with County's determination, Consultant shall make the changes requested by County 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 County 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, County, or any third party) of which Consultant becomes aware.

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 _____, 2019, between the County of Alameda (“County”) 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 may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by County.

2. Monthly Billing Breakdown

- 2.1 County shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for County’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. The Monthly Billing Breakdown shall identify whether tasks were performed for County or District

3. Methods of Payment to Consultant

- 3.1 Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.
- 3.2 The Billing Rates used as a basis for payment apply to all of Consultant’s and Subconsultants’ principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Project (Exhibit A-1 attached to Appendix A). Any future adjustments to the 2023 fee schedule is subject to negotiation for approval by the County.

END OF APPENDIX B

APPENDIX C

COUNTY OF ALAMEDA 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:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability 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	Commercial or Business Automobile Liability 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
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> ADDITIONAL INSURED: 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: County of Alameda, the Alameda County Flood Control and Water Conservation District, their Board of Supervisors, the individual members thereof, and all 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. DURATION OF COVERAGE: 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. REDUCTION OR LIMIT OF OBLIGATION: 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 County. 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. INSURER FINANCIAL RATING: 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 County. Acceptance of Contractor's insurance by County 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. SUBCONTRACTORS: 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. JOINT VENTURES: 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"> 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. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County 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. 	

APPENDIX D

COUNTY OF ALAMEDA
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 D

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APPENDIX E**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS****CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County 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.

County of Alameda 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 County 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. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

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

END OF APPENDIX E

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**APPENDIX F:
– IRAN CONTRACTING ACT COMPLIANCE CERTIFICATE
(for contracts of \$1,000,000 or more)**

COUNTY OF ALAMEDA

The Iran Contracting Act (ICA) of 2010

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

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

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

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

_____.

FIRM NAME: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

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ATTACHMENT E – County Small, Local, and Emerging Business (SLEB) Forms

1. SLEB Certification Instructions
2. East Bay Inter-agency Alliance (EBIA) Common Application for Local Certification
3. SLEB Partnering Information Sheet
4. Request for Preference

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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 the 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 <http://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

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

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	County
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	<input type="checkbox"/> Secured concession <input type="checkbox"/> Other (explain)	Federal ID Number:
Has this entity operated under a different name during the past five years? <input type="checkbox"/>				
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"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific /Hawaiian <input type="checkbox"/> Multi ethnic ownership <input type="checkbox"/> Asian Indian <input type="checkbox"/> Multi ethnic minority ownership <input type="checkbox"/> Caucasian <input type="checkbox"/> Other _____ <input type="checkbox"/> Filipino		
		Gender (for tracking purposes only) <input type="checkbox"/> Male <input type="checkbox"/> Female		
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)		Year Ended _____ Year Ended _____ Year Ended _____	Total Receipts \$ _____ Total Receipts \$ _____ Total Receipts \$ _____	

SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

RFP #XXXX

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

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

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

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

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

Form section for 'FIRM IS A CERTIFIED SLEB' with fields for Business Name, Certification #, Expiration Date, and NAICS Codes.

Form section for 'FIRM IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT' with fields for subcontractor details and percentage.

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.

Form section for firm contact information including printed name, street address, city, state, zip code, and signature.

COUNTY OF ALAMEDA

REQUEST FOR PREFERENCE

PLEASE READ AND COMPLETE THIS FORM CAREFULLY:

IF YOU ARE A PRIME FIRM WHO IS A **LOCAL BUSINESS**, AND/OR A **CERTIFIED SMALL AND LOCAL BUSINESS** OR A **CERTIFIED EMERGING AND LOCAL BUSINESS**, COMPLETE THIS FORM AND RETURN IT WITH YOUR RFP/SOQ SUBMITTAL.

Subject to the requirements of the SLEB program and the criteria of each procurement process, the maximum proposal evaluation preference points for being certified is 10% (5% local & 5% certified). Compliance with the SLEB program is required for architectural, landscape architectural, engineering, environmental land surveying, and construction project management services projects.

Check the appropriate boxes below (2 maximum) and provide the requested information.

<input type="checkbox"/> Request for 5% LOCAL Proposal Preference (Complete 1-4, print name, title, sign and date below) Submit the following:			
<ul style="list-style-type: none"> • Copy of a verifiable business license, issued by the County of Alameda or a City within the County; and • Proof of six (6) months business residency, identifying the name of the vendor and the local address. Utility bills, deed of trusts or lease agreements, etc., are acceptable verification documents to prove residency. 			
1. Company Name			
2. Street Address			
3. Telephone Number			
4. Business License #			
(Check One) <input type="checkbox"/> Request for 5% SMALL Local Business Proposal Preference <i>OR</i> <input type="checkbox"/> Request for 5% EMERGING Local Business Proposal Preference (Complete certification information below)			
SLEB Certification #:		SLEB Certification Expiration Date	/ /
NAICS Codes Included in SLEB Certification			

The Undersigned declares that the foregoing information is true and correct:

Print/Type Name: _____

Print/Type Title: _____

Signature: _____

Date: _____

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APPENDIX G
List of Tests Performed in Materials Testing Services

ITEMS ¹	Test Method
CE	CERTIFICATIONS & EQUIPMENT
CE1	Coring Service (one person) ASTM C42, ASTM C42M
CE2	Coring Service (two person crew) ASTM C42, ASTM C42M
CE3	Full time sample runner from field to lab and return (mileage included) n/a
CE4	Field Sample Pickup and Delivery n/a
CE5	Laboratory Technician at Asphalt Plant ⁶ n/a
CE6	Concrete Batch Plant or Casting Yard Inspector n/a
CE7	Nuclear Density Gage ASTM D6938, ASTM D2950 ASTM D2950M
	Pachometer
TSA	TESTING OF SOIL AND AGGREGATES
TSA 1	Laboratory Compaction Characteristics of Soil (Standard Proctor) ASTM D698
TSA 2	Laboratory Compaction Characteristics of Soil (Modified Proctor) ASTM D1557
TSA 3	Plasticity Index ASTM D4318
TSA 4	Resistance (R-Value) test, untreated sample, 3 specimen HVEEM Stabilometer Test ASTM D2844
TSA 5	Resistance (R-Value) test, lime or cement treated Lab compaction test CAL 302
TSA 6	Bulk Density and Voids in Aggregate ASTM C29
TSA 7	Determining the Percentage of Fracture in Coarse Aggregate AASHTO TP 61 ASTM D5821
TSA 8	Uncompacted Void Content of Fine Aggregate AASHTO T 304 or ASTM C 1252
TSA 9	Flat Particles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregates ASTM D4791
TSA 10	Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact (LA Rattler) ASTM C131
TSA 11	Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact (LA Rattler) ASTM C131
TSA 12	Soundness of Aggregates, per sieve size, five cycles ASTM C88
TSA 13	Organic Impurities in Fine Aggregates for Concrete ASTM C40
TSA 14	Cleanness Value of Coarse Aggregate CAL 227
TSA 15	Aggregate Durability Index CAL 229
TSA 16	Density, Relative Density, and Absorption of Coarse Aggregates ASTM C127
TSA 17	Density, Relative Density, and Absorption of Fine Aggregates ASTM C 128
TSA 18	Percentage of Crushed Particles CT 205
TSA 19	Sieve analysis (coarse aggregates) ASTM C136
TSA 20	Wash and Sieve Analysis for aggregates finer than #200 sieve ASTM C117, ASTM C 136
TSA 21	Total Evaporable Moisture Content of Aggregate by Drying ASTM C566
TSA 22	Paver Stone Sand Degradation Test Set (6-hours, 50 rpms) ⁸ ASTM D2419 or CAL 217
TSA 23	Sand equivalent CAL 217
TSA 24	Cement Treated Base Laboratory Design (3 specimens)

	ITEMS ¹	Test Method
TAB	TESTING OF ASPHALT BINDERS	
TAB 1	Effect of Heat and Air on a Moving Film of Asphalt (Rolling Thin-Film Oven Test)	AASHTO 240 ASTM D 2872
TAB 2	Accelerated Aging of Asphalt Binder Using a Pressurized Aging Vessel (PAV)	AASHTO R 28
TAB 3	Viscosity Determination of Asphalt Binder Using Rotational Viscometer	AASHTO T 316 ASTM D 4402
TAB 4	Determining the Rheological Properties of Asphalt Binder Using a Dynamic Shear Rheometer (DSR)	AASHTO T 315
TAB 5	Determining the Flexural Creep Stiffness of Asphalt Binder Using the Bending Beam Rheometer (BBR)	AASHTO T 313
TAB 6	Determination of Low-Temperature Performance Grade (PG) of Asphalt Binders	AASHTO PP 42
TAB 7	Determining the Fracture Properties of Asphalt Binder in Direct Tension (DT)	AASHTO T 314
TAB 8	Solubility of Asphalt Materials in Trichloroethylene ¹⁰	ASTM D2042
TAB 9	Penetration, each temperature (77, 95 or 115 degrees F) ¹⁰	ASTM D5
TAB 10	Distillation of Road Tars, each ¹⁰	ASTM D20
TAB 11	Viscosity (Saybolt or Capillary), each ¹⁰	ASTM D2170 or D88
TAB 12	Ductility ¹⁰	ASTM D113
TAB 13	Density of Semi-Solid Bituminous Materials ¹⁰	ASTM D70
TAM	TESTING ASPHALT CONCRETE MIXES	
TAM 1	Moisture of Volatile Distillates Bituminous Paving Mixture	ASTM D1461
TAM 2	Marshall stability test, premixed sample per specimen	ASTM D6927
TAM 3	Marshall stability test, lab mixed sample, per specimen	ASTM D6927
TAM 4	HVEEM stabilometer test preparation, premixed sample per specimen	ASTM D1560 (CAL 366)
TAM 5	HVEEM stabilometer test, premixed sample, per specimen, including unit weight	ASTM D1560
TAM 6	HVEEM stabilometer test, lab mixed sample per specimen	ASTM D1560
TAM 7	HVEEM Cohesimeter in conjunction with stabilometer	ASTM D1560
TAM 8	Theoretical maximum specific gravity of Paving Mixtures (Rice Gravity) per specimen	ASTM D2041
TAM 9	Bulk specific gravity and density of compacted bituminous mixtures per specimen	ASTM D2726
TAM 10	Percent Air Voids in Compacted Dense and Open Bituminous Paving Mixtures	ASTM D3203
TAM 11	Centrifuge kerosene equivalent, percent oil retained (coarse and fine) ¹⁰	CAL 303
TAM 12	Swell Test ¹⁰	CAL 305
TAM 13	Moisture vapor susceptibility ¹⁰	CAL 307
TAM 14	Theoretical Maximum Specific Gravity and Density of Bituminous Paving Mixtures	AASHTO T 209 and ASTM D 2041
TAM 15	Determining the Asphalt Binder Content of Hot-Mix Asphalt (HMA) by the Ignition Method	AASHTO T 308 and ASTM D 6307
TAM 16	Resistance of Compacted Bituminous Mixture to Moisture-Induced Damage	AASHTO T 283
TAM 17	Effect of Moisture on Asphalt Concrete Paving Mixtures	ASTM D 4867

	ITEMS ¹	Test Method
TAM 18	Determining the Fatigue Life of Compacted Hot-Mix Asphalt (HMA) Subjected to Repeated Flexural Bending	AASHTO T 321
TAM 19	Determining Rutting Susceptibility of Asphalt Paving Mixtures Using the Asphalt Pavement Analyzer (APA) Determining Rutting Susceptibility of Asphalt Paving Mixtures Using the Asphalt Pavement Analyzer (APA)	AASHTO TP 63
TAM 20	Determining the Permanent Shear Strain and Stiffness of Asphalt Mixtures Using the Superpave Shear Tester (SST)	AASHTO T 320
TAI	TESTING ASPHALT CONCRETE INSTALLED	
TAI 1	Bitumen Content	ASTM D4
TAI 2	Extraction, % asphalt	ASTM D2172
TAI 3	Gradation on extracted sample, including wash	ASTM D2172
TAI 4	Mechanical Size Analysis of Extracted Aggregate	ASTM D5444
TC	TESTING OF CONCRETE	
TC 1	Compression, concrete, mortar, grout, or gunite compression core sample including mold	ASTM C39
TC 2	Flexure, concrete, 6x6x24 cure and break only	ASTM C78
TC 3	Fresh unit weight, air content, yield	ASTM C138
TC 4	Drying shrinkage, 3 samples/test, 28 days drying, linear shrinkage, concrete	ASTM C157
TC5	Making and Curing Concrete Test Specimens in the Laboratory	ASTM C192
TC 6	Compression, concrete, shotcrete, 3 tests of cores, from 4" x 12" x 12" panel	ASTM C39
TC 7	Mortar strengths relative to Ottawa sand	CAL 515
TC 8	Air Voids in Fresh Concrete by Volumetric Method	ASTM C 173
TC 9	Air Voids in Fresh Concrete by Pressure Method	ASTM C 231
TC 10	Test Drill Cores of Concrete	ASTM C 42
TC 11	Cylindrical Concrete Sample Testing Strength	ASTM C 496
TC 12	ASTM C 642 Test for Density, Absorption, and Voids	ASTM C 642
TC 13	Chloride Ion in Concrete	AASHTO T260
TMB	TESTING OF MASONRY AND BRICK (3 units minimum)	
TMB 1	Absorption and saturation coefficient of moisture content	ASTM C67
TMB 2	Compression, concrete block, or brick CMU	ASTM C140
TRS	TESTING OF REINFORCING STEEL	
TSS 1	Tensile and bend test, No. 3 through No. 10	ASTM A370
TSS 2	Tensile and bend test, No. 11	ASTM A370
TSS 3	Tensile test No. 14	ASTM A370
TSS 4	Tensile test No. 18	ASTM A370
TSS	TESTING OF STRUCTURAL STEEL	
MD 1	Tension test, reduced section	ASTM A370
MD 2	Tensile and bend test, to 1" thickness	ASTM A370
TW	TESTING OF WELDS	
TW 1	Magnetic Particle Level II	ASNT
TW 2	Dye Penetrant Level II	ASNT
TGL	TESTING OF GLUE LAMINATED LUMBER	
TGL 1	Core shear, per core	ASTM C273

❖ Above ASTM testing methods represent a sample of tests only. Additional tests may be required in specific projects. All corresponding California Test methods may be specified by District.