

**ALAMEDA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT REQUEST FOR  
PROPOSALS**

**SPECIFICATIONS, TERMS & CONDITIONS**

**MANDATORY PRE-SUBMITTAL CONFERENCE**

**2:00 to 3:00 p.m. on **Monday, July 20, 2015****

at

**Alameda County Public Works Agency  
951 Turner Court, Room 230, Hayward, CA 94545**

**For complete information regarding this project see RFP posted at  
<http://www.acgov.org/pwa/business/services.htm> or contact the person listed below.**

**Thank you for your interest!**

**Contact Person: James Scanlin  
Phone Number: 510-670-6548  
Email Address: Jims@acpwa.org**

**RESPONSE DUE**

by

**2:00 p.m.**

on

**Monday August 10, 2015**

at

**Alameda County Flood Control and  
Water Conservation District  
399 Elmhurst Street, Room 113  
Hayward, CA 94544-1307**

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**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT (MPR) 2.0 PROFESSIONAL  
SERVICES  
REQUEST FOR QUALIFICATIONS  
SPECIFICATIONS, TERMS & CONDITIONS**

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**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
NATIONAL POLLUTANT DISCHARGE ELIMINATION  
SYSTEM PERMIT PROFESSIONAL SERVICES  
REQUEST FOR QUALIFICATIONS  
SPECIFICATIONS, TERMS & CONDITIONS**

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**I. ACRONYM AND TERM GLOSSARY**

Unless otherwise noted, the terms below may be upper or lower case. Acronyms will always be uppercase.

A/E	Architecture(-al) and Engineer(-ing)
Agency	Alameda County Public Works Agency
Board	Shall refer to the Alameda County Flood Control and Water Conservation District Board of Supervisors
Consultant	When capitalized, shall refer to selected Firm that is awarded a contract.
County	When capitalized, shall refer to the County of Alameda
District	When capitalized, shall refer to the Alameda County Flood Control and Water Conservation District
DSC	Shall refer to District Selection Committee
Federal	Refers to United States Federal Government, its departments and/or agencies
Firm	Shall mean specific person or firm responding to this RFP
GSA	General Services Agency – County of Alameda
IRS	Internal Revenue Service
Labor Code	California Labor Code
NPDES	National Pollutant Discharge Elimination System
On-Call Services	As-Needed Services
Program	When capitalized refers to the Alameda Countywide Clean Water Program
Request for Proposals	Shall mean this document, which is the District’s request for firm’s proposal to provide the services being solicited herein. Also referred herein as RFP
RFP	Request for Proposals
SF	Standard Form
SLEB	Small Local Emerging Business
SOP	Submittal of Proposal
Submittal	Shall mean Firm’s response to this RFP.
State	Refers to State of California, its departments and/or agencies
TBD	To Be Determined
Water Board	Refers to the San Francisco Bay Regional Water Quality Control Board

**II. STATEMENT OF WORK AND SCOPE OF SERVICES**

Dear firm, you are invited to submit a proposal to provide Municipal Regional Stormwater Permit support services for the Alameda County Flood Control and Water Conservation

District (“District”). The following information is provided to assist you in preparing and submitting your proposal.

A. PROJECT DESCRIPTION AND OVERVIEW:

The Alameda Countywide Clean Water Program (Program) was initiated in 1991 to help member agencies comply with the Water Quality Control Plan for the San Francisco Bay Basin prepared by the San Francisco Regional Water Quality Control Board (Water Board), and other requirements of state and federal laws applicable to water quality and urban runoff management. The Alameda County Flood Control and Water Conservation District (District) administers the Program on behalf of the member agencies. The District contracts for specialized consulting services to assist with the implementation of the Program. The Program is currently assisting with the implementation of the current 5-year Phase I municipal storm water discharge permit, the “Municipal Regional Stormwater Permit” (MRP) issued in October 2009 under the National Pollutant Discharge Elimination System (NPDES) by the California Regional Water Quality Control Board of the San Francisco Bay Region (Water Board) to the Program’s member agencies and 59 other Bay Area agencies. A copy of the MRP is available on the Program’s website ([http://www.cleanwaterprogram.org/publications\\_libraryResources.htm](http://www.cleanwaterprogram.org/publications_libraryResources.htm)). The next 5-year permit (MRP 2) has been released as a tentative order and is expected to be adopted by the Water Board in late 2015. The District intends to contract with the successful consultant(s) for a 5-year period to assist with the implementation of MRP 2. The MRP 2 Tentative Order is posted on the Water Board’s website:

[http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/stormwater/Municipal/mrp\\_page4.shtml](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrp_page4.shtml). References to MRP in the remainder of this document refer to MRP 2 as described in the Tentative Order unless otherwise noted.

The following agencies are member agencies of the Program: the Alameda County Flood Control and Water Conservation District (District), County of Alameda, City of Alameda, City of Albany, City of Berkeley, City of Dublin, City of Emeryville, City of Fremont, City of Hayward, City of Livermore, City of Newark, City of Oakland, City of Pleasanton, City of Piedmont, City of San Leandro, City of Union City, and Zone 7 Water Agency. The Program participants have executed an “Agreement to Implement the Alameda Countywide Clean Water Program” (Agreement). The Agreement provides the basis for the participants to implement the Program and establishes a Management Committee which is the decision making body of the Program.

The successful consultant(s) will assist the member agencies in complying with various provisions of the NPDES permit. Assistance will include providing legal/regulatory guidance, technical support and staff training; conducting “Creek Status” and “Pollutants of Concern” monitoring and related special studies; and support for annual reporting. “Pollutants of Concern” (POCs) refers to a range of pollutants that are or may be causing water quality impairments, as identified in individual provisions of the MRP. Polychlorinated biphenyls (PCBs), mercury, and trash are the primary focus of the Program’s Pollutants of Concern efforts at this point.

The Management Committee meets monthly and is assisted by subcommittees which meet regularly to address the following Program component areas: Policy, Watershed Assessment and Monitoring/Special Studies, Public Information/Participation, Municipal

Maintenance, New Development and Construction Site Controls, and Industrial Inspection and Illicit Discharge. The Program is administered by the District using its standard contractual policies and procedures.

This Request for Proposal (RFP) describes the anticipated scope of services, the required consultant expertise and experience, and the information that must be included in the Submittal. Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification. To be considered for these services, you must demonstrate knowledge, qualifications, ability and experience, and competency to provide the services.

The District will evaluate and rank submittals on the basis of thoroughness, completeness and content, as described in Section III F of this RFP: “Response Content/Submittals.” The highest ranked firms in each of the Subject Areas will be invited to an oral interview.

**B. SCOPE OF SERVICES**

The Program assists the member agencies in complying with the requirements of their stormwater discharge permit. In some cases, the Program conducts an activity on behalf of the member agencies, such as, conducting stormwater monitoring, technical studies, and public outreach campaigns. In other cases, the Program provides services to member agencies to help the member agencies implement permit requirements, such as legal and regulatory guidance, staff training, and technical support.

Consultants may propose on one, several, or all of the following Service Areas. The Program may select a consultant for one, several, or all Service Areas. The Program may also select one or more consultants for a Service Area in general, while other consultant(s) may be selected to provide on-call assistance for a specific task within that Service Area.

- 1) **Legal/Regulatory Services:** Provide on-call expert legal guidance on Permit compliance, and various municipal stormwater related water quality regulations including the Clean Water Act and the California Water Code.
- 2) **Municipal Operations, and Industrial and Illicit Discharge Control:** Assist the Program and the member agencies in implementing requirements of MRP Provisions C.2, C.4, C.5, C.9, and C.15. Tasks may include: a) providing technical support with BMP development and implementation, and annual reporting; and, b) developing and implementing training for municipal staff.
- 3) **New Development and Construction Site Control:** Assist the Program and the member agencies in implementing various requirements of MRP Provisions C.3 and C.6. Tasks may include: a) providing technical support with BMP guidance development and annual reporting; b) developing and implementing training for municipal staff; and, c) Assisting with the development of Green Infrastructure Plans (Provision C.3.j).

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- 4) **Creek Status Monitoring:** Under direction of Program staff, implement the Creek Status Monitoring and related requirements of MRP Provisions C.8.d and C.8.e. Tasks may include: a) assist Program staff in planning and site selection consistent with regional and Program monitoring priorities; b) collect and analyze biological, water and sediment samples; c) deploy and retrieve data from continuous monitoring equipment; d) perform surveys and measurements of physical habitat and channel conditions associated with bioassessment sampling and special studies; e) implement Quality Assurance/Quality Control program for field, laboratory and management and reporting of data; f) Report and present results as needed to support permit submittals; g) participate in coordination meetings and activities with representatives and Consultants of other Bay Area stormwater programs and of the Water Board's SWAMP program; and h) assist with related special studies and support tasks as needed.
  
- 5) **Pollutants of Concern Monitoring:** Under direction of Program staff, implement the Pollutants of Concern Monitoring requirements of MRP Provision C.8.f. Tasks may include: a) assist Program staff in program design and planning in conjunction with other monitoring and POC management activities; b) collect and analyze samples of water, sediment and other solids; c) implement Quality Assurance/Quality Control program for field, laboratory and management and reporting of data; d) Report and present results as needed to support permit submittals and TMDL implementation planning; and, participate in regional coordination meetings and assist with related support tasks as directed by Program staff.
  
- 6) **Pollutants of Concern Controls Implementation:** Assist the Program and the member agencies in implementing requirements of MRP Provisions C.10, C.11 and C.12. Tasks may include: 1) Support continuing identification and evaluation of potential PCB source properties and evaluation of opportunity areas for reduction of PCB discharges to runoff; 2) evaluate and support effective application of other control measures for PCBs or other priority POCs; 3) assist regionally coordinated efforts to estimate POC load reductions from control measures; 4) support development and evaluation of MRP-required controls on PCB-containing building materials; assist with the implementation of the Permittees Long-Term Trash Reduction Plans; and 5) assist with other support tasks as directed by Program staff.

The Program is a member of the Bay Area Stormwater Management Agencies Association (BASMAA), a 501(c)(3) non-profit organization comprising the municipal stormwater programs in the San Francisco Bay Area which represent 96 agencies. The Program also participates extensively in regional activities that involve coordination among agencies and programs in the greater Bay Area to accomplish objectives of the MRP. Past and ongoing regional coordination is described in the Program's Annual Reports, Urban Creeks Monitoring Reports and/or Integrated Monitoring Report, available on the Internet at <http://cleanwaterprogram.org/about-us.html>.

The Program's fiscal year 2015/16 budget is on the Program's website at <http://cleanwaterprogram.org/about-us.html>. The Program may modify its planned activities or

reallocate resources as needed to meet the objectives of the MRP, comply with Water Board requirements and make efficient use of available resources in conjunction with other regional efforts.

C. CONDUCT OF WORK

The Program is intended to be a cooperative effort of the Program participants and the selected consultants. The consultants will be under the policy direction of the Program's Management Committee. A designated District staff member will act as the Project Manager and will provide daily point of contact for the selected consultant(s) for each Service Area. In accordance with the Program's Agreement, the District will administer consultant contracts on behalf of the Program.

The District intends to enter into a five-year contract with the successful consultant(s). The maximum contract amount for the consultant(s) will vary according to the Service Areas involved and the Program's anticipated needs for services. Execution of a contract with a general scope of potential services will not in itself constitute authorization to proceed with any work. The final scope of work for the specific project or task will be incorporated in a written Action Plan signed by the consultant's project manager and approved by Program staff before work is authorized to proceed.

D. SPECIFIC DISTRICT REQUIREMENTS

1. 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. Please note detailed provisions in DISTRICT PROVISIONS SECTION of this RFP.
2. Consultants must meet applicable requirements of Attachments A through M.

III. **INSTRUCTIONS TO FIRMS**

A. DISTRICT CONTACTS

The evaluation phase of the RFP process shall begin upon receipt of sealed Submittal until a contract has been awarded. Firms shall not contact or lobby evaluators during the evaluation process. Attempts by Firms to contact evaluators may result in disqualification of Firms.



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All questions regarding these specifications, terms and conditions are to be submitted in writing, preferably using the form in Exhibit I via e-mail by 2:00 PM on July 22, 2015 to:

James Scanlin  
Alameda County Flood Control and  
Water Conservation District  
399 Elmhurst Street, Room 233  
Hayward, CA 94544-1307  
E-Mail: jims@acpwa.org

The District “Current List of RFQs / RFPs” website will be the official notification posting place of all Request for Qualifications and Addenda. Go to <http://www.acgov.org/pwa/business/services.htm> to view current contracting opportunities.

**B. CALENDAR OF EVENTS**

Event	Date/Location
RFP Issued	July 10, 2015
Written Questions Due	<b><i>BY</i></b> 2:00 PM on July 22, 2015
Pre-Submittal/RFP Conference	MONDAY JULY 20, 2015 2:00 TO 3:00 PM <b><i>LOCATION:</i></b> PWA Conf. Rm. 230 951 Turner Court Hayward, CA
SOPs due date	August 10, 2015 2:00 p.m.
Oral Presentation/ Interviews	August 25, 2015
Final Ranking/Notices of Intent to Award/Non- Award	September 4, 2015
Contract Negotiation with Top ranked firm(s)	Week of September 8, 2015
Board Award Date	Tuesday October 20, 2015
Contract Start Date	Thursday October 22, 2015

**Note:** Contract award and start dates are approximate.

It is the responsibility of each proposer to be familiar with all of the specifications, terms and conditions of this RFP. By the submission of a Proposal, Firms certify that if awarded a contract they will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.

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C. PRE-SUBMITTAL/RFP CONFERENCE

NOTE: Firms wishing to participate must attend the Pre-submittal Conference. The networking/RFP conference will be held to:

- Provide an opportunity for small and local and emerging businesses (SLEBs) and large firms to network and develop partnering relationships in order to participate in the contract(s) that may result from this RFP.
- Provide an opportunity for Firms to ask specific questions about the project and request RFP clarification.
- Provide Firms an opportunity to receive documents, etc. necessary to respond to this RFP.
- Provide the District with an opportunity to receive feedback regarding the RFP.

Written questions submitted prior to the networking/proposers conference, in accordance with the Calendar of Events, and verbal questions received at the networking/proposers conference, will be addressed whenever possible at the networking/proposers conference.

Failure to participate in the Pre-Submittal/ RFP Conference will in no way relieve the Consultant from furnishing services required in accordance with these specifications, terms and conditions.

The Pre-Submittal/ RFP conference will be held as shown on Calendar of Events section above.

D. SUBMITTAL OF PROPOSALS

1. All proposals must be SEALED and must be received by the Alameda County Flood Control and Water Conservation District receptionist at 399 Elmhurst Street, Room 113 Hayward, CA **BEFORE** 2:00 p.m. on the due date specified in the Calendar of Events.

NOTE: LATE AND/OR UNSEALED QUALIFICATIONS CANNOT BE ACCEPTED. IF HAND DELIVERING QUALIFICATIONS PLEASE ALLOW TIME FOR METERED PUBLIC PARKING OR SPARCE STREET PARKING.

Submittals will be received only at the address shown below, and by the time indicated in the Calendar of Events. Any Submittals received after said time and/or date or at a place other than the stated address cannot be considered and will be returned to the Firm unopened.

All Submittals, whether delivered by an employee of Firm, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address prior to the time designated. The District's Management Services timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of Submittals.

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2. Submittals are to be addressed and delivered as follows:

**MUNICIPAL REGIONAL STORMWATER PERMIT (MRP)  
PROFESSIONAL SERVICES**

Alameda County Flood Control and  
Water Conservation District  
399 Elmhurst Street, Room 113  
Hayward, CA 94544  
Attn.: James Scanlin

3. Firm's name and return address must also appear on the mailing package.
4. No telegraphic, e-mail or facsimile Submittals will be considered.
5. By submission of its qualifications the Firm agrees and acknowledges all RFP specifications, terms and conditions and indicates ability to perform.
6. All costs required for the preparation and submission of a qualification shall be borne by the Firm.
7. Only one SOP response will be accepted from any one person, partnership, corporation, or other entity.
8. It is the responsibility of the Firm to clearly identify information in their qualification responses that they consider to be confidential under the California Public Records Act. See:  
<http://www.acgov.org/gsa/departments/purchasing/policy/proprietary.htm>

E. **RESPONSE FORMAT**

Qualification responses are to be straightforward, clear, concise and specific to the information requested. Submit in 8-1/2 x 11 format one (1) original plus eight (8) copies of the qualification, plus a copy shall be submitted on read-only CD in "PDF" format. Original qualification is to be clearly marked, printed on plain white paper. It is preferred that all Submittals shall be printed double-sided and on minimum 30% post-consumer recycled content paper; inability to comply with this recommendation will have no impact on the evaluation and scoring of the Submittals. Submittals shall contain only material directly related to response to requirements, not general marketing material. Organize your information under tabs in the same order delineated below under "Response Content."

Submittal responses must be signed in ink. The signatures of all persons required under the applicable organizational documents in order to bind the Firm must be on the qualification response. Provide applicable signature documentation pursuant to Firm's organizational structure verifying the

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authority of the person signing the qualification response to commit to its Qualification on behalf of the Firm.

F. RESPONSE CONTENT/SUBMITTALS

RFP response shall include the following information:

- 1) Transmittal letter: include a list of Service Areas the submittal is addressing and the signature of a responsible party. Attach a completed and signed Exhibit A to the transmittal letter.
- 2) Title page - show the RFP subject, the name of the proposer's firm, location address, telephone number, name of the contact person, and the date.
- 3) Table of Contents - include a clear identification of the material by section and page number.
- 4) SLEB Compliance: Describe your approach to compliance with the County's SLEB/Outreach Program, with particular reference to any mentoring or capacity developing strategies represented by partnering with local Alameda County firms. If the lead firm is not SLEB certified, describe how you will ensure that at least 20% of the work will go to a SLEB firm(s). Include a completed and signed Exhibit F.
- 5) Overview and Summary (maximum of 4 pages): This section should clearly convey the consultant's understanding of the work and project approach. The consultant should address the following:
  - Understanding of the purpose of the project as specified in the scope of services;
  - Awareness of institutional, organizational and political issues related to the history of the project;
- 6) Organization and Approach (maximum of 3 pages)
  - Describe the roles and organization of your proposed team for this scope. Indicate the composition and number of staff and experience of your firm/team as it relates to this scope.
  - Describe your management approach. Provide a detailed description of how the team, including all consultants, will be managed.
  - Describe the roles of key individuals on the team, including roles of individuals in each consultant firm. Key members, especially the Project Manager, shall have significant demonstrated

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experience with this type of work. For the purposes of this clause, “Key members” is defined as those individuals who are essential to the successful completion and execution of this contract. Key members must be available for the duration of the engagement and may not be substituted without prior written approval by the District. The District reserves the right to direct the removal of any individual, including Key members, assigned to this contract.

7) Detailed Work Plan (maximum of 3 pages for each Service Area and a maximum of 10 pages for 4 or more service areas)

The Consultant shall include a full description of the work elements and the proposed methodology. The work description should be detailed to a sufficient level (work elements, sub-elements, etc.) to show a clear understanding of the precise work required to meet project goals and objectives.

8) Relevant Projects:

Include descriptions of up to two relevant projects of the Key Personnel for each for each Service Area for which the Firm is submitting Qualifications (limit of six projects total). State for which Service Area(s) the project is related. Project descriptions are limited to one page each.

9) Resumes:

Provide resumes and references for all key team members. Resumes shall show relevant experience, for the Area of Service, as well as the length of employment with the proposing firm.

10) References

Provide one to three references for clients/projects which are similar to this one and who can attest to firm’s performance. Provide name, contact address and telephone number, with brief description of the project. Prefer completed projects, but one may be ongoing.

11) Payment Schedule: Detailed payment schedules which include hourly rates for each category of personnel assigned to the project and other direct expenses shall be submitted in a separate sealed envelope which will remain unopened until consultants have been selected. The selected consultants’ payment schedule will either be accepted in whole or the Program will negotiate an acceptable payment schedule with the consultant. If a payment schedule is not agreed to, the Selection Committee will look to the next highest ranking consultant(s).

3. Exhibits/Attachments

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Firms shall include in their submittal completed and signed documentation for Exhibits A and F including any attachments required by the Exhibit. Exhibit G should be completed, signed if requesting bid preference. Any material deviation from these requirements may be cause for rejection of the Submittal, as determined in the District's sole discretion. Other Exhibits are provided for your information and may be required as part of any contractual agreement.

- Exhibit A – Acknowledgement, completed and signed
- Exhibit B – (Not used)
- Exhibit C – Insurance Requirements
- Exhibit D – (Not used)
- Exhibit E – SLEB Certification Application Package, completed, signed, required documentation attached (if applicable)
- Exhibit F - Small Local Emerging Business (SLEB) Partnering Information Sheet, completed and signed
- Exhibit G – Request for Bid Preference completed and signed if applicable
- Exhibit H, First Source Agreement, completed and signed
- Exhibit I, Exceptions, Clarifications and Amendments Form, completed and signed. Any exceptions, clarifications and amendments should also address the attached Exhibits, particularly Exhibit J, Agreement (the County is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification).
- Exhibit J- Draft Agreement
- Exhibit K – Example Scoring Sheet
- Exhibit L – Debarment and Suspension Certification
- Exhibit M– The Iran Contracting Act (ICA) of 2010

### G. EVALUATION CRITERIA/SELECTION COMMITTEE

All submittals will be evaluated by a District Selection Committee (DSC). The DSC may be composed of District staff and other parties that may have expertise or experience in the professional services described herein. The DSC will review the submittals and will rank the proposers. The two or three highest ranked firms in each subject area will be invited to attend an interview in accordance with the evaluation criteria set forth in this RFP. The evaluation of the proposals shall be within the sole judgment and discretion of the DSC.

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

The DSC will evaluate each Submittal meeting the qualification requirements set forth in this RFP. Firms should bear in mind that any Submittals that is

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unrealistic in terms of the technical or schedule commitments may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District’s requirements as set forth in this RFP.

As a result of this RFP, District intends to interview the two or three highest ranked firms for each Service Area. However, District reserves the right to determine the number of interviews it will conduct for this project. Each of the Evaluation Criteria below will be used in ranking and determining the quality of the Submittals. Submittals will be evaluated according to each Evaluation Criteria, 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 Submittal. A Submittal with a high weighted total will be deemed of higher quality than a Submittal with a lesser-weighted total. The final maximum score for any proposal is five hundred fifty (550) points, including the possible fifty (50) points for local and small, local and emerging, or local preference points (maximum 10% of final score).

Each of the following Evaluation Criteria below will be used in ranking and determining the quality of Firm’s Submittal. Submittals will be evaluated according to each Evaluation Criteria, and rated on a zero to five-point scale where the range is defined as follows:

0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of Submittals.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving scope objectives per RFP.
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 RFP specification. This will be the baseline score for each item with adjustments based on interpretation of Submittals by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP 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 and in achieving all objectives and meeting RFP specification.

The Evaluation Criteria and their respective weights are as follows:

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	<b>Evaluation Criteria</b>	<b>Weight</b>
F.1.	<p><u>Completeness of Response</u> Responses to this RFP must be complete. Only submittals that meet the SLEB requirements will be considered. <u>A completed and signed Exhibit F must be included with the submittal.</u> Responses that do not include the content requirements identified within this RFP and 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
F.2	<p><u>Overview and Summary:</u> Clearly conveys the consultant's understanding of the work and project approach. The consultant should address the following:</p> <ul style="list-style-type: none"> <li>• Understanding of the purpose of the project as specified in the detailed scope of services above;</li> <li>• Awareness of institutional, organizational and political issues related to the history of the project;</li> </ul>	15 Points
F.3	<p><u>Organization &amp; Approach</u> <u>Roles and Organization of Proposed Team</u></p> <ul style="list-style-type: none"> <li>▪ Proposes adequate and appropriate disciplines of project team.</li> <li>▪ Overall organization of the team is relevant to District needs.</li> </ul>	10 Points
F.4	<p><u>Detailed Work Plan (Scored separately for each Service Area)</u></p> <ul style="list-style-type: none"> <li>▪ Provides a full description of work elements and proposed methodology.</li> <li>▪ Shows a clear understanding of the work required to meet the Area of Service objectives.</li> </ul>	15 Points
F.5	<p><u>Relevant Projects (Scored separately for each Service Area)</u></p> <ul style="list-style-type: none"> <li>▪ Relevant Projects clearly demonstrate experience needed for the proposed Area of Service.</li> </ul>	10 Points
F.6	<p><u>Resumes (Scored separately for each Service Area)</u> Resumes clearly demonstrate experience needed for the proposed Area of Service.</p>	5 Points
F.7	<p><u>References</u></p> <ul style="list-style-type: none"> <li>▪ Up to three references for each firm on team on similar projects are provided.</li> </ul>	5 Points



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	<b>Evaluation Criteria</b>	<b>Weight</b>
G.	<p><u>Oral Presentation and Interview</u></p> <p>Following evaluation of the written proposals, Firms receiving the highest scores will be invited to an oral presentation and interview. The scores at that time will not be communicated to Firms. The oral presentation and question/answers by each Firms shall not exceed sixty (60) minutes in length. The oral interview will consist of a Firm’s presentation, followed by standard questions asked of each of the Firms and specific questions regarding the specific submittal. The submittal may then be re-evaluated and re-scored based on the oral presentation and interview.</p>	40 Points
<b>SMALL LOCAL EMERGING BUSINESS PREFERENCE</b>		
	<p><b>Local Preference:</b> Points equaling five percent (5%) of Firm’s total score, for the above Evaluation Criteria, will be added if the lead firm meets the local business criteria. This will be the Firm’s final score for purposes of award evaluation.</p>	Five Percent (5%)
	<p><b>Certified Small and Local or Emerging and Local Preference:</b> Points equaling five percent (5%) of Firm’s total score, for the above Evaluation Criteria, will be added if the lead firm meets the SLEB criteria. This will be the Firm’s final score for purposes of award evaluation.</p>	Five Percent (5%)

H. NOTICE OF AWARD

1. At the conclusion of the RFP response evaluation process (“Evaluation Process”), all Firms will be notified in writing of the contract award recommendation. The document providing this notification is the Notice of Award.

The Notice of Award will provide the following information:

- The name of the Firm(s) being recommended for contract award;
  - The names of all other Firms ; and,
  - In summary form, evaluation points for each Firm.
2. Debriefings for unsuccessful Firms may be scheduled and provided upon written request and will be restricted to discussion of the unsuccessful submitter’s proposal with the Project Manager.
    - a. Under no circumstances will any discussion be conducted with regard to contract negotiations with the successful Firm, etc.
    - b. Debriefing may include review of successful Firm(s)’s submittal.

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3. The submittal shall be made available upon request no later than five (5) business days before approval of the award and contract is scheduled to be heard by the Board of Supervisors.

I. SUBMITTAL PROTEST/APPEALS PROCESS

District prides itself on the establishment of fair and competitive contracting procedures and the commitment made to follow those procedures. The following is provided in the event that Firms wish to protest the Submittal process or appeal the recommendation to award a contract for this RFQ once the Notices of Intent to Award/Non-Award have been issued. Protests submitted prior to issuance of the Notices of Intent to Award/Non-Award will not be accepted by the District.

1. Any Submittal protest by any Firm regarding any other Submittal must be submitted in writing to the District's Flood Control Program Manager, Hank Ackerman, located at 399 Elmhurst Street, Hayward, CA 94544, Fax: (510) 510-782-1939, before 4:00 p.m. of the FIFTH (5th) business day following the date of issuance of the Notice of Intent to Award, not the date received by the consulting firm. A Submittal protest received after 4:00 p.m. is considered received as of the next business day.
  - a. The Submittal 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. The District will transmit a copy of the Submittal protest to all firms that submitted proposals as soon as possible after receipt of the protest.
2. Upon receipt of written protest, Flood Control Program Manager, Hank Ackerman, or designee will review and evaluate the protest and issue a written decision. The Flood Control Program Manager, Hank Ackerman, or designee may, at his or her discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting consulting firm and others (as appropriate) to discuss the protest. The decision on the Submittal protest will be issued at least ten (10) business days prior to the Board hearing or District award date.

The decision will be communicated by e-mail or fax, and certified mail, and will inform the Firm whether or not the recommendation to the Board of Supervisors or District in the Notice of Intent to Award is going to change. A copy of the decision will be furnished to all Firms affected by

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the decision. As used in this paragraph, a Firm is affected by the decision on a Submittal protest if a decision on the protest could have resulted in the Firm not being the apparent successful Firm on the RFQ.

3. The decision of the Flood Control Program Manager, Hank Ackerman on the consulting firm 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 consulting firm whose Submittal is the subject of the protest, all consulting firms affected by the Flood Control Program Manager, Hank Ackerman's decision on the protest, and the consulting firm have the right to appeal if not satisfied with the Flood Control Program Manager, Hank Ackerman 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 Flood Control Program Manager, Hank Ackerman, not the date received by the consulting firm. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the FIFTH (5th) business day following the date of issuance of the decision by the Flood Control Program Manager, Hank Ackerman shall not be considered under any circumstances by the District or 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 Submittal(s). The appeal to the OCC shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFQ or, where appropriate, District contracting policies or other laws and regulations.
  - c. The appeal to the OCC also shall be limited to the grounds raised in the original protest and the decision by the District's Flood Control Program Manager. As such, a Firm is prohibited from stating new grounds for a Submittal protest in its appeal. The Auditor-Controller (OCC) shall only review the materials and conclusions reached by the District's Flood Control Program Manager or department designee, and will determine whether to uphold or overturn the protest decision.
  - d. The Auditor's Office may overturn the results of a Submittal process for ethical violations by District staff, District Selection Committee members, subject matter experts, or any other District 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 protestor, the Firm whose Submittal is the subject of the Submittal protest, and all Firms affected by the decision.

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4. The District will complete the Submittal protest/appeal procedures set forth in this paragraph before a recommendation to award the Contract is considered by the Board of Supervisor or District.
5. The procedures and time limits set forth in this paragraph are mandatory and are each Firm's sole and exclusive remedy in the event of Submittal Protest. A Firm's failure to timely complete both the Submittal 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 Submittal protest, including filing a Government Code Claim or legal proceedings.

**IV. TERMS AND CONDITIONS**

**A. AWARD**

1. The District Selection Committee will recommend award to the Firm(s) who, in its opinion, has submitted the Submittal that best serves the overall interests of the District, attains the highest overall point score, submits an acceptable fee proposal upon request and completes successful contract negotiations.
2. The District reserves the right to reject any or all responses that materially differ from any terms contained herein or from any Exhibits attached hereto and to waive informalities and minor irregularities in responses received.
3. The District reserves the right to award to a single or multiple Consultants.
4. The District has the right to decline to award this contract for any reason.
5. Board approval to award a contract is required.
6. Consultant shall sign an acceptance of award letter prior to Board approval.
7. The RFP specifications, terms, conditions and Exhibits, RFP Addenda and Firm's Submittal, may be incorporated into and made a part of any contract that may be awarded as a result of this RFP.

**B. METHOD OF CONTRACTING**

1. A signed Agreement will be issued upon Board approval.
2. Agreement will be faxed, transmitted electronically or mailed and shall be the only authorization for the Consultant to begin work
3. Payments will be issued only in the name of Consultant.

4. Change orders shall be agreed upon by Consultant and District and issued as needed in writing by County.

C. DISTRICT PROVISIONS

1. Small and Emerging Locally Owned Business: The District is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the District's purchase of goods and services. As a result of the District's commitment to advance the economic opportunities of these businesses, **Firm's must meet the County's Small and Emerging Locally Owned Business 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 submittal, applicable industries include, but are not limited to, the following NAICS Code: 41620 Environmental Consulting 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.

2. 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.
3. Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist consultants 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.

The prime consultant and all participating local and SLEB sub-consultants 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 subs participating in County contracts.

Upon contract award

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- a. The County will provide consultants and subconsultants 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.
- b. Consultants should schedule a representative from their office/company, along with each of their subconsultants, 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 Consultant's responsibility to ensure that they and their subconsultants are registered and trained as required to utilize Elation Systems.

For further information, please see the Elation Systems training schedule online at [http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm) or call 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](mailto:ACSLEBcompliance@acgov.org).

4. Compliance Information and Records: As needed and upon request, for the purposes of determining compliance with the SLEB Program, the Consultant 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 subconsultant Submittals must be through the prime consultant.
5. First Source Program: The District is vitally interested in supporting our Alameda County employed and underemployed residents. Consultants awarded contracts for goods and services for \$100,000 or more as a result of this RFP are required to agree to this program. For more details: <http://acgov.org/auditor/sleb/sourceprogram.htm>

## EXHIBIT A – SOP ACKNOWLEDGEMENT

### ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MUNICIPAL REGIONAL STORMWATER PERMIT (MRP) PROFESSIONAL SERVICES REQUEST FOR PROPOSALS

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

- 1. Preparation of submittals:** (a) All submittal 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 submittal. No alterations or changes of 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. Failure to submit submittal:** If you are not submitting a submittal but want to remain on the mailing list and receive future submittals, complete, sign and return this Submittal Acknowledgement and state the reason you are not submitting.
- 3. Award:** (a) Unless otherwise specified by the firm or the RFP gives notice of an all-or-none award, the District may accept any item or group of items of any submittal. (b) Submittals are subject to acceptance at any time within thirty (30) days of opening, unless otherwise specified in the RFP. (c) A valid, written purchase order mailed, or otherwise furnished, to the successful firm within the time for acceptance specified results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
- 4. Patent indemnity:** Vendors who do business with the District shall hold the Alameda County Flood Control and Water Conservation District, its officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
- 5. California Government Code Section 4552:** In submitting a submittal to a public purchasing body, the firm offers and agrees that if the submittal 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 submittal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the firm.
- 6. No guarantee or warranty:** The Alameda County Flood Control and Water Conservation District makes no guarantee or warranty as to the condition, completeness or safety of any material or equipment that may be traded in on this order.

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

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

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

Print Name Signed Above: \_\_\_\_\_

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

## Exhibit C

### CONTRACTORS INSURANCE REQUIREMENTS SYSTEM

#### EXHIBIT 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
<b>A Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability; Abuse, Molestation, Sexual Actions, and Assault and Battery	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
<b>E Endorsements and Conditions:</b> <ol style="list-style-type: none"> <li>1. <b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>2. <b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li>3. <b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the 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.</li> <li>4. <b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the 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.</li> <li>5. <b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>6. <b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:                         <ul style="list-style-type: none"> <li>- Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>- Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li>7. <b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li>8. <b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to 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.</li> </ol>	





**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/search.htm>*

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

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

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

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

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

**3. On-site Visit**

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

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

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

If you have questions regarding your certification, please contact:

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

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

# 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"/> Asian <input type="checkbox"/> Asian Pacific /Hawaiian <input type="checkbox"/> Asian Indian <input type="checkbox"/> Caucasian <input type="checkbox"/> Filipino <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Multi ethnic ownership <input type="checkbox"/> Multi ethnic minority ownership <input type="checkbox"/> Other _____	
		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 \$ _____

**Exhibit E  
Small Local Emerging Business (SLEB) Program new Certification Application  
RFP/Q No. 900xxx for BidTitle**

**2) Company Profile:** (Continue)

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

**3) Certifications:**

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

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

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

**5) NAICS Codes:** Please review the NAICS<sup>1</sup> listing of work codes and indicate below your areas of expertise ranked in order of importance (begin with primary and specialty areas as indicated in the Company Profile section) NAICS Codes can be found at: <http://www.naics.com/search.htm> & <http://www.census.gov/epcd/naics02/>. Add separate sheet for additional NAICS codes if needed.

NAICS Code	Description of Work

**6) Additional Information:**

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

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

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

<sup>1</sup> North American Industry Classification System – [www.naics.com](http://www.naics.com)  
Rev. 05/2011

# EXHIBIT F

## SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION SHEET

### ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES REQUEST FOR QUALIFICATIONS

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

Bidders not meeting the [definition of a SLEB \(http://acgov.org/auditor/sleb/overview.htm\)](http://acgov.org/auditor/sleb/overview.htm) are required to subcontract with a SLEB for at least twenty percent (20%) of the total estimated bid 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 bidders will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Bidders 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 bid as a prime on their own.

Once a contract has been awarded, bidders 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>).

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

SLEB BIDDER Business Name: \_\_\_\_\_

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

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

BIDDER IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT \_\_\_\_% WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: \_\_\_\_\_

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

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

SLEB Certification Status:  Small /  Emerging

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

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

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

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

Bidder Printed Name/Title: \_\_\_\_\_

Street Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

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

# EXHIBIT G

## ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES REQUEST FOR QUALIFICATIONS

### REQUEST FOR SUBMITTAL 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 bid 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"/> <b>Request for 5% LOCAL Bid Preference</b> (Complete 1-4, print name, title, sign and date below) Submit the following:	
<ul style="list-style-type: none"> <li>• Copy of a verifiable business license, issued by the County of Alameda or a City within the County; and</li> <li>• 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.</li> </ul>	
1. Company Name	
2. Street Address	
3. Telephone Number	
4. Business License #	

(Check One) <input type="checkbox"/> <b>Request for 5% SMALL Local Business Bid Preference</b> <u>OR</u> <input type="checkbox"/> <b>Request for 5% EMERGING Local Business Bid Preference</b> (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: \_\_\_\_\_

# EXHIBIT H

## ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES REQUEST FOR QUALIFICATIONS

### ALAMEDA COUNTY VENDOR FIRST SOURCE AGREEMENT VENDOR INFORMATION

ALCOLINK Vendor Number (if known): 00000

SLEB Vendor Number:

Full Legal Name:

DBA

Type of Entity:  Individual  Sole Proprietor  Partnership

Corporation  Tax-Exempted  Government or Trust

Check the boxes that apply:

Goods Only  Goods & Services  Rents/Leases  Legal Services

Rents/Leases paid to you as the agent  Medical Services  Non-Medical Services – Describe \_\_\_\_\_

Other \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

LOC  Local Vendor (Holds business license within Alameda County)

SML  Small Business (as defined by Small Business Administration)

I  American Indian or Alaskan Native (>50%)

A  Asian (>50%)

B  Black or African American (>50%)

F  Filipino (>50%)

H  Hispanic or Latino (>50%)

N  Native Hawaiian or other Pacific Islander (>50%)

W  White (>50%)

Number of entry level positions available through the life of the contract: \_\_\_\_\_

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

This information to be completed by County:

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

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

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

**EXHIBIT H**

**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES  
REQUEST FOR QUALIFICATIONS**

**ALAMEDA COUNTY VENDOR FIRST SOURCE AGREEMENT  
VENDOR INFORMATION**

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

**District** agrees to only refer pre-screened qualified firms, based on vendor specifications, to vendor for interviews for prospective employment by Vendor (see Incentives for Vendor Participation under Vendor/First Source Program located on the Small Local Emerging Business (SLEB) Website, <http://www.acgov.org/auditor/sleb/>).

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

---

(Company Name)

---

(Vendor Signature) (Date)

---

(District Representative Signature) (Date)

Justification for Non-Compliance:

---

---

**EXHIBIT I**

**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES  
REQUEST FOR QUALIFICATIONS**

**Firm Name:** \_\_\_\_\_

List below requests for clarifications, exceptions and amendments, if any, to the RFP and associated Submittal Documents, and submit with your response.

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

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	<i>Vendor takes exception to...</i>

\*Print additional pages as necessary



**EXHIBIT J**

**DRAFT PROFESSIONAL SERVICES AGREEMENT  
FOR  
ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES  
REQUEST FOR QUALIFICATIONS**

**Professional Services Agreement**

**With**

**(CONSULTANT NAME)**

**for the**

**\_\_\_\_\_ SERVICES**

**FOR**

**\_\_\_\_\_**

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

**Alameda County Flood Control and Water Conservation**

## ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION

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

This Agreement is made this (Day) of \_\_\_\_\_, 2015, in the City of Oakland, State of California, by and between (CONSULTANT NAME), (CONSULTANT ADDRESS), hereinafter referred to as "Consultant" and the Alameda County Flood Control and Water Conservation District, a political subdivision of the State of California, hereinafter referred to as "District."

#### AGREEMENT

##### 1. Definitions

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

**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", "F" and "G" attached hereto.

**CONSULTANT** (Consultant)

**COUNTY** Alameda County Flood Control and Water Conservation District

**Project** The DISTRICT'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 District's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when acting at District's direction, breaches of this

reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, District may (but shall not be required to) grant a time extension without compensation.

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

#### **4. Compensation**

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

#### **5. Maximum Costs**

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

District amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

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

## 6. Qualified Personnel

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

## 7. Representations

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

## 8. Indemnification and General Liability

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

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

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

8.2 [Intentionally Omitted]

8.3 [Intentionally Omitted]

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

8.5 District acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. District shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with District's expert consultant as required by Appendix "A", 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, District's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

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

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

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

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

#### **11. Insurance**

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

#### **12. Suspension of Services**

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

#### **13. Termination of Agreement for Cause**

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

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



**14. Termination of Agreement for Convenience**

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

amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

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

**15. Conflicts of Interest/Other Agreements**

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

**16. Proprietary or Confidential Information of County; Publicity**

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

**17. Notice to the Parties**

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

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

To County:  
District Project Manager Full Name  
399 Elmhurst Street  
Hayward, CA 94544

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

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

## 18. Ownership of Results/Work for Hire

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

**19. Audit and Inspection Records**

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

**20. Subcontracting/Assignment/ County Employees**

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

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

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

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

- 21.1 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 (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor. 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.
- 21.2 Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.
- 21.3 Consultant shall, if requested to do so by the District, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.
- 21.4 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 21.5 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 21.6 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- 21.7 The Consultant shall include the provisions set forth in 21.2 through 21.6 (above) in each of its subcontracts.

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

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

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

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

further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

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

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

**25. Small, Local, and Emerging Business (SLEB) Participation**

25.1 SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: Contractor has been approved by County to participate in contract 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 contract should change**, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. 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).
- e. 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 contractor 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) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

## 26. First Source Program

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

## 27. Disputes

- 27.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and
- 27.2 Provided that District continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, District may terminate this Agreement for cause as provided herein.
- 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 construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

## 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. 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 one original and three copies 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**

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

### **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 District of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 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.
- 31.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to District a written report, in such form as may be required by District of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of District's equipment, tools, material, or staff were involved.
- 31.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of the accident.

### **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, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 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 District, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 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 District 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 District. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to District, unless otherwise indicated by the context.

### **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 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 Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 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 District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 33.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.

- 33.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 33.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 33.12.5 The Consultant shall inform the District of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 33.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 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 District representatives may result in conditioning amounts of any progress payment due.
- 33.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 33.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.2 Consultant shall, if requested to so do by the District, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.3 If requested to do so by the District, Consultant shall provide the District with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

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

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

“DISTRICT”

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

By: \_\_\_\_\_  
PRESIDENT  
BOARD OF SUPERVISORS

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

“CONSULTANT”

(CONSULTANT COMPANY NAME)

TAX ID \_\_\_\_\_

By: \_\_\_\_\_  
(CONSULTANT AUTHORIZE TO EXECUTE AGREEMENT)  
TITLE

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

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

\_\_\_\_\_  
Deputy County Counsel

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

END OF DOCUMENT

## APPENDIX A DEFINITION OF SERVICES

1. Contractor shall provide Municipal Regional Stormwater Permit Consulting Services (“MRP Services”) in one or more of the Areas of Service listed in the Request for Proposal (“RFP”) issued July [REDACTED], 2015 by the Alameda Countywide Clean Water Program (ACCWP). Said list from the RFP is attached hereto as Exhibit A-1. The ACCWP Selection Committee approved the Contractor’s qualifications to provide services in the following Areas of Expertise [include all that apply]:

- 1) Legal/Regulatory Services
- 2) Municipal Operations, and Industrial and Illicit Discharge Control
- 3) New Development and Construction Site Control
- 4) Creek Status Monitoring
- 5) Pollutants of Concern Monitoring
- 6) Pollutants of Concern Controls Implementation

Contractor will provide MRP Services to assist District in administering and implementing ACCWP’s activities and other tasks needed to comply with the five-year stormwater discharge permit (“Municipal Regional Stormwater Permit” or “MRP”) issued to the ACCWP member agencies by the California Regional Water Quality Control Board, San Francisco Bay Region (RWQCB). These activities may include, but are not limited to, the list of tasks associated with each Area of Service in Exhibit A-1.

2. Work by Contractor may only be initiated after an appropriate task-specific Action Plan, with included task budget and timeline, has been approved in writing by District. Preparation of an Action Plan will be under the direction of the District in accordance with the objectives and funding allocations of annual ACCWP workplans. Contractor must obtain prior written authorization from District before exceeding any task budget.

## APPENDIX A-1

**Areas of Service and Tasks– Alameda Countywide Clean Water Program  
Municipal Regional Stormwater Permit Consulting Services**

Note: references to MRP Provisions based on Tentative Order dated May 11, 2015

- 1) **Legal/Regulatory Services:** Provide on-call expert legal guidance on Permit compliance, and various municipal stormwater related water quality regulations including the Clean Water Act and the California Water Code.
- 2) **Municipal Operations, and Industrial and Illicit Discharge Control:** Assist the Program and the member agencies in implementing requirements of MRP Provisions C.2, C.4, C.5, C.9, and C.15. Tasks may include: a) providing technical support with BMP development and implementation, and annual reporting; and, b) developing and implementing training for municipal staff.
- 3) **New Development and Construction Site Control:** Assist the Program and the member agencies in implementing various requirements of MRP Provisions C.3 and C.6. Tasks may include: a) providing technical support with BMP guidance development and annual reporting; b) developing and implementing training for municipal staff; and, c) Assisting with the development of Green Infrastructure Plans (Provision C.3.j).
- 4) **Creek Status Monitoring:** Under direction of Program staff, implement the Creek Status Monitoring and related requirements of MRP Provisions C.8.d and C.8.e. Tasks may include: a) assist Program staff in planning and site selection consistent with regional and Program monitoring priorities; b) collect and analyze biological, water and sediment samples; c) deploy and retrieve data from continuous monitoring equipment; d) perform surveys and measurements of physical habitat and channel conditions associated with bioassessment sampling and special studies; e) implement Quality Assurance/Quality Control program for field, laboratory and management and reporting of data; f) Report and present results as needed to support permit submittals; g) participate in coordination meetings and activities with representatives and contractors of other Bay Area stormwater programs and of the Water Board's SWAMP program; and h) assist with related special studies and support tasks as needed.
- 5) **Pollutants of Concern Monitoring:** Under direction of Program staff, implement the Pollutants of Concern Monitoring requirements of MRP Provision C.8.f. Tasks may include: a) assist Program staff in program design and planning in conjunction with other monitoring and POC management activities; b) collect and analyze samples of water, sediment and other solids; c) implement Quality Assurance/Quality Control program for field, laboratory and management and reporting of data; d) Report and present results as needed to support permit submittals and TMDL implementation planning; and, participate in regional coordination meetings and assist with related support tasks as directed by Program staff.
- 6) **Pollutants of Concern Controls Implementation:** Assist the Program and the member agencies in implementing requirements of MRP Provisions C.10, C.11 and C.12. Tasks may include: 1) Support continuing identification and evaluation of potential PCB source properties and evaluation of opportunity areas for reduction of PCB discharges to runoff; 2) evaluate and support effective application of other control measures for PCBs or other priority POCs; 3) assist regionally coordinated efforts to estimate POC load reductions from control measures; 4) support development and evaluation of MRP-required controls on PCB-containing building materials; assist with the implementation of the Permittees Long-Term Trash Reduction Plans; and 5) assist with other support tasks as directed by Program staff.



## APPENDIX B PAYMENT TERMS

1. Contractor shall furnish materials and/or labor to the District for services as outlined in Exhibit A.
2. District will pay for services completed and itemized on invoices prepared by the Contractor according to the rate schedule attached hereto as Exhibit B-1, or any approved revisions of the rate schedule in effect at the time services are performed. Contractor shall receive District's written acceptance of any revisions to the rate schedule before billing work at revised rates.
3. Invoices will be approved by the District, when submitted and itemized according to the phases or subtasks defined in one or more task-specific Action Plans which the District has authorized for Contractor services as outlined in Exhibit A. District will pay Contractor for services itemized in uncontested portions of invoices within thirty (30) days of receipt of invoice.
4. The maximum amount payable to Contractor under this Agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Not To Exceed Amount" or "NTE").
5. The maximum amount payable to Contractor for services performed in the first year of this Agreement (October 22, 2015 through October 31, 2020) shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The maximum payment in subsequent years will be determined by the approval of annual ACCWP Work Plans for projects requiring Clean Water On-call Services to be conducted during each time period. Such annual Work Plans will be referenced in task-specific Action Plans prepared in accordance with Exhibit A and paragraphs 7 and 8 below.
6. Contractor acknowledges that District does not guarantee that any specific amount of work will be assigned to Contractor during any particular year of this Agreement, and that funding for future years of this Agreement is subject to the adoption of annual budgets of the District and of the ACCWP "General" Program.
7. For each task-specific Action Plan developed as required in Exhibit A, District and Contractor will agree upon a maximum compensation amount which will include any reimbursable expenses, subcontractors, taxes or other charges allowed by the Action Plan. Total compensation due to Contractor shall be the actual amount invoiced based upon the Contractor's hourly billing, which may be less than the maximum amount agreed on for the Action Plan.
8. For each task-specific Action Plan, the District will approve a schedule for the timely performance of Contractor's services. The District may terminate or suspend work on any Action Plan by giving the Contractor prior written notice.

EXHIBIT K  
Example Scoring Sheet

**MUNICIPAL REGIONAL STORMWATER PERMIT (MRP) 2.0 PROFESSIONAL SERVICES  
REQUEST FOR PROPOSALS 2015  
EVALUATION SCORING SHEET**

Name of Firm/Team Lead \_\_\_\_\_

Name of Reviewer \_\_\_\_\_ Date \_\_\_\_\_

**Part Evaluation Criterion** (to be completed by Program staff)

A. F.1 Completeness of Response (Page and content limits, SLEB requirements) \_\_\_\_\_ ( Pass/Fail )

	<b>Rating Range</b>	<b>Reviewer Rating</b>		<b>Weight factor</b>		<b>Total points</b>
<b>B. PROPOSAL BASICS</b>						
F.2 Overview and Summary √ Understanding of purpose of work √ Awareness of context and issues	(5 max)	_____	x	15	=	<input type="text"/>
F.3 Organization and Approach √ Disciplines of project team √ Understanding of work required	(5 max)	_____	x	10	=	<input type="text"/>
<b>Total Part B points</b> (maximum 125)						<input style="border: 2px solid black;" type="text"/>

C. SERVICE AREAS ( only use columns for Service Areas that are addressed in firm/team proposal )

<b>Service Areas</b> (maximum rating 5 for each Criterion below, per Service Area)	<b>1 Legal/Regulatory</b>	<b>2 Operations &amp; IIDC</b>	<b>3 New Dev. &amp; Construction</b>	<b>4 Creek Status</b>	<b>5 POC Monitoring</b>	<b>6 POC Controls</b>
<b>Task Subareas</b> (list those included in proposal, by letters if shown in RFP)						
F.4 Detailed Work Plan Points (above rating x weight 15)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
F.5 Relevant Projects Points (above rating x weight 10)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
F.6 Resumes & experience Points (above rating x weight 5)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Total Part C points</b> (maximum 150 in each Area column)	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>

D. REFERENCES/INTERVIEW

F.7 References ( all Service Areas ) (5 max)	_____		x	5	=	<input type="text"/>
G.1 Oral Presentation (5 max) Points (above rating x weight 20)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
G.2 Response to Questions (5 max) Points (above rating x weight 20)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Total Part D points</b> (maximum 225 in each Area column)	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>	<input style="border: 2px solid black;" type="text"/>

E. OVERALL POINT SCORE (to be completed by Program staff)

Sum of Points for Parts B, C & D	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>
√ Meets Local preference ( add 5% )		_____				( Yes/No )
√ Meets Certified Small+Local or Emerging+Local ( add 5% )		_____				( Yes/No )
Add 0-10% of above Sum of Points	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>
<b>Overall Score for each Area</b>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>	<input style="border: 2px solid red;" type="text"/>

**MUNICIPAL REGIONAL STORMWATER PERMIT (MRP) 2.0 PROFESSIONAL SERVICES  
REQUEST FOR PROPOSALS 2015**

**Instructions to Reviewers**

1. Complete one Evaluation Scoring Sheet for each proposal.
2. Enter your ratings on the lines provided in Parts B, C and D of the sheet, following the guidelines below.
3. Multiply rating(s) for each criterion by the appropriate weight factor to calculate points for each criterion (and Service Area if applicable), and enter in the boxes provided.
4. Parts A and E will be completed by Alameda Countywide Clean Water Program staff.

**Guidelines for Rating Proposals**

Reviewers should try to ensure fair scoring by applying a uniform evaluation process for each proposing firm or team.

For each evaluation criterion, rate the firm or team with a number from 0 to 5 according to the table below, and place your rating on the appropriate line in that row. For Criteria F.4-6 and G.1-2, rate the firm or team separately for each Service Area that is covered in the Proposal. A firm or team may propose on some or all of the Tasks (subareas) listed in the RFP within some of the Service Areas - in that case your rating should apply to those Tasks described in the proposal.

0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of Submittals.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving scope objectives per RFP.
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 RFP specification. This will be the baseline score for each item with adjustments based on interpretation of Submittals and Interview by Evaluation Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP 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 and in achieving all objectives and meeting RFP specification.

**General Notes**

The consultant selection will be for unspecified services focused on the six Service Areas. More than one qualified consultant or team may be selected for each Service Area, especially to obtain coverage of all task subareas within the Service Areas.

The proposals contain example workplans to demonstrate how the firm or team would approach selected task subareas using their team's skills and experience. Since each of the proposals may cover a different subset of the Service Areas and subareas, the content of the workplans are not expected to be directly comparable from one proposal to another.

Because actual scopes of work will be negotiated through individual Action Plans on an as-needed basis, there is a fairly strong weight to scores in Criteria G.1 and G.2. The question and answer period of the interview will try to focus on the flexibility and responsiveness of each firm/team in adapting their workplans according to Clean Water Program needs.

# EXHIBIT L

## ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES REQUEST FOR QUALIFICATIONS

### DEBARMENT AND SUSPENSION CERTIFICATION

For Procurements Over \$25,000

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

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

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

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

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

FIRM: \_\_\_\_\_

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

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

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

**ALAMEDA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
MUNICIPAL REGIONAL STORMWATER PERMIT PROFESSIONAL SERVICES  
REQUEST FOR QUALIFICATIONS**

The Iran Contracting Act (ICA) of 2010

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

NAME: \_\_\_\_\_

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

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