

QUESTIONNAIRE FOR DETERMINING THE WITHHOLDING STATUS

INSTRUCTIONS: This questionnaire is to be completed by the DISTRICT department for services contracts and must be included as part of the contract package. Be sure to answer all of the questions in Sections I and II and to complete the certifications on page 2. Sections III and IV contain supplemental questions to be answered for contractors in certain service categories.

CONTRACTOR NAME: _____ DEPT #: _____

TITLE/SERVICE: _____

DEPT. CONTACT: _____ PHONE: _____

I. INFORMATION ABOUT THE CONTRACTOR	YES	NO
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1. Is the contractor a corporation or partnership? () ()

2. Does the contractor have the right per the contract to hire others to do the work agreed to in the contract? () ()

3. If the answer to BOTH questions is YES, provide the employer ID number here:

No other questions need to be answered. Withholding is not required.

4. If the answer to question 1 is NO and 2 is YES, provide the individual social security number here: _____

No other questions need to be answered. Withholding is not required.

5. If the answer to question 2 is NO, continue to Section II.

II. RELATIONSHIP OF THE PARTIES	YES	NO
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1. Does the DISTRICT have the right to control the way in which the work will be done, i.e., will the DISTRICT be able to specify the sequence of steps or the processes to be followed if it chooses to do so? () ()

2. Is the contractor restricted from performing similar services for other businesses while he is working for the DISTRICT? () ()

3. Will the contractor be working for more than 50% of the time for the DISTRICT (50% = 20 hrs/wk; 80 hrs/mo)? () ()

4. Is the relationship between the DISTRICT and the contractor intended to be ongoing? () ()

III. FOR CONSULTANTS, PROJECT MANAGERS, PROJECT COORDINATORS **YES NO**

- 1. Is the contractor being hired for a period of time rather than for a specific project? () ()
- 2. Will payment be based on a wage or salary (as opposed to a commission or lump sum)? () ()

IV. FOR PHYSICIANS, PSYCHIATRISTS, DENTISTS, PSYCHOLOGISTS

- 1. Will the agreement be with an individual who does not have an outside practice? () ()
 - 1a. Will the contractor work more than an average of ten hours per week? () ()

IF THE ANSWER TO QUESTION 1a. IS YES, ANSWER QUESTION 1b.

- 1b. Will the DISTRICT provide more than 20% of the contractor's income? () ()
- 2. If the answer to either question 1.a, or if required, question 1.b is NO, the entire answer is NO.

A "yes" answer to any of the questions in Section II, or, if applicable, Sections III or IV constitutes justification for paying the contractor through the payroll system as an "employee for withholding purposes."

CERTIFICATIONS:

I hereby certify that the answers to the above questions accurately reflect the anticipated working relationship for this contract.

Contractor Signature

Agency/Department Head/Designee Signature

Printed Name

Printed Name

Date

Date

**ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2010, is by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as the "DISTRICT", and _____, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, DISTRICT desires to obtain _____ services which are more fully described in Exhibit A hereto ("_____ Services"); and
(Insert short name or delete)

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to DISTRICT; and

Now, therefore it is agreed that DISTRICT does hereby retain Contractor to provide _____ Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements

The term of this Agreement shall be from _____ through _____.

The compensation payable to Contractor hereunder shall not exceed *(dollar amount written out)* (\$ _____) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

CONTRACTOR/COMPANY NAME

By: _____
Signature

By: _____
Signature

Name: _____
(Printed)

Name: _____
(Printed)

Title: President of the Board of Supervisors

Title: _____

Date: _____

Approved as to Form:

By: _____
County Counsel Signature

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.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the DISTRICT in any capacity whatsoever, and DISTRICT shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold DISTRICT harmless from any and all liability which DISTRICT may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of DISTRICT.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of DISTRICT is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the DISTRICT agency concerned.

Notwithstanding the foregoing, if the DISTRICT determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, DISTRICT may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the DISTRICT, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss,

damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The DISTRICT may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of DISTRICT, Contractor shall indemnify, defend, and hold harmless DISTRICT for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of DISTRICT.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the DISTRICT maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from DISTRICT any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold DISTRICT harmless from any and all liability, fines, penalties and

consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor 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 Contractor's sub-Contractor, if any; (3) name and address of Contractor'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.
 - c. Contractor 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.
7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/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, Contractor 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.
8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.

10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the DISTRICT and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the DISTRICT, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the DISTRICT and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by DISTRICT to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the DISTRICT and any assignee of the DISTRICT an express royalty – free license to retain and use said Documents and Materials. The DISTRICT's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the DISTRICT the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the DISTRICT harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the DISTRICT harmless from any claims for infringement of patent or copyright arising out of such selection. The DISTRICT's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor 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, Contractor represents to and agrees with the DISTRICT that Contractor has no present, and will have no future, conflict of interest between providing the DISTRICT services hereunder and 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 Board of Supervisors of the DISTRICT.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the DISTRICT will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the DISTRICT by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the DISTRICT hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To District: ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Attn: _____

To Contractor: _____

Attn: _____

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

- 14. USE OF DISTRICT PROPERTY: Contractor shall not use DISTRICT property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
- 15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with 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 Agreement.
 - a. Contractor 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, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran’s status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the DISTRICT, certify that it has not, in the performance of this Agreement, 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.

- c. If requested to do so by the DISTRICT, Contractor 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.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the DISTRICT's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any DISTRICT facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a DISTRICT facility or work site, the Contractor within five days thereafter shall notify the head of the DISTRICT department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the DISTRICT, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the DISTRICT, and shall furnish to the DISTRICT, its authorized agents, officers or employees such other evidence or information as the DISTRICT may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with DISTRICT requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the DISTRICT, make such books and records available to the DISTRICT for inspection at a location within DISTRICT or Contractor shall pay to the DISTRICT the reasonable, and necessary costs incurred by the DISTRICT in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The DISTRICT further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the DISTRICT, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records,

accounts, and data in any manner whatsoever for three (3) years after the DISTRICT makes the final or last payment or within three (3) years after any pending issues between the DISTRICT and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to DISTRICT for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by DISTRICT), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the DISTRICT's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The DISTRICT has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the DISTRICT should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its _____ Services shall not exceed \$_____ payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION:**

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

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

- a. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- b. As is applicable, Contractor shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this contract.
- c. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the DISTRICT. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the DISTRICT 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).
- d. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the awarded contract are required to use the Elation web-based compliance system as described in Exhibit E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation compliance system. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

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

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) 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.

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

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

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

- a. Contractor must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. As is applicable, Contractor shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this contract.
- d. For any subcontractors retained to comply with this provision, Contractor shall not substitute any such small and/or emerging local business(s) subcontractor without prior written approval from the DISTRICT. Said requests to substitute shall be submitted in writing to the DISTRICT 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). Further approval from the Board of Supervisors may also be required.
- e. If subcontractors are added to the contract, all SLEB participation, except for prime contractor, must be tracked and monitored utilizing the Elation compliance System (see Exhibit E). SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

Contractor shall meet the requirements above within 15 business days of the DISTRICT notifying Contractor that it is no longer in compliance with the program. DISTRICT will be under no obligation to pay contractor for the percent committed to a SLEB

subcontractor if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) 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.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide DISTRICT ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the DISTRICT that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between DISTRICT and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of DISTRICT, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of DISTRICT in each instance.
28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

29. **ASSURANCE OF PERFORMANCE:** If at any time DISTRICT believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, DISTRICT may request from Contractor prompt written assurances of performance and a written plan acceptable to DISTRICT, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of DISTRICT's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the DISTRICT's prior written approval.
- a. 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.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without DISTRICT's prior written approval.
 - c. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to DISTRICT under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless DISTRICT of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. DISTRICT will: (1) notify Contractor promptly of such claim,

suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without DISTRICT's prior written consent, to any settlement, which would require DISTRICT to pay money or perform some affirmative act in order to continue using the Contractor Products.

- a. If Contractor is obligated to defend DISTRICT pursuant to this Section 33 and fails to do so after reasonable notice from DISTRICT, DISTRICT may defend itself and/or settle such proceeding, and Contractor shall pay to DISTRICT any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with DISTRICT's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for DISTRICT the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, DISTRICT retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. **EXTENSION:** This agreement may be extended for two additional one year terms by mutual agreement of the DISTRICT and the Contractor.
36. **SIGNATORY:** By signing this agreement, 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 GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

Instructions:

- *To be used as necessary (i.e., “Delete #31, General Terms and Conditions – does not apply).*
- *Additional Provisions must be approved by County Counsel.*
- *(Delete this page “Additional Provisions” if there are no additional provisions or changes to the General Terms and Conditions).*
- *The following Additional Provisions must be approved by County Counsel:*

1. **TERMINATION OF AGREEMENT FOR CAUSE:** 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.
2. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.
3. **MODIFICATION:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, including but not limited to any alteration or variation to Contractor’s Project Management Team, as specified in Contractor’s Proposal submitted for this project.
4. No alteration or changes may be made in Contractor’s Project Management Team, as specified in Contractor’s Proposal submitted for this project, without the prior written approval of DISTRICT.

County Counsel Signature: _____

Date:_____

EXHIBIT A
DEFINITION OF SERVICES

(Modify language as needed)

1. Contractor shall provide _____ Services in accordance with the “Specific Requirements” section within DISTRICT’s Request for Proposal No. _____ (RFP) and “Description of Services” section of Contractor’s Proposal dated _____. Said sections are incorporated herein by reference and attached hereto as Exhibit A-1, A-2, A-3, and A-4.
 - a. In the event of any conflict (direct or indirect) among any of the above-referenced exhibits, the more stringent requirements providing the DISTRICT with the broader scope of services shall have precedence, such that the scope of work described in the RFP sections and the scope of work described in Contractor’s proposal shall both be performed to the greatest extent feasible.
 - b. DISTRICT and Contractor agree that the following Supplemental Provisions are incorporated into this Agreement, and that the Additional Provisions shall take precedence over inconsistent or conflicting provisions contained in the above-referenced exhibits.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of DISTRICT, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to DISTRICT an individual with greater or equal qualifications as a replacement subject to DISTRICT’s approval, which approval shall not be unreasonably withheld.

3. The approval of DISTRICT to a requested change shall not release Contractor from its obligations under this Agreement.

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 insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability; Abuse, Molestation, Sexual Actions, and Assault and Battery	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<u>Endorsements and Conditions:</u> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall provide an additional insurance endorsement page that names as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: 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 termination 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. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance affected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, 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. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent to: <ul style="list-style-type: none"> - Department/Agency issuing the contract 	

EXHIBIT D

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT DEBARMENT AND SUSPENSION CERTIFICATION

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

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, 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 contractor 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 Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

EXHIBIT E**ALAMEDA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the DISTRICT within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the DISTRICT should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

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