

ALAMEDA COUNTY PUBLIC WORKS AGENCY

REQUEST FOR QUALIFICATIONS/PROPOSAL No. LAN202111321

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

For complete information regarding this project, see RFQ/P posted at http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp or contact the County representative listed below. Thank you for your interest!

Contact Person: Lorena Arroyo, Procurement & Contracts Specialist

Phone Number: (510) 670-5212

E-mail Address: Lorena@acpwa.org

RESPONSE DUE

by

2:00 p.m.

on

March 12, 2021

at

**Alameda County, Public Works Agency
951 Turner Court, Room 100
Hayward, CA 94544**

COUNTY OF ALAMEDA

REQUEST FOR QUALIFICATIONS/PROPOSAL No. LAN202111321

SPECIFICATIONS, TERMS & CONDITIONS

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

TABLE OF CONTENTS

| | Page |
|---|-----------|
| I. STATEMENT OF WORK | 2 |
| A. Intent | 2 |
| B. Scope of Services | 3 |
| C. Bidder Qualifications | 4 |
| D. Deliverables/Reports | 4 |
| II. INSTRUCTIONS TO CONTRACTORS | 4 |
| A. AGENCY CONTACTS | 4 |
| B. CALENDAR OF EVENTS | 5 |
| C. NETWORKING / CONTRACTOR CONFERENCE | 5 |
| D. SUBMITTAL OF RESPONSES | 5 |
| E. RESPONSE FORMAT | 6 |
| F. RESPONSE CONTENT/SUBMITTALS | 7 |
| III. EVALUATION CRITERIA/SELECTION COMMITTEE | 10 |
| A. AWARD | 13 |
| B. CONTRACT EVALUATION AND ASSESSMENT | 14 |
| C. NOTICE OF INTENT TO AWARD | 14 |
| D. TERM/TERMINATION/RENEWAL | 14 |
| E. PROCUREMENT PROTEST/APPEALS PROCESS | 15 |
| IV. TERMS AND CONDITIONS | 16 |
| A. OTHER AGENCY PROVISIONS | 16 |

ATTACHMENTS

ATTACHMENT A – RFQ/P RESPONSE PACKET

Attachment A-1 Contractor Information and Acceptance

Attachment A-2 References

Attachment A-3 SLEB Partnering Information Sheet

Attachment A-4 Exceptions, Clarifications, Amendments

Attachment A-5 Debarment and Suspension Certification

Attachment A-6 Contractors License and Department of Industrial Relations Form

Attachment A-7 Current Fee Schedule (to be provided in sealed envelope)

ATTACHMENT B – INSURANCE REQUIREMENTS

ATTACHMENT C – SAMPLE STANDARD SERVICES CONTRACT

I. STATEMENT OF WORK

The Alameda County Public Works Agency (“Agency”) and the Alameda County Flood Control and Water Conservation District (“district”) are seeking proposals from firms that are interested in providing on-call professional geotechnical/civil engineering services and material testing services for both private development review and County and District Capital Improvement projects. The Agency intends to enter into a contract with Five (5) consultants (“Consultants”) for a period of five (5) years for each contract.

A. INTENT:

The Agency is responsible for approving the design and construction of private development projects, roadway and flood control improvements proposed by others, designing and constructing similar improvements that will be built under contract with the Agency or the District, and undertaking emergency and planned repairs of County roadways and District facilities. To carry out these responsibilities, the Agency/District anticipate the need for professional services including, but not limited to, geotechnical engineering, geologic, civil engineering, hydrologic and hydraulic engineering, structural engineering, and materials-testing services (collectively “Services”).

The specific scope of Services that could be required at any given time in support of one or more of the above activities during the period of the contract(s) is unknown at this time, but will be defined by a Project Manager at the time of request for Services in accordance with the provisions of the contract entered with the successful Proposer.

Most past Services have been relatively short-term, but some previous projects have required longer periods of continuing support. It is anticipated that during the prescribed period there will be a continuing need for Services from multiple Consultants at any given time. Previous contracts for similar Services have typically been conducted by different Consultants concurrently.

Previous Services required under similar County/District contracts in the past have included the following:

Independent review of professionally-prepared soils reports, seismic hazard and earthquake fault zone studies, and other similar geotechnical and geologic documents.

- Overview of earthquake fault excavations and other similar geotechnical and geologic field investigations.

Independent Review of professionally prepared soils reports, seismic hazard and earthquake fault zone studies, and other similar geotechnical and geologic documents.

- Geotechnical, hydrological, hydraulic, and civil review of grading and drainage plans.
- Structural review of plans and specifications for temporary and permanent bridges, poles, and other special structures.
- Preparation of plans, specifications, and estimates (PS&E) in support of Agency/District contracts for emergency repairs or other planned modifications of County roadways and bridges or District flood control facilities.
- Geotechnical and hydrologic/hydraulic studies and report preparation in conjunction with District levee and dam improvement projects.
- 24-7 emergency responses (in coordination with Agency/District personnel) to flood control levee breaches, scouring of roadway bridge abutments, landslide damages to County roadways, creek bank erosion, structural damage to County bridges, etc.
- Special tests of various materials in support of the Agency's Materials Test Laboratory.

B. SCOPE OF SERVICES

- In accordance with the circumstances described above, the Agency/District seeks a firm or firms to provide the following generally described phases of service:
- The Agency/District anticipates the need to request on-call Services from time-to-time in the performance of each of the following geotechnical engineering, geologic, civil engineering, hydrologic and hydraulic engineering, structural engineering, and materials testing tasks:
 - A. Recommendations to the Agency/District following the independent review of technical studies, plans, reports, and other documents submitted by others to the Agency in conjunction with proposed private developments and redevelopments.
 - B. Studies for and recommendations to the Agency/District in support of maintenance, repairs, and modification of County-maintained public roadways and District-maintained flood control facilities, including emergency repairs.
 - C. Field and laboratory materials testing services in support of various Agency and District construction and restoration projects.

Note: Proposers are strongly encouraged to respond with proposals to provide Services across the full range of the listed tasks; i.e. "Full Response." The Agency/District may consider limited "Partial Responses" that propose to provide some but not all of the

above-listed tasks, but Proposers should understand that the Agency/District reserves the right to favor a Full Response over a Partial Response.

C. BIDDER QUALIFICATIONS

- Bidder and all key personnel assigned to the project shall be regularly and continuously engaged in the business of providing geotechnical engineering services for at least three (3) years.
- Bidder shall possess all permits, licenses and professional credentials necessary to perform services as specified under this RFP/Q.
- Bidders proposing to provide Services in the areas of geotechnical engineering and geology shall include evidence in their response that they are fully qualified and credentialed so as to provide reviews in accordance with the provisions of Special Publications 42 and 117, as published by the California Department of Conservation.

All bidders must provide, with their response, a completed SLEB Information Sheet (page 12 of Exhibit A).

For this criterion, the *SLEB Certification Form with Instructions* can be found on the County's website: <http://acgov.org/auditor/sleb/cert.htm>.

The Contractor 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 Contractor from the observation and/or adherence to the provisions of the California Labor code. Among other things, Contractor, and all covered subcontractors performing work pursuant to this Agreement, shall at all times maintain registration with the Department of Industrial Relations as required by Labor Code sections 1725.5 and 1771.1.

D. Deliverables/Reports

The Agency will request proposals on work requested from the approved on call consultants. The proposals must include all costs associated with the requested review/report preparation requested, time line for completions, and list of deliverables to be provided to the agency. No work is to begin under the proposal is accepted in writing by the Agency.

II. **INSTRUCTIONS TO BIDDERS/PROPOSERS**

A. AGENCY CONTACTS

<https://www.acpwa.org/current-contracting-opportunities>

B. CALENDAR OF EVENTS

| EVENT | DATE |
|--|---|
| Networking/Contractor Conference <i>Virtual, contact Lorena Arroyo at lorena@acpwa.org or 670-5212</i> | February 25, 2021 at 11:00 am |
| Deadline to submit questions on RFQ/P | February 25, 2021 at 5:00 pm |
| Responses to questions posted (Addendum 1) | February 26, 2021 |
| Responses to RFQ/P Due <i>Deliver to: 951 Turner Court, Hayward CA or Email to Lorena@acpwa.org</i> | March 12, 2021 <u>by</u> 2:00 pm |
| Contractor Interviews (discretionary) | March 19, 2021 |
| Board Consideration Award Date | _June 1, 2021 |
| Contract Start Date | July 1, 2021 |

Note: Award and contract start dates are approximate.

C. NETWORKING / CONTRACTOR CONFERENCE

A non-mandatory pre proposal submittal meeting will be held virtual. To receive an invitation to the Networking/Contractor Conference please contact Lorena Arroyo at lorena@acpwa.org or 670-5212.

D. SUBMITTAL OF RESPONSES

1. Responses are to be addressed and delivered as follows:

RFQ/P No. LAN202111321
Alameda County Public Works Agency
951 Turner Court, Room 100
Hayward, CA 94545
Attention: Lorena Arroyo
2. Prime Contractor must submit 4 copies of the responses, including a pdf file of the completed submittal.
3. Prime contractor's name and return address must also appear on the mailing package.
4. No telegraphic or facsimile responses will be considered.
5. All costs required for the preparation and submission of response shall be borne by contractor.
6. Only one response will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response. For purposes of this requirement, "partnership" shall mean, and is limited to, a legal partnership formed under one of more of the provisions of the state of California or other state's Corporations Code or an equivalent statute.

7. All information regarding the response will be held as confidential until such time as Agency Selection Committee (ASC) has completed its evaluation, and recommended award has been made by the ASC, and the contract has been fully negotiated with the recommended awardee named in the recommendation to award/non-award notification(s).
8. Responses, in whole or in part, are NOT to be marked confidential or proprietary. Agency may refuse to consider any response or part thereof so marked. Responses submitted may be subject to public disclosure. Agency shall not be liable in any way for disclosure of any such records. Please refer to the County's website at: <http://www.acgov.org/gsa/departments/purchasing/policy/proprietary.htm> for more information regarding Proprietary and Confidential Information policies.
9. Each response received, with the name of the Contractor, shall be entered on a record, and each record with the successful responses indicated thereon, shall, after the award of the contract, be open to public inspection.
10. California Government Code §4552: In submitting response to a public purchasing body, the Contractor offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. §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 Contractor for sale to the purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Contractor.
11. Contractor expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.) AGENCY will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the contractor may be subject to criminal prosecution.
12. The contractor certifies that it is, at the time of response/proposal, and shall be throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Contractor further certifies that it is regularly engaged in the general class and type of work called for in the RFQ/P.
13. The contractor certifies that it is not, at the time of the response, on the California Department of General Services (DGS) list of persons determined to be engaged in investment activities in Iran or otherwise in violation of the Iran Contracting Act of 2010 (Public Contract Code Section 2200-2208).
14. It is understood that AGENCY reserves the right to reject a response and that the rejected response shall remain open for advancement in this procurement process for a period of 180 days, unless otherwise specified in the RFQ/P documents.

E. RESPONSE FORMAT

1. Responses are to be straightforward, clear, concise and specific to the information requested. Submit in 8-1/2 x 11 format one (1) original hardcopy proposal with original ink signatures, plus four (4) copies of the response, plus a copy shall be submitted in "PDF" format on read-only CD or USB flash drive and enclosed with the sealed original hardcopy

of the response. Original response is to be clearly marked "ORIGINAL," printed on plain white paper, and must be either loose leaf or in a 3-ring binder (NOT bound). All copies shall be marked "COPY."

It is preferred that all responses submitted 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 response. 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 under Section II.F., "Response Content/Submittals."

2. In order for responses to be considered complete, contractor must provide all information and documentation requested, including forms required in Attachment A. Failure to include all requisite information may be grounds for AGENCY's rejection of Contractor's response.

F. RESPONSE CONTENT/SUBMITTALS

AGENCY appreciates brevity. Please keep your response, excluding transmittal letter, title page, table of contents, plain section dividers, resumes, and required exhibits/attachments, to a total of no more than 20 printed pages. Clarity and conciseness are essential and will be considered in assessing the Contractor's capabilities.

In order to simplify the process and to obtain the maximum degree of comparability, the response should be organized in the following manner:

1. **Transmittal Letter.** Responses shall include a brief description of Contractor's capabilities and approach in providing its services to AGENCY and provide a brief synopsis of the highlights of the response and overall benefits of the response to AGENCY. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. **Title Page.** Show the RFQ/P subject, the RFQ/P number, the name of the Contractor's firm, address, telephone number, name of the contact person and their email address, and the date.
3. **Table of Contents.** Responses shall include a table of contents listing the individual sections of the response and their corresponding page numbers. Tabs should separate each of the individual sections.
4. **Response Content:**
 - a. **Overview and Summary.** This section should clearly convey the Contractor's understanding of the work and project approach. Contractor should address the following:
 - i. Understanding of AGENCY's objectives and purpose.
 - ii. Understanding of the potential project challenges.
 - b. **Sample Project Approach and Work Plan.** This section should include a full description of the work elements and the proposed methodology the contractor proposes to satisfy AGENCY objectives on a variety of projects. Include a

discussion of samples of similar work performed for others, and how you satisfied the client's objectives for that work.

The sample work description should be detailed to a sufficient level (work elements, sub-elements, etc.) to show a clear understanding of the type of work that may be required. Provide a detailed description covering all the requirements in this RFQ/P.

Identify other activities that you propose to implement in support of the required work. Identify all tasks or activities that would be fully supported by your organization and those that would require assistance from AGENCY.

- c. **Management Plan.** This section should describe the Contractor's approach to managing the work from issuance of task orders by AGENCY to final close of task. If the work is anticipated to be a team effort, the allocation of the work to the team members should be indicated. The management plan should describe the following:
 - i. Management approach, including the role of the prime Contractor and subcontractors, and team and joint venture members, if applicable, and any specific features of the management approach that require explanation.
 - ii. Organizational work assignments structure, including work elements and sub elements performed by subcontractors.
 - iii. Discussion of Contractor's capacity to perform a work as may be required by AGENCY.
 - iv. Description of subcontractor supervision.
 - v. Overview of Contractor's quality assurance and quality control procedures with sufficient detail that AGENCY can evaluate how the contractor will meet or exceed AGENCY's expectations on any given project.
- d. **Pricing and Fees.** Prime contractor and, if applicable, subcontractor(s) must provide, under separate sealed envelope, and on company letterhead, a current fee schedule showing labor categories and hourly labor rates for all named personnel and/or type of personnel anticipated on this contract, plus expense costs. Fee schedules for the Prime and all subcontractors making up a team, can be placed into one envelope. All prime and subcontractors must be registered with the Department of Industrial Relations at the time of proposal submission and provide County staff a copy of their DIR registration number.
 - i. The County's maximum allowable mark up on subcontractor fees and any expenses is ten (10) percent.
 - ii. Quoted fees shall be firm for the first twelve (12) months of any contract that may be awarded pursuant to this RFQ/P.
 - iii. Maximum annual escalation of fees shall be no more than 3%.
 - iv. Any fee increases or decreases for subsequent contract terms may be negotiated between contractor and AGENCY only after completion of the initial term.
- e. Federal and State minimum wage laws apply. AGENCY has no requirements for living wages. AGENCY is not imposing any additional requirements regarding wages.

- f. **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. **Exhibits/Attachments.** Contractors shall include in their submittal completed and signed documentation for all listed Attachments, including any attachments required by the Attachment. Detailed instructions, forms, and a checklist for the RFQ/P Response Packet is provided at the end of this RFQ/P. The content and sequence for each required document shall be as follows:

Attachment A RFQ/P Response Packet- Required Documentation

*Attachment A-1: **Contractor Information and Acceptance*** - Every Prime Contractor must select one choice under Item 10 of this Attachment and must complete and sign page 3.

*Attachment A-2: **References*** - Prime Contractors must use the template on Attachment A-2 to provide three client references.

*Attachment A-3: **SLEB Partnering Information Sheet*** - Every Prime Contractor must fill out and submit a signed SLEB Partnering Information Sheet, indicating their SLEB certification status.

*Attachment A-4: **Exceptions, Clarifications, Amendments** (required with submittal of response).* If Prime Contractors are making ANY clarifications and/or amendments, or taking exception to policies or specifications of this RFQ/P, these MUST be submitted on the form attached.

*Attachment A-5: **Debarment and Suspension Form*** – Prime Contractor must complete, sign, and date the *Debarment and Suspension Certification* form.

*Attachment A-6: **California State Contractors License and Department of Industrial Relations Form***: Prime Contractor must complete and sign the California State Contractors License and Department of Industrial Relations form.

*Attachment A-7: **Current Fee Schedule***- Prime Contractor and subcontractors must provide a current rate sheet in separate sealed envelope.

- Attachment B Insurance Requirements (for information).** This attachment contains the minimum insurance limits, required by the County to be held by the Contractor and all of its sub-Contractors performing on the projects. Insurance certificates are not required at the time of submission of the response; however, by signing Attachment A-1, *Contractor Information and Acceptance*, Contractor and its sub-Contractors agree to meet the minimum insurance requirements stated in the RFQ/P prior to contract. This documentation must be provided to AGENCY prior

to award and shall include an insurance certificate and additional insured certificate naming the County of Alameda, which meets the minimum insurance requirements, as stated in the Attachment B – *Insurance Requirements*

Attachment C **Sample Standard Services Agreement** (*for information*). This attachment is an example of Alameda County’s Professional Services Agreement, and is provided for informational purposes.

III. EVALUATION CRITERIA/SELECTION COMMITTEE

All responses that pass the initial Evaluation Criteria (which are determined on a pass/fail basis, see table below) will be evaluated by an AGENCY Selection Committee (ASC). The ASC may be composed of AGENCY staff and other parties that may have expertise or experience with the type of work required for this contract. The ASC will score and select the Contractor(s) who will be invited to negotiate a contract for On Call Geotechnical services. Other than the initial pass/fail Evaluation Criteria, the evaluation of the responses shall be within the sole judgment and discretion of the ASC.

All contact during the evaluation phase shall be through AGENCY contact only identified on the cover sheet. Contractors shall neither contact nor lobby evaluators during the evaluation process. Attempts by Contractor to contact and/or influence members of the ASC may result in disqualification of Contractor. The ASC will evaluate each response meeting the qualification requirements set forth in this RFQ/P. Contractors should bear in mind that any response that is unresponsive to the scope set forth in this RFQ/P will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of AGENCY’s requirements as set forth in this RFQ/P.

The basic information that each section should contain is specified below, these specifications should be considered as minimum requirements. Much of the material needed to present a comprehensive response can be placed into one of the sections listed. However, other criteria may be added to further support the evaluation process whenever such additional criteria are deemed appropriate in considering the nature of the services being solicited.

Each of the Evaluation Criteria below will be used in ranking and determining the quality of a Contractor’s response and scored on the zero to ten-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 response. A response with a higher-weighted total will be deemed of higher quality than a response with a lesser-weighted total.

The final maximum score for any Contractor (combined response and reference check score) is two-hundred twenty (220) points. The zero to ten-point scale range is defined as follows:

| | | |
|-----|----------------------|--|
| 0 | Not Acceptable | Non-responsive, fails to meet RFQ/P specification. The approach has no probability of success. If a mandatory requirement this score will result in disqualification of proposal. |
| 1-2 | Poor | Below average, falls short of expectations, is substandard to the average or expected norm, has low probability of success in achieving objectives. |
| 3-4 | Fair | Has a reasonable probability of success, however, some objectives may not be met. |
| 5-6 | Average | Acceptable, achieves all objectives in a reasonable fashion per RFQ/P specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Evaluation Committee members. |
| 7-8 | Above Average / Good | Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFQ/P. |

| | | |
|------|----------------------------|---|
| 9-10 | 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 RFQ/P specification. |
|------|----------------------------|---|

The Evaluation Criteria and their respective weights are as follows:

| | INITIAL CRITERIA | Score |
|----|---|-----------|
| 1. | <p>Completeness of Response: Responses to this RFQ/P must be complete. Responses that do not include the RFQ/P content requirements and do not address each of the items listed in Attachment A, will be considered incomplete, be rated a Fail in the evaluation criteria and will receive no further consideration.</p> <p><i>Responses that are rated a Fail and are not considered may be picked up by the Contractor at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.</i></p> | Pass/Fail |

| | EVALUATION CRITERIA- RESPONSES | Weight Factor | Max Rating | Max Score |
|----|--|---------------|------------|-----------|
| 1. | <p>Understanding of the Project: Response will be evaluated against the RFQ/P specifications and the questions below:</p> <p>a. Has proposer demonstrated a thorough understanding of the purpose of the RFQ/P? How well has the proposer identified pertinent issues and potential problems related to potential projects? Also, has the proposer demonstrated understanding of the deliverables and time schedules and can proposer meet them?</p> | 2.0 | 10 | 20 |
| 2. | <p>Sample Project Approach, Work Plan For similar or applicable work, please describe projects completed for others, risks associated with each project and your response to those risks. Describe specifically:</p> <p>a. Methodology proposed to satisfy client objectives and detailed description of all requirements. b. All tasks and activities conducted to complete project. c. Project schedule, and how it was met.</p> | 6.0 | 10 | 60 |
| 3. | <p>Management Plan: Response will be evaluated against the RFQ/P specifications and the questions below:</p> <p>a. Is Contractor's management approach, including roles of prime and subcontractors, and other team members, clearly explained in example projects (see Item 2 of Evaluation Criteria) b. Is work assignment structure, including work elements and sub elements performed by subcontractors clearly explained? Does response include a description of subcontractor supervision strategy? d. Does Contractor provide an overview of quality assurance and quality control procedures with sufficient detail that AGENCY can evaluate how the Contractor will meet or exceed AGENCY's expectations on projects?</p> | 3.0 | 10 | 30 |

| | | | | |
|--|--|-----|----|------------|
| 4. | Resumes of Key Personnel: Response will be evaluated against the RFQ/P specifications and the questions below: a. Do the individuals assigned to the project have experience on similar projects? b. How extensive is the education and/or training of the personnel assigned to work on this project? | 4.0 | 10 | 40 |
| Maximum Score for Proposal Evaluation | | | | 150 |

| | | | | |
|-------------------------------------|--|---------------|------------|-----------|
| | EVALUATION CRITERIA- REFERENCE CHECKS | Weight Factor | Max Rating | Max Score |
| 1. | References: Reference checks will only be performed on Contractors with the highest scoring responses. | 1.0 | 10 | 10 |
| Maximum Score for References | | | | 10 |

| | | | | |
|------------------------------------|--|---------------|------------|-----------|
| | EVALUATION CRITERIA- Interviews | Weight Factor | Max Rating | Max Score |
| 1. | Interviews | 4.0 | 10 | 40 |
| Maximum Score for Interview | | | | 40 |

| | | |
|--------------------------------|-----------------------------------|-------------------|
| | FINAL EVALUATION SCORE | MAX TOTALS |
| 1. | CONTRACTOR'S RESPONSE SCORE | 150 |
| 2. | Contractors Reference Check Score | 10 |
| 3 | CONTRACTOR'S Interview SCORE | 40 |
| Final Maximum Raw Score | | 200 |

| | | |
|--|---|------------------------|
| | LOCAL OR SLEB PREFERENCES <i>(Awarded based on prime's status)</i> | |
| 1. | Local Preference Points: If prime (non-SLEB) Contractor is local (located within Alameda County), preference points equaling five percent (5%) of Contractor's final raw score will be added | 5% of final raw score |
| 2. | Small Local or Emerging (SLEB) Points: If prime Contractor is a registered SLEB firm, preference points equaling ten percent (10%) of Contractor's final raw score will be added | 10% of final raw score |
| FINAL MAXIMUM RAW SCORE W/SLEB PREFERENCE | | 220 |

A. AWARD

The ASC will recommend award to the Contractors who achieve the highest overall scores. Overall scores are determined by adding the proposal evaluation score , the reference check score and interview score.

B. CONTRACT EVALUATION AND ASSESSMENT

During the initial sixty (60) day period of any contract that may be awarded to Contractor, the ASC and/or other persons designated by AGENCY will meet with the Contractor to evaluate the services provided thus far, to identify any issues or potential problems.

AGENCY reserves the right to determine, at its sole discretion, whether:

1. Contractor has complied with all terms of this RFQ/P; and
2. Any problems or potential problems with the proposed services that make it unlikely (even with possible modifications) that such services have met AGENCY requirements.

If, as a result of such determination, AGENCY concludes that it is not satisfied with Contractor, Contractor's performance under any awarded contract and/or Contractor's services as contracted for therein, the Contractor will be notified of contract termination effective forty-five (45) days following notice. Contractor shall be responsible for returning AGENCY property at no charge to AGENCY. AGENCY will have the right to invite the next highest ranked Contractor to enter into a contract. AGENCY also reserves the right to re-procure this project if it is determined to be in its best interest to do so.

C. NOTICE OF INTENT TO AWARD

At the conclusion of the evaluation process, all Contractors will be notified in writing by e-mail, fax, or US Postal Service mail, of the contract award recommendation, if any, by AGENCY. The document providing this notification is the Notice of Intent to Award.

The Notice of Intent to Award will provide the following information:

3. The name of the Contractor(s) being recommended for contract award; and
4. The names of all the other parties that submitted proposals.

At the conclusion of the evaluation process and negotiations, debriefings for unsuccessful Contractors may be scheduled and provided upon written request and will be restricted to discussion of the unsuccessful Contractor's response. Under no circumstances will any discussion be conducted with regard to contract negotiations with the successful Contractor.

D. TERM/TERMINATION/RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ/P, will be for 5 years.
2. AGENCY 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 AGENCY should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to negotiate its payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. AGENCY may terminate the contract at any time without written notice upon a material breach of contract and substandard or unsatisfactory performance by the Contractor. In the event of termination with cause, AGENCY reserves the right to seek any and all damages from the Contractor. In the event of such termination with or without cause, AGENCY reserves the right to invite the next highest ranked Contractor to enter into a contract or re-procure the project if it is determined to be in its best interest to do so.
3. AGENCY may, at its sole option, terminate any contract that may be awarded as a result of this RFQ/P at any time, for reason of non-appropriation of funds. In such event, AGENCY will give Contractor at least thirty (30) days written notice that such function will not be funded for the next

fiscal period. In such event, AGENCY will return any associated equipment to the Contractor in good working order, reasonable wear and tear excepted, and vice-versa.

4. By mutual agreement, any contract which may be awarded pursuant to this RFQ/P, may be extended for an additional one-year term at agreed prices with all other terms and conditions remaining the same.

E. PROCUREMENT PROTEST/APPEALS PROCESS

AGENCY 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 Contractors wish to protest the procurement process or appeal the recommendation to award a contract for this project 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 AGENCY.

1. Any protest by any Contractor to any part of the procurement process, must be submitted in writing to Bill Lepere, Alameda County Public Works Deputy Director, 951 Turner Court, Hayward, CA 94545, before 5:00 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 Contractor. A protest received after 5:00 p.m. is considered received as of the next business day.
 - a. The protest must contain a complete statement of the reasons and facts for the protest.
 - b. The protest must refer to the specific portions of all documents that form the basis for the protest.
 - c. The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.
 - d. AGENCY will transmit a copy of the protest to all Contractors affected by the protest as soon as possible after receipt of the protest.
2. Upon receipt of the written protest, the Public Works Deputy Director or designee will review and evaluate the protest and issue a written decision. The Public Works Deputy Director, 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 Contractor and others (as appropriate) to discuss the protest. The decision on the protest will be issued at least ten (10) business days prior to the Board hearing date. The decision will be communicated by e-mail or fax, and certified mail, and will inform the proposer whether or not the recommendation to the Board of Supervisors in the Notice of Intent to Award is going to change. A copy of the decision will be furnished to all Contractors affected by the decision. As used in this paragraph, a Contractor is affected by the decision on a protest if a decision on the protest could have resulted in the Contractor not being the apparent successful Contractor on the procurement.
3. The decision of the Public Works Deputy Director on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance & Reporting (OCCR) located at 1221 Oak Street, Room 249, Oakland, CA 94612, Fax: (510) 272-6502 unless the OCCR determines that it has a conflict of interest in which case an alternate will be identified to hear the appeal and all steps to be taken by OCCR will be performed by the alternate. The Contractor whose proposal is the subject of the protest, all Contractors affected by the Public Works Director decision on

the protest, and the protestor have the right to appeal if not satisfied with the Public Works Director's decision. All appeals to the Auditor-Controller's OCCR shall be in writing and submitted within five (5) business days following the issuance of the decision by the Public Works Program Manager, not the date received by the Contractor. 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 Public Works Director shall not be considered under any circumstances by AGENCY or the Auditor-Controller OCCR.

- 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 OCCR will not re-judge the Contractor submission. The appeal to the OCCR shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFQ/P or, where appropriate, County contracting policies or other laws and regulations.
- c. The appeal to the OCCR also shall be limited to the grounds raised in the original protest and the decision by the Public Works Deputy Director. As such, a Contractor is prohibited from stating new grounds for the protest in its appeal. The Auditor-Controller (OCCR) shall only review the materials and conclusions reached by the Public Works 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 RFQ/P process for ethical violations by AGENCY staff, AGENCY Selection Committee members, subject matter experts, or any other staff managing or participating in the competitive process, regardless of timing or the contents of a proposal protest. Any participating County staff, including County Counsel or Auditor-Controller, are doing so as staff of AGENCY.
- e. The decision of the Auditor-Controller's OCCR is the final step of the appeal process. A copy of the decision of the Auditor-Controller's OCCR will be furnished to the protestor, the Contractor whose response is the subject of the protest, and all Contractors affected by the decision.
- f. AGENCY will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award the Contract is considered by the Board of Supervisors.

The procedures and time limits set forth in this paragraph are mandatory and are each Contractor's sole and exclusive remedy in the event of protest. A Contractor's failure to timely complete both the protest and the 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 protest, including filing a Government Code Claim or legal proceedings.

IV. TERMS AND CONDITIONS

A. OTHER AGENCY PROVISIONS

1. Small and Emerging Locally Owned Business: The County is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the County's purchase of goods and services. As a result of the

County's commitment to advance the economic opportunities of these businesses, **Contractors/Proposers must meet the County's Small and Emerging Locally Owned Business requirements in order to be considered for the contract award.** AGENCY's requirement is to have at least 20 percent of the contract work performed by Alameda County SLEB-certified firms. If this requirement cannot be met, Contractor must apply to the County for a waiver of SLEB requirement, and include evidence that a good faith effort was made to meet requirement. For more information about the SLEB program, go to: <http://acgov.org/auditor/sleb/overview.htm>.

For purposes of this RFQ/P, applicable industries include, but are not limited to, all of those industries related to the service categories listed in Section I.A.1 of this RFQ. NAICS Codes for applicable industries can be found at: https://www.acgov.org/sleb_query_app/gsa/sleb/query/slebsearchbynaicsdesc.jsp.

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 project management services projects.
3. Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist Contractors to conveniently comply with legal and contractual requirements. Elation Systems, a secure web-based system, was implemented to monitor compliance and to track and report SLEB participation in County contracts.

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

Department of Industrial Relations Registration: A Contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless registered and qualified to perform public work pursuant to Section 1725.5. However, for federally-funded projects, it is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Upon contract award:

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

It is the Contractor's responsibility to ensure that it and its subcontractors 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/default.aspx> 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 & Reporting (OCCR) located at 1221 Oak Street, Room 249, Oakland, CA 94612, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

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

4. AGENCY reserves the right to reject any or all responses that materially differ from any terms contained in this RFQ/P or from any Exhibits attached hereto, to waive informalities and minor irregularities in responses received, and to provide an opportunity for Contractors to correct minor and immaterial errors contained in their submissions. The decision as to what constitutes a minor irregularity shall be made solely at the discretion of AGENCY.
5. AGENCY reserves the right to award to a single or multiple Contractors.
6. AGENCY has the right to decline to award a contract or any part thereof for any reason.
7. Any proposal/bids that contain false or misleading information may be disqualified by the County.
8. Board approval to award a contract is required.
9. A contract must be negotiated, finalized, and signed by the recommended awardee prior to Board approval.
10. Final Professional Agreement terms and conditions will be negotiated with the selected Contractor. Contractor may access a copy of the Professional Services Agreement template online at:
<http://www.acgov.org/gsa/purchasing/standardServicesAgreement.pdf>.
 The template contains minimal Agreement boilerplate language only.

11. The RFQ/P specifications, terms, conditions and exhibits, RFQ/P Addenda and Contractor's proposal may be incorporated into and made part of any contract that may be awarded as a result of this procurement.
12. Invoicing:
 - a. Contractor shall invoice the requesting department, unless otherwise advised, upon satisfactory performance of services.
 - b. AGENCY will use best efforts to make payment within thirty (30) days following receipt and review of invoice and upon complete satisfactory performance of services.
 - c. AGENCY shall notify Contractor of any adjustments required to invoice.
 - d. Invoices shall contain AGENCY PO number, invoice number, remit to address and itemized, per scope item, products and/or services description and price as quoted and shall be accompanied by acceptable proof of delivery.
 - e. Contractor shall utilize standardized invoice upon request.
 - f. Invoices shall only be issued by the Contractor who is awarded a contract.
 - g. Payments will be issued to the Contractor whose name is specified on the POs.
 - h. AGENCY will pay Contractor monthly or as agreed upon, not to exceed the total agreed upon per final executed contract.
13. Account Manager/Support Staff:
 - a. Contractor shall provide a dedicated competent account manager who shall be responsible for AGENCY account/contract. The account manager shall receive all orders from AGENCY and shall be the primary contact for all issues regarding Contractor's response to this RFQ/P.
 - b. Contractor shall also provide adequate, competent support staff that shall be able to service AGENCY during normal working hours, Monday through Friday. Such representative(s) shall be knowledgeable about the contract, products offered and able to identify and resolve quickly any issues including but not limited to order and invoicing problems.
 - c. Contractor account manager shall be familiar with AGENCY requirements and standards and work with AGENCY to ensure that established standards are adhered to.
 - d. Contractor account manager shall keep AGENCY informed of requests from departments as required.



ATTACHMENT A RFQ/P RESPONSE PACKET REQUIRED DOCUMENTATION

REQUEST FOR QUALIFICATIONS/PROPOSAL No. LAN202111321

ON CALL GEOTECHNICAL ENGINEERING SERVICES

All of the specific information and documentation listed below is required to be submitted with the Response Packet in order for a response to be deemed complete. Any pages of Attachment A not applicable to the Contractor, must still be submitted as part of a complete response, with such pages or items clearly marked "N/A." Contractors that do not comply with the requirements, and/or submit incomplete response packages, shall be subject to disqualification and their response rejected in total.

Contractors shall submit all information and documentation, in the order listed below and clearly label each section with the appropriate title (i.e. Table of Contents, Letter of Transmittal, etc.). Please consider the following a checklist of items required:

- ☐ 1. **Transmittal Letter:** Response shall include a brief description of Contractor's capabilities and approach in providing its services to AGENCY, and provide a brief synopsis of the highlights of the response and overall benefits of the response to AGENCY. This synopsis should not exceed three (3) pages in length and should be easily understood.
- ☐ 2. **Title Page & Table of Contents:** RFQ/P responses shall include a title page showing the date, RFQ/P subject, the RFQ/P number, name of the Contractor's firm, address, telephone number and name of contact person with email address. The table of contents should list the individual sections of the response and their corresponding page numbers. Tabs should separate each of the individual sections.
- ☐ 3. **Overview and Summary:** RFQ/P response should convey the Contractor's understanding of the work and project approach. Contractor should address the following:
 - a. Understanding of AGENCY's objectives and the purpose of the project.
 - b. Understanding of the project challenges.
- ☐ 4. **Sample Project Approach and Work Plan:** RFQ/P response should include several relevant work examples and examples of the methodologies the Contractor used to satisfy client objectives. The work description should be detailed to a sufficient level (work elements, sub-elements, etc.) to show a clear understanding of the work that was required to meet project goals. Response should relate these work examples to AGENCY objectives.

Identify other activities you propose to implement in support of the potential tasks that may be assigned to the Contractor pool. Identify tasks or activities that would be fully supported by your organization and those that would require assistance from AGENCY.

- ☐ 5. **Management Plan:** This section should describe the Contractor's approach to managing potential work to be assigned. If work is to be allocated across team members, this should be clearly indicated.
- ☐ 6. **Pricing and Fees:** Prime Contractor and subcontractors must provide, under separate sealed envelope, and on company letterhead, a current fee schedule showing labor categories and hourly labor rates for all named personnel and/or type of personnel anticipated on this contract, plus expense costs. All fee schedules for a given team can be in one envelope.
- ☐ 7. **Attachments to be Completed:**
 - **Attachment A-1: Contractor Information and Acceptance-** Every Prime Contractor must select one choice under Item 10 of this attachment and must complete and sign Page 3.
 - **Attachment A-2: References-** Prime Contractor must use the templates on Attachment A-2 to provide three client references. Contractors must verify all contact information for references. References must be satisfactory as deemed by AGENCY. Contractors are strongly encouraged to notify all references that AGENCY may be contacting them to obtain a reference. AGENCY may contact some or all of the references provided in order to determine Contractor's performance record on work similar to that described in this request. AGENCY reserves the right to contact references other than those provided and to use the information gained in the evaluation process.
 - **Attachment A-3: SLEB Partnering Information Sheet-** Every Prime Contractor must fill out and submit a signed SLEB Partnering Information Sheet, indicating their SLEB certification status. If Contractor is not certified, the name, identification information, and goods/services to be provided by the named CERTIFIED SLEB partner(s) with whom the Contractor will subcontract to meet the County SLEB participation requirement must be stated. For any CERTIFIED SLEB subcontractor(s) named, the Attachment must be signed by the CERTIFIED SLEB(s) according to the instructions. All named SLEB subcontractor(s) must be certified by the time of submittal.
 - **Attachment A-4: Exceptions, Clarifications, Amendments-** If Prime Contractors are making ANY clarifications and/or amendments, or taking exception to policies or specifications of this RFQ/P, these MUST be submitted in the Exceptions, Clarifications, Amendments form. THE COUNTY IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RESPONSE DISQUALIFICATION.
 - **Attachment A-5: Debarment & Suspension Form -** Prime Contractor must complete, sign, and date the *Debarment and Suspension Certification* form.
 - **Attachment A-6: Contractors License and Department of Industrial Relations Form –** Prime Contractor must complete and sign the California State Contractors License and Department of Industrial Relations Form.

- **Attachment A-7: Current Fee Schedule** – Prime Contractor and subcontractors must provide a current fee schedule on company letterhead in separate sealed envelope. All fee schedules for a given team can be included in one envelope.

CONTRACTOR INFORMATION AND ACCEPTANCE

REQUEST FOR QUALIFICATIONS/PROPOSAL No.
LAN202111321

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

1. The undersigned declares that the response documents, including, without limitation, the RFQ/P, Addenda, and Attachments have been read.
2. The undersigned is authorized, offers, and agrees to furnish the articles and/or services specified in accordance with the Specifications, Terms & Conditions of the RFQ/P No. XXX – XXX Services.
3. The undersigned has reviewed the RFQ/P Documents and fully understands the requirements in this RFQ/P including, but not limited to, the requirements under AGENCY Provisions, and that each Contractor who is awarded a contract shall be, in fact, a prime Contractor, not a subcontractor, to AGENCY, and agrees that its response and proposal, if accepted by AGENCY, will be the basis for the Contractor to enter into a contract with AGENCY in accordance with the intent of the RFQ and RFQ/P Documents.
4. The undersigned acknowledges receipt and acceptance of all addenda.
5. The undersigned agrees to the following terms, conditions, certifications, and requirements found on AGENCY's website:
 - **Bid Protests / Appeals Process**
[<http://www.acgov.org/gsa/departments/purchasing/policy/bidappeal.htm>]
 - **Debarment / Suspension Policy**
[<http://www.acgov.org/gsa/departments/purchasing/policy/debar.htm>]
 - **Iran Contracting Act (ICA) of 2010**
[<http://www.acgov.org/gsa/departments/purchasing/policy/ica.htm>]
 - **General Environmental Requirements**
[<http://www.acgov.org/gsa/departments/purchasing/policy/envIRON.htm>]
 - **Small Local Emerging Business Program**
[<http://acgov.org/auditor/sleb/overview.htm>]

- **First Source**
[<http://acgov.org/auditor/sleb/sourceprogram.htm>]
- **Online Contract Compliance System**
[<http://acgov.org/auditor/sleb/elation.htm>]
- **General Requirements**
[<http://www.acgov.org/gsa/departments/purchasing/policy/genreqs.htm>]
- **Proprietary and Confidential Information**
[<http://www.acgov.org/gsa/departments/purchasing/policy/proprietary.htm>]

6. The undersigned acknowledges that Contractor will be in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFQ/P and associated proposal documents.
7. It is the responsibility of each Contractor to be familiar with all of the specifications, terms and conditions and, if applicable, the site condition. By the submission of a proposal, the Contractor certifies that if awarded a contract they will make no claim against AGENCY based upon ignorance of conditions or misunderstanding of the specifications.
8. Patent indemnity: Vendors who do business with AGENCY shall hold the County of Alameda, its officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
9. Insurance certificates are not required at the time of submission. However, by signing Attachment A – Proposal Response Packet, the Contractor agrees to meet the minimum insurance requirements stated in the RFQ/P. This documentation must be provided to AGENCY, prior to award, and shall include an insurance certificate and additional insured certificate, naming the County of Alameda, which meets the minimum insurance requirements, as stated in the RFQ/P.
10. The undersigned acknowledges **ONE** of the following (please check only one box):
 - ☐ Contractor is not local to Alameda County and is ineligible for any bid preference; **OR**
 - ☐ Contractor is a certified SLEB and is requesting 10% bid preference; (Contractor must check the first box and provide its SLEB Certification Number in the [SLEB PARTNERING INFORMATION SHEET](#)); **OR**
 - ☐ Contractor is LOCAL to Alameda County and is requesting 5% bid preference, and has attached the following documentation to this Exhibit:
 - Copy of a verifiable business license, issued by the County of Alameda or a City within the County; and
 - Proof of six (6) months business residency, identifying the name of the vendor and the local address. Utility bills, deed of trusts or lease agreements, etc., are acceptable verification documents to prove residency.

Official Name of Contractor: _____

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: _____

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

SIGNATURE: _____

Name and Title of Signer: _____

Dated this _____ day of _____ 20_____



ATTACHMENT A-2

REFERENCES

REQUEST FOR QUALIFICATIONS/PROPOSAL No. LAN202111321

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

Contractor Name: _____

| | |
|--------------------------------------|-------------------|
| Company Name: | Contact Person: |
| Address: | Telephone Number: |
| City, State, Zip: | E-mail Address: |
| Services Provided/Date(s) of Service | |

| | |
|--------------------------------------|-------------------|
| Company Name: | Contact Person: |
| Address: | Telephone Number: |
| City, State, Zip: | E-mail Address: |
| Services Provided/Date(s) of Service | |

| | |
|--------------------------------------|-------------------|
| Company Name: | Contact Person: |
| Address: | Telephone Number: |
| City, State, Zip: | E-mail Address: |
| Services Provided/Date(s) of Service | |



ATTACHMENT A-3

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

**REQUEST FOR QUALIFICATIONS/PROPOSAL No.
LAN202111321**

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

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

Contractors 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 Contractors with no employees of either entity working for the other. This form must be submitted for each business that Contractors will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Contractors 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, Contractors will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance & Reporting (OCCR). County departments and the OCCR will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/index.htm>).

☐ CONTRACTOR IS A CERTIFIED SLEB (sign at bottom of page)

SLEB CONTRACTOR Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

NAICS Codes Included in Certification: _____

☐ CONTRACTOR IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT ____% WITH THE SLEB(S) NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES: _____

(If proposed team will include more than one SLEB partner, copy this form and submit one per SLEB partner.)

SLEB Subcontractor Business Name: _____

SLEB Certification #: _____ SLEB Certification Expiration Date: _____

SLEB Certification Status: ☐ Small / ☐ Emerging

NAICS Codes Included in Certification: _____

SLEB Subcontractor Principal Name: _____

SLEB Subcontractor Principal Signature: _____ Date: _____

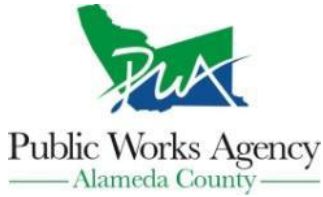
Upon award, prime Contractor and all SLEB subcontractors that receive contracts as a result of this procurement process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor

participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Contractor Printed Name/Title: _____

Street Address: _____ City _____ State _____ Zip _____

Contractor Signature: _____ Date: _____



ATTACHMENT A-4

EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

REQUEST FOR QUALIFICATIONS/PROPOSAL No.
LAN202111321

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

Contractor: _____

List below requests for clarifications, exceptions and amendments, if any, to the RFQ/P and associated documents, and submit with your proposal.

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

| Reference to: | | | Description |
|---------------|---------|----------|------------------------------|
| Page No. | Section | Item No. | |
| p. 23 | D | 1.c. | Vendor takes exception to... |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

*Print additional pages as necessary.



ATTACHMENT A-5

DEBARMENT AND SUSPENSION CERTIFICATE

FOR PROCUREMENTS OVER \$25,000

**REQUEST FOR QUALIFICATIONS/PROPOSAL No.
LAN202111321**

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

The bidder, under penalty of perjury, certifies that, except as noted below, bidder, 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 bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

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

CONTRACTOR: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

ATTACHMENT A-6

**CALIFORNIA STATE CONTRACTORS LICENSE AND
DEPARTMENT OF INDUSTRIAL RELATIONS INFORMATION**

**REQUEST FOR QUALIFICATIONS/PROPOSAL No.
LAN202111321**

for

ON CALL GEOTECHNICAL ENGINEERING SERVICES

1. Contractor Name: _____

Company Name: _____

Contractor License Type and No.: _____

DIR Registration No.: _____

2. Contractor Name: _____

Company Name: _____

Contractor License Type and No.: _____

DIR Registration No.: _____

ATTACHMENT B
COUNTY OF ALAMEDA MINIMUM INSURANCE
REQUIREMENTS

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

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

ATTACHMENT C

SAMPLE STANDARD SERVICES AGREEMENT**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**

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**

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 **YES NO**

1. Will the agreement be with an individual who does not have an outside practice? () ()

2. Will the contractor work more than an average of ten hours per week? () ()

IF THE ANSWER TO QUESTION 2 IS YES, ANSWER QUESTION 3.

3. Will the District provide more than 20% of the contractor's income? () ()

4. If the answer to either question 2, or if required, question 3 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

XXXX

Printed Name

Date

Date

Professional Services Agreement

With

XXXXX.

for

**ON CALL GEOTECHNICAL
ENGINEERING SERVICES WITH THE
ALAMEDA DISTRICT FLOOD
CONTROL AND CONSERVATION
DISTRICT**

Contract No. XXXX

Alameda District Flood Control and Conservation District

ALAMEDA DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT

**AGREEMENT BETWEEN THE ALAMEDA DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT AND
XXXX**

This Agreement is made this 12th day of July, 2016, in the City of Oakland, State of California, by and between XXXX hereinafter referred to as "Consultant" and the Alameda District Flood Control and 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", and "E", attached hereto. |
| Consultant | XXXX. |
| District | Alameda County Flood Control and Conservation District |
| Project | The District's project – On Call Geotechnical Services - as further described in Appendix "A", Scope of Services. |
| Services | All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services. |

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

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from xxxx through xxxx.

3. Services Consultant Agrees to Perform

- 3.1 Consultant shall perform all Services described in Appendix "A", "Services to be Provided by Consultant", attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix "A". Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for District's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by District or District's agents or consultants when acting at District's direction, breaches of this Agreement by District, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's

reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other 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 District Superior Court may upon application by any party make such selection for the parties. If a party other than District refuses to mediate under this Section, then District shall have satisfied its obligations under this Section.

5. Maximum Costs

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

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

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

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, District shall direct all communications to Consultant through Andrew Herlache, Fugro; and Consultant shall direct all communications to District through District Permit Center.
- 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 ALAMEDA DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT, 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 DISTRICT 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 DISTRICT, 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 District 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 District

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

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

9.3 District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented,

or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above 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 District as provided herein for cause:

13.3.1 District shall compensate Consultant for the value of the Services delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but District shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Consultant shall deliver to District possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which District may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate District for all loss, cost, damage, expense, and/or liability suffered by District as a result of such termination and failure to comply with the Agreement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

14. Termination of Agreement for Convenience

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

or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

- 14.5 If Consultant and District fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –

14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.

14.5.2 When, in opinion of District, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.

14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to District or otherwise disposed of as directed by District.

- 14.6 Except as provided in this Agreement, in no event shall District be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.

- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by District to settle claims from Subconsultants.

- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:

14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,

14.8.2 Any substantiated claim which District may have against Consultant in connection with this Agreement, and

14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to District.

- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with District a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. District may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of District and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit District's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

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

16. Proprietary or Confidential Information of District; Publicity

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

17. Notice to the Parties

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

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

To District:

XXXX

To Consultant:

XXXX

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

18. Ownership of Results/Work for Hire

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

19. Audit and Inspection Records

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

20. Subcontracting/Assignment/ District Employees

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

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

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

21. 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, District 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 District 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 District 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

Consultant shall subcontract with xxxxx), for services to be provided under this Agreement in an amount totaling of at least twenty percent (20%) (*or adjust percentage if more than or less than*) of the contract value of this Agreement in accordance with DISTRICT's Small and Emerging Locally owned 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 District 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.

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 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party, and a meeting between the District representative and principal of the Consultant shall then take place within five days of the request.
- 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 District 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, Alameda District Flood Control and Conservation District. 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 Alameda District Flood Control and Conservation District. 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 District 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 District, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 33.2 The Consultant and any subcontractor shall 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, District 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 District, 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 District Flood Control and Conservation District

By: _____
PRESIDENT
BOARD OF SUPERVISORS

Date: _____

“Consultant”

XXXX

By: _____

Date: _____

Approved as to form:

Donna R. Ziegler, Deputy District Counsel

Deputy District 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

EXHIBIT A

SERVICES TO BE PROVIDED BY CONSULTANT

1. This is an appendix attached to, and made a part of the Agreement dated xxx, between the Alameda District (“District”) and xxx. (“Consultant”), providing for professional services.

- 1.1 The District’s Proposed Project – On call Geotechnical Engineering Services

- 1.2 Consultant Team

Consultant’s team consists of

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

- 2.1 General Criteria Governing Consultant’s Service

- 2.1.1 The Services shall be provided to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the District grants a written exemption to a specific standard or regulation.
- 2.1.2 Unless otherwise permitted in writing by District, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide District with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. District will consider such evaluation in making its decision.
- 2.1.3 Prior to notice to begin providing geotechnical engineering services on a particular project, Consultant shall provide a scope of services and estimated hours and cost to provide geotechnical engineering on said project including schedule for completion. Proposal must be approved by District before notice to proceed on the particular project is to begin.

- 2.2 General Scope of Consultant’s Services

- 2.2.1 Services to be provided during a particular project.

The Agency is responsible for approving the design and construction of roadway and flood control improvements proposed by others, designing and constructing similar improvements that will be built under contract with the Agency or the District, and undertaking emergency and planned repairs of District roadways and District facilities. To carry out these responsibilities, the Agency anticipates it will require certain geotechnical engineering, geologic, civil engineering, hydrological and

hydraulic engineering, structural engineering, and materials-testing services (collectively “Services”).

The specific scope of Services that could be required at any given time in support of one or more of the above activities during the period of the contract(s) is unknown at this time, but will be defined by a Project Manager at the time of request for Services in accordance with the provisions of the contract entered with the successful Proposer. Previous Services required under similar Agency contracts in the past have included the following:

- Independent review of professionally-prepared soils reports, seismic hazard and earthquake fault zone studies, and other similar geotechnical and geologic documents.
- Overview of earthquake fault excavations and other similar geotechnical and geologic field investigations.
- Geotechnical, hydrological, and civil review of grading and drainage plans.
- Structural review of plans and specifications for temporary and permanent bridges, poles, and other special structures.
- Preparation of plans, specifications, and estimates (PS&E) in support of Agency contracts for emergency repairs or other modifications of District roadways and bridges or District flood control facilities.
- Geotechnical and hydrological studies and report preparation in conjunction with District levee and dam improvement projects.
- 24-7 emergency responses (in coordination with Agency personnel) to flood control levee breaches, scouring of roadway bridge abutments, landslide damages to District roadways, creek bank erosion, structural damage to District bridges, etc.
- Special tests of various materials in support of the Agency’s Materials Test Laboratory.

2.2.2 Other services to be provided on a particular project include:

The Agency anticipates the need to request on-call Services from time-to-time in the performance of each of the following geotechnical engineering, geologic, civil engineering, hydrological and hydraulic engineering, structural engineering, and materials testing tasks:

- Recommendations to the Agency following the independent review of technical studies, plans, reports, and other documents submitted by others to the Agency in conjunction with proposed private developments and redevelopments.

- Studies for and recommendations to the Agency in support of maintenance, repairs, and modification of District-maintained public roadways and District-maintained flood control facilities, including emergency repairs.
- Field and laboratory materials testing services in support of various Agency and District construction and restoration projects.

2.3 Coordination of Services with District Staff

- 2.3.1 Consultant shall fully coordinate its Services with the services of all geotechnical engineering and subconsultants involved in completing a particular project.
- 2.3.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the particular project area. Consultant shall require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear, and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

2.4 Deliverables Required Under this Agreement

Required deliverables are discussed in Section 2.2 above, and in Consultant's proposed scope of work annexed as Exhibit A-1. Each deliverable shall be reviewed with representatives of the District. The District shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that District reasonably identifies in the deliverables and shall promptly make modifications to conform with requirements and modifications to achieve acceptability of deliverables to District, and the cost thereof is included in the fee for Basic Services. (If Consultant should disagree with District's determination, Consultant shall make the changes requested by District under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.)

END OF APPENDIX A

EXHIBIT B

PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of the Agreement dated xxx, between the Alameda District (“District”) and xxx. (“Consultant”), providing for professional geotechnical engineering services.

1. Amount of Compensation for Services of Consultant

- 1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed One Hundred and Twenty Thousand Dollars (\$120,000) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- 1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract and are not considered Reimbursable expenses. Out-of-State travel in connection with the project shall be approved in advance by District. The hourly rates included in the bid proposal are attached as Exhibit “B-1”

2. Monthly Billing Breakdown

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

3. Methods of Payment to Consultant

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

4. Definitions

- 4.1 The Billing Rates used as a basis for payment apply to all of Consultant’s and Subconsultants’ principals, professional personnel and others engaged directly on the Services provided, and are set forth in the Exhibit B-1. Any future adjustments to the 2015 fee schedule is subject to negotiation for approval by the District. In any case, the maximum adjustment shall not exceed 3%.

END OF APPENDIX B

EXHIBIT C

ALAMEDA DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following 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 | \$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 Including Medical Malpractice for medical related Agreement | \$1,000,000 per claim |
| E | <p><u>Endorsements and Conditions:</u></p> <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 be endorsed to name as additional insured: Alameda District Flood Control and Conservation District, its Board of Supervisors, the individual members thereof, and all District 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 effected 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 District. Acceptance of Contractor's insurance by District shall no relieve or decrease the liability of Contractor hereunder 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish 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 District 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 District, evidencing that all required insurance coverage is in effect. The District reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent to: <ul style="list-style-type: none"> - Department/Agency issuing the contract - With a copy to Risk Management Unit (1106 Madison Street, Room 233, Oakland, CA 94607) | |

EXHIBIT D

ALAMEDA DISTRICT FLOOD CONTROL AND 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 DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT CONTRACT COMPLIANCE REPORTING REQUIREMENTS

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

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

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

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

EXHIBIT O

ALAMEDA DISTRICT FLOOD CONTROL AND CONSERVATION DISTRICT THE IRAN CONTRACTING ACT (ICA) OF 2010

For Procurements of \$1,000,000 or more

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

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

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

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

NAME: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____