

**EAST BAY DISCHARGERS AUTHORITY  
REQUEST FOR PROPOSALS  
FOR  
NATURE-BASED SOLUTIONS STUDY AND  
DESIGN SERVICES**

**RETURN ELECTRONIC COPIES OF THE PROPOSAL TO:  
JUANITA VILLASENOR  
[juanita@ebda.org](mailto:juanita@ebda.org)**

**EAST BAY DISCHARGERS AUTHORITY  
2651 GRANT AVENUE  
SAN LORENZO, CA 94580-1841**

**(510) 278-5910**

**PROPOSALS ARE DUE:  
Friday, October 16, 2020 at 2:00 p.m.**

# REQUEST FOR PROPOSALS FOR NATURE-BASED SOLUTIONS STUDY AND DESIGN SERVICES

Supporting technical documents and background material are available for download at <https://ebda.org/projects/>. Questions regarding this RFP must be submitted before September 25, 2020 at 5:00 p.m. by e-mail to [juanita@ebda.org](mailto:juanita@ebda.org) with the subject line "Nature-Based Solutions RFP". Answers will be compiled in a "Questions & Answers" document posted on the <https://ebda.org/projects/>.

## I. INTRODUCTION

The **EAST BAY DISCHARGERS AUTHORITY** (hereinafter "EBDA") located at 2651 Grant Avenue, San Lorenzo, CA 94580 is hereby requesting proposals from qualified firms to perform planning, design, and environmental review services. EBDA will enter into an agreement with the individual or firm (hereinafter "Consultant") selected to provide these services. All interested parties are required to submit proposals in accordance with the conditions and dates outlined in this RFP.

## II. BACKGROUND

EBDA sustainably and cost-effectively manages the wastewater of one million East Bay residents for the protection of San Francisco Bay. EBDA was formed on February 15, 1974, by a "Joint Exercise of Powers Agreement" (JPA) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District and Castro Valley Sanitary District. The Authority owns and operates three effluent pump stations, a dechlorination facility, and a force main and outfall system for effluent disposal into the San Francisco Bay. Additionally, flow from the effluent pump station owned by the City of San Leandro enters the system, as well as flow from the Livermore-Amador Valley Water Management Agency (LAVWMA) from the Cities of Pleasanton and Livermore and Dublin San Ramon Services District.

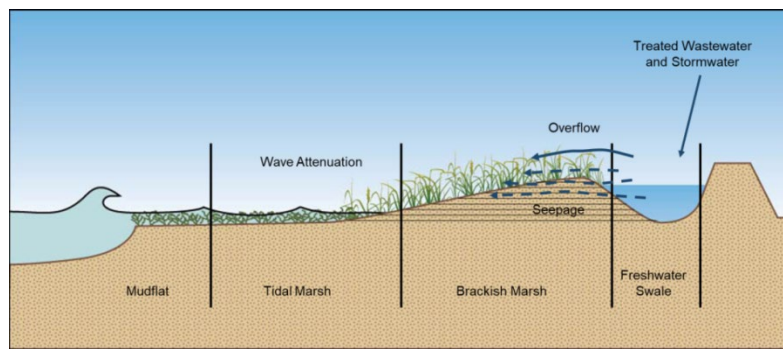
EBDA operates under a Commission consisting of one representative appointed by each member agency. EBDA's staff includes the General Manager, Operations & Maintenance Manager and Administrative Assistant. Additionally, EBDA hires consultants to augment and assist staff in other functions including accounting and engineering services.

All of EBDA's infrastructure, as well as much of its member agencies', is located along the East Bay shoreline and is therefore vulnerable to sea level rise. In 2014-2015, through funding from the California State Coastal Conservancy's Climate Ready Grant program, EBDA conducted a study to evaluate strategies (with input from multiple stakeholders) for modifying its infrastructure with benefits to bayland ecosystems and reduced infrastructure vulnerability. The resulting report, [Sea Level Rise Adaptation Planning Project: Decentralized Wastewater Discharges & Multiple Benefit Natural Infrastructure](#), was published in September 2015. One of

the concepts that stakeholders coalesced around through this and related planning processes was that of the Horizontal Levee.

A Horizontal Levee, shown in Figure 1, is a multi-benefit project that uses “green infrastructure” to provide sea level rise resilience, water quality improvement, and habitat protection. The habitat created is important because many of the existing marshlands are projected to be under water (especially when sea level rise is coupled with a storm surge). Providing an upland transition zone will help protect the many species that make the marsh their home. The horizontal portion of the levee also absorbs energy, which conceptually allows a smaller FEMA-certified levee to protect existing development. This multi-benefit solution could provide benefits to EBDA in terms of flood protection and natural polishing of treated wastewater, while it also provides value to the communities EBDA serves.

Figure 1 - Horizontal Levee Schematic



In 2015, EBDA and member agency Oro Loma Sanitary District, along with other partners, constructed a [horizontal levee demonstration](#), which is still in operation today. Results from research conducted to date by UC Berkeley shows that the feature is very effective at removing nutrients as well as pharmaceuticals and other organic compounds from treated wastewater.

EBDA is also an active participant in the regional study of Nature-Based Solutions for Nutrient Load Reduction funded by the Bay Area Clean Water Agencies (BACWA). This study, which is being conducted by the San Francisco Estuary Institute and is required of the Bay Area’s wastewater agencies as a condition of the regional [Watershed Permit for Nutrients](#), is evaluating opportunities and costs for use of nature-based solutions (NBS) including horizontal levees as well as open water wetlands to treat nutrients while at the same time providing additional benefits such as flood and sea level rise resilience and habitat.

### III. PROJECT DESCRIPTION

In 2019 EBDA, as part of a team led by the [San Francisco Estuary Partnership](#), was awarded a grant from the U.S. Environmental Protection Agency (USEPA) Region IX’s [San Francisco Bay Water Quality Improvement Fund \(WQIF\)](#) for the Transforming Shorelines Project. Transforming Shorelines is a collaborative project with a goal of advancing multi-benefit NBS

approaches to sea level rise and building capacity for innovative projects linked to wastewater treatment. The project includes:

1. Establishing the Transforming Shorelines Collaborative to share ideas and brainstorm solutions to barriers and challenges among practitioners engaging in NBS projects at wastewater treatment plants
2. Development of tools and resources to assist wastewater facilities in implementing NBS projects
3. Studying, planning, designing, and permitting NBS projects at different phases across EBDA's service area, including:
  - a. Design and permitting of a full-scale ("First Mile") horizontal levee south of the Oro Loma Wastewater Treatment Plant at the Oro Loma Marsh
  - b. Developing a Feasibility Study for natural treatment at the Hayward Water Pollution Control Facility
  - c. Design and permitting of a wetland treatment system at the San Leandro Wastewater Treatment Plant
  - d. Testing performance of the Oro Loma Horizontal Levee Demonstration for treatment of reverse osmosis concentrate.

EBDA entered into a Cooperative Funding Agreement with the San Francisco Estuary Partnership to implement projects 3(a) and 3(b) described above. This RFP is soliciting a Consultant to assist EBDA in implementing these two projects.

The Hayward Area Shoreline Protection Agency (HASPA) is currently developing a [Shoreline Master Plan](#) for the Hayward shoreline, which includes the areas of both projects. These projects are consistent with the Master Plan, and ongoing coordination with HASPA is envisioned. In addition, as part of the Master Plan, the HASPA team has consulted with the stakeholders listed below, and ongoing collaboration with these stakeholders will be important to project success:

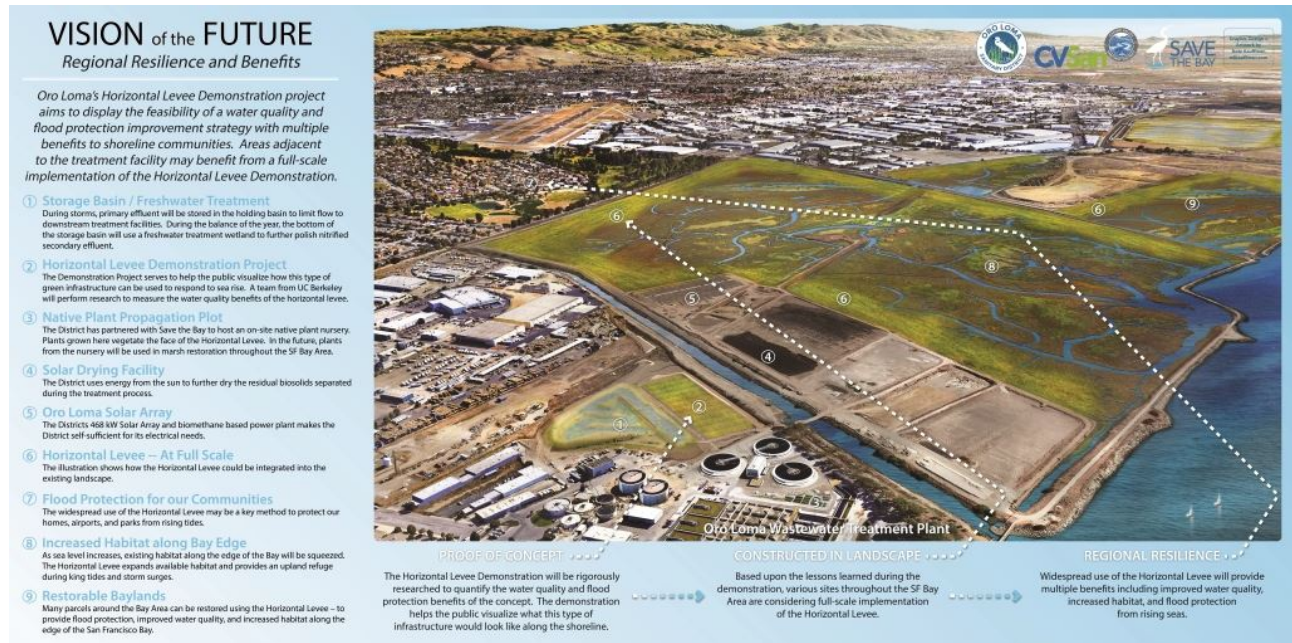
- HASPA Members:
  - East Bay Regional Park District (EBRPD)
  - City of Hayward
  - Hayward Area Recreation and Park District (HARD)
- San Francisco Estuary Institute
- Alameda County Mosquito Abatement District
- Bay Conservation and Development Commission
- California Department of Fish and Wildlife
- United States Fish and Wildlife Service
- Alameda County Flood Control and Water Conservation District (ACFCWCD)

EBDA also envisions convening an Expert Panel (funded separately from this RFP) that will provide input to these projects, including synthesizing lessons learned from work at the Oro Loma pilot as well as other projects. Finally, it is expected that community organizations and local leaders will be consulted and engaged during the design process to collect input.

## First Mile Horizontal Levee

The goal of the “First Mile” Horizontal Levee Project is to expand the concept behind the Oro Loma Horizontal Levee Demonstration Project to full scale, or approximately one mile, though the actual length of the levee will be determined through this project. The project will be located south of the treatment plant and Bockman Canal in an area known as Oro Loma Marsh, as shown on number 6 in Figure 2 and at this [link](#).

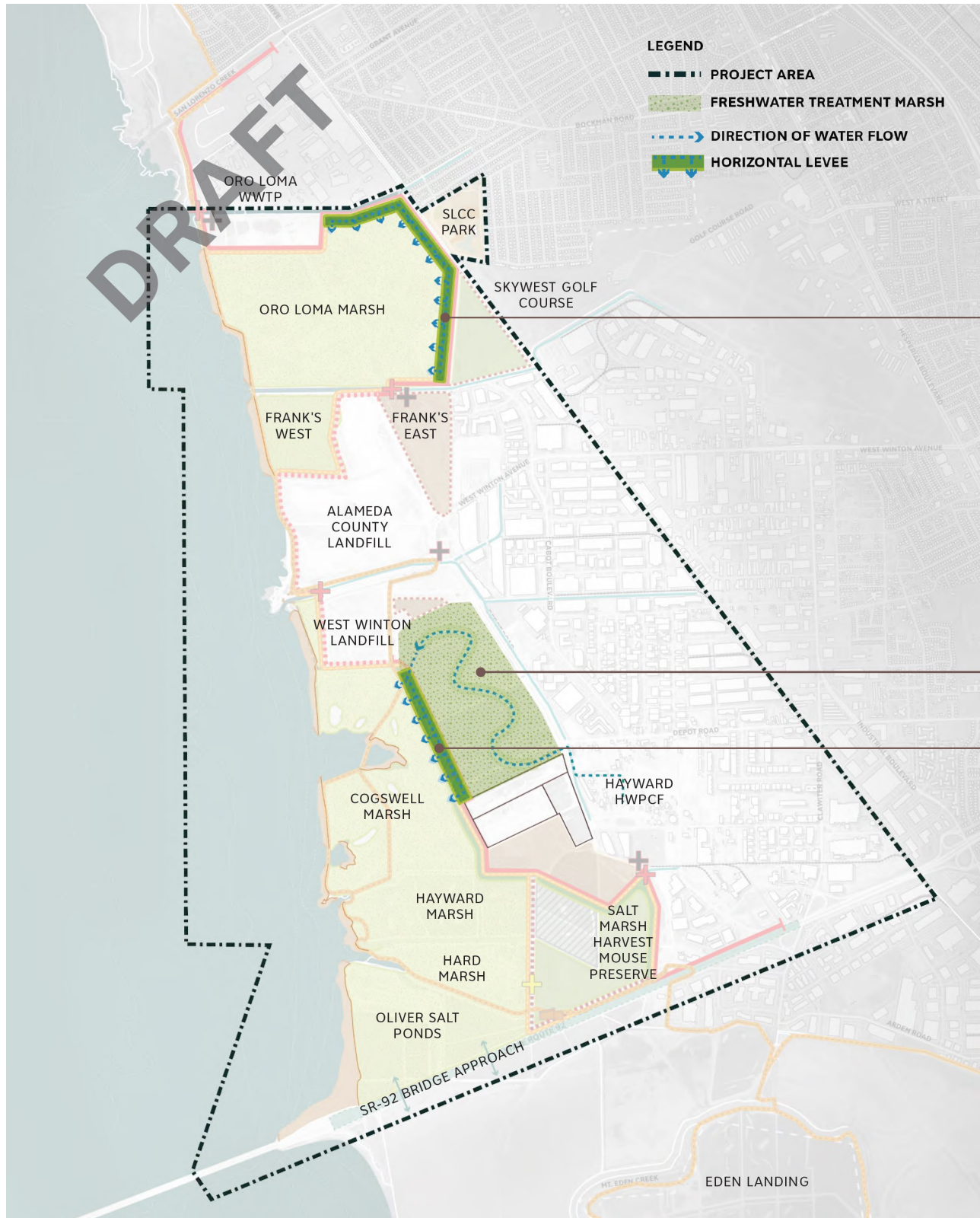
Figure 2 – First Mile Horizontal Levee Location



The exact project location and orientation will be developed as part of this scope. The starting point will be the Preferred Alternative recommended under the HASPA Master Plan, which is shown in Figure 3.



Figure 3 – HASPA Preferred Alternative



As part of the study, the Consultant will evaluate opportunities and constraints of different fresh water sources to the Horizontal Levee, including a recycled water line that currently delivers treated effluent from Oro Loma to the Skywest Golf Course, as well as stormwater runoff.

The project area is managed by EBRPD, who is a partner in this project. Land ownership in the area is summarized in Attachment E.

The Consultant will be responsible for developing designs and initiating permitting to get this project to the stage that it is ready for implementation funding. In this project, EBDA hopes to improve on the Oro Loma Demonstration Project design by doubling the flow rate that can be delivered through the levee and still achieve water quality benefits, and by simplifying the design to decrease implementation costs.

### Hayward Feasibility Study

The City of Hayward (City), an EBDA member agency, owns a large area of [wet weather effluent storage ponds](#) and levee adjacent to the Bay at the City's Water Pollution Control Facility. This project will evaluate the feasibility of converting a portion of the existing ponds and levee into a multi-benefit NBS shoreline feature capable of removing nutrients and contaminants of emerging concern while maintaining the current storage function during wet weather flows. In addition to the contamination-removal and storage benefits, transforming the existing shoreline using a NBS approach could create benefits of enhanced habitat using treated wastewater, flood protection from sea level rise and demonstration of green infrastructure for educational opportunities. This project also builds upon and relies on lessons learned from the Oro Loma Horizontal Levee Demonstration Project, as well as demonstration projects conducted at the Discovery Bay Wastewater Treatment Plant and at the Prado Wetlands along the Santa Ana River in Riverside County. The latter two projects utilized shallow, open water wetlands to achieve high removal of nitrate and pharmaceutical compounds. This project will evaluate the feasibility and relative advantages and disadvantages of horizontal levees, open water wetlands, and combinations thereof to achieve the City's dry season water quality improvement goals while maintaining the wet season functionality of the storage ponds. The Preferred Alternative recommended under the HASPA Master Plan for this area is shown in Figure 3. The Consultant will work collaboratively with Hayward staff, who will provide in-kind engineering support.

## **IV. SCOPE OF SERVICES**

### First Mile Horizontal Levee

The preliminary Scope of Services provided below is intended to illustrate the minimum project requirements. Consultants are encouraged to present innovative concepts to produce a complete project. In addition, tasks that you believe are necessary for the completion of the project should be included in your proposal.

Phases and tasks identified herein will be approved on an as-needed basis, pursuant to EBDA-initiated task orders. The project will begin with authorization of Phase 1, and additional Phases will be added based on available funding, performance, and the needs of the project team. \$550,000 has currently been identified for this project from the WQIF grant. The project team

does not anticipate authorizing services beyond this dollar value unless additional grant funds are identified.

All required services shall be authorized by Task Order, initiated and developed according to the Task Order Process described in Attachment F.

## **Phase I: Project Development, 30% Design & Permitting Plan**

### Task FM1: Project Administration and Management

- Within ten (10) working days from issuance of the notice to proceed, Consultant will provide a workflow diagram for Phase I, with key decision points noted and an associated schedule. At EBDA's discretion and upon written notification from EBDA, Consultant shall provide additional workflow diagrams and an associated schedule for Phases II and III.
- The Consultant will participate in monthly (or as needed) update phone calls with EBDA and SFEP, beginning immediately during the term of the contract and continuing throughout.
- A kickoff meeting will be held at the beginning of the project with stakeholders to be determined by EBDA and SFEP, in consultation with the Consultant and other Transforming Shorelines partners. Kickoff meeting will be held by the second month of the project, at the latest.
- The Consultant will conduct project management activities, including:
  - Supervise, coordinate and monitor design for conformance with standard engineering practices and other governing agency requirements.
  - Notify EBDA of any changes in scope or budget as soon as possible and propose actions, if necessary, to correct these changes.
  - Maintain communication by being available by phone or e-mail and responding in a timely fashion.
  - Maintain project files.
  - Provide monthly written progress reports and invoices to EBDA, over the duration of the project, consistent with SFEP's WQIF grant administration requirements. This project is anticipated to take place over twenty-four (24) to thirty (30) months.

### Task FM2: Data & Information Collection

- Consultant shall collect and review relevant data to inform the design, including design work from the Oro Loma Horizontal Levee Demonstration Project.
- Consultant shall submit information requests and gather information from project partners about land ownership and management (supplementing as needed the map in Attachment E), including any constraints on land use in the project area.
- Consultant shall meet as needed with project partners, stakeholders and additional experts to discuss site conditions and constraints. These include but are not limited to EBRPD, HASPA, and ACFCWCD.
- Consultant shall meet at least once with the Expert Panel to discuss guiding principles for the design.



- Work shall include site background research to confirm design features including project area and site orientation.
- Consultant shall perform geotechnical investigations as needed to inform recommendations related to settlement, consolidation, stability, material suitability, seepage, etc. These may include soil boring and/or cone penetration tests to ascertain subsurface conditions along proposed levee alignment.
- Consultant shall perform flood control modeling as needed to inform engineering design. A model has been developed by ACFCWCD that will be available for use on this project.
- Consultant shall evaluate opportunities and risks, including technical and permitting, associated with different sources of fresh water to the levee.

#### Task FM3: Develop up to 30% Preliminary Design & Permitting Strategy

- Consultant shall develop design drawings, maps, and corresponding materials representing 30% project definition. Conceptual design components are to include: maps, cross sections, site conditions, planting, grading, planting methods, cost estimates, permitting strategy and any other necessary elements. Cost estimates will meet Class 3, AACE International Classification System requirements for associated accuracy.
- Permitting is not included within the Phase I scope, but Consultant shall provide a permitting strategy identifying which permits must be obtained, any special studies required to meet permitting requirements, and in which order.
- Consultant shall assist in preparation for and presentation to the Bay Restoration Regulatory Integration Team (BRRIT) for early feedback on the permitting strategy and key issues.
- Consultant shall develop a strategy for FEMA approval of the project for flood protection. This may include development of a Conditional Letter of Map Revision (CLOMR) for submittal to FEMA Region IX. This process will be supported by ACFCWCD.
- Consultant shall provide drafts for review at 50% and 95% completion. Consultant shall produce and conduct presentations to review drafts with project proponents at which point stakeholder consultation and feedback shall be garnered. Drafts will be provided at least fourteen (14) days prior to corresponding presentations. The project team will provide feedback that the Consultant shall incorporate into subsequent drafts and materials. Consultant shall participate in technical meetings with project partners, stakeholders and additional experts, which include but are not limited to EBRPD, HASPA, and ACFCWCD. Consultant shall also participate in up to two meetings with the Expert Panel to review and provide input on draft materials.

#### Task FM4: Support for Community Consultation

- Consultant shall develop graphics and 3D renderings of the project concept suitable for community and stakeholder consultation.
- Consultant shall participate in up to three (3) community meetings to present and/or assist in response to technical questions.

## **Phase II: 60% Design and Initial Permitting**

### Task FM5: 60% Design

- Consultant shall develop design documents including but not limited to plan drawings, maps, specifications, cost estimates, and corresponding materials to a 60% project definition. Cost estimates shall meet Class 2, AACE International Classification System requirements for associated accuracy.
- Consultant shall provide drafts for review at 50% and 95% completion. Consultant shall produce and conduct presentations to review drafts with project proponents at which point stakeholder consultation and feedback will be garnered. Drafts will be provided at least fourteen (14) days prior to corresponding presentations. The project team will provide feedback that the Consultant shall incorporate into subsequent drafts and materials. Consultant shall participate in technical meetings with project partners, stakeholders and additional experts, which include but are not limited to EBRPD, HASPA, and ACFCWCD. Consultant shall also participate in one meeting with the Expert Panel to review and provide input on draft materials.

### Task FM6: Initial Permitting

- Consultant shall update the previous permitting strategy as needed to reflect increased project definition developed under Task 5.
- Consultant shall, working with the project team, utilize the BRRIT process to advise on permitting.
- Consultant shall prepare the following studies as identified in the permitting strategy:
  - Jurisdictional Delineation
  - Biological Assessment (combined for US Fish and Wildlife Service and National Marine Fisheries Service)
  - Compensatory Mitigation proposal
  - Cultural Resources Evaluation
  - US Army Corps of Engineers 404 Application
  - 401 Application
  - Bay Conservation and Development Application
  - CA Department of Fish and Wildlife 1602 and CESA Application
  - CEQA

## **Phase III: 100% Design, Complete permitting & Technical Assistance**

### Task FM7: 100% Design

- Consultant shall develop final design drawings, specifications, and cost estimates to represent 100% project definition. These design drawings should include plans as well as supplemental documentation. Cost estimates shall meet Class 1, AACE International Classification System requirements for associated accuracy.
- Consultant shall provide drafts for review at 50%, 80% and 95% completion. Consultant shall produce and conduct presentations to review drafts with project proponents at which point stakeholder consultation and feedback will be garnered. Drafts will be provided at least fourteen (14) days prior to corresponding presentations. The project

team will provide feedback that the Consultant shall incorporate into subsequent drafts and materials. Consultant shall participate in technical meetings with project partners, stakeholders and additional experts, which include but are not limited to EBRPD, HASPA, and ACFCWCD. Consultant shall also participate in meetings with the Expert Panel to review and provide input on draft materials.

#### Task FM8: Complete/Finalize Permitting & Technical Assistance

- Consultant shall update the prior permitting strategy as needed based on feedback and information obtained under Phase I and II tasks. Permit assistance work may include Jurisdictional Delineation, Biological Assessment (combined for US Fish and Wildlife Service and National Marine Fisheries Service), Compensatory Mitigation proposal, Cultural Resources, US Army Corps of Engineers 404 Application, 401 Application, Bay Conservation and Development Application, CA Department of Fish and Wildlife 1602 and CESA Application, and CEQA.
- Consultant shall engage with the project team on technical assistance and capacity building to advance nature-based shoreline infrastructure design, permitting and construction best practices as the project scope and funding allows.

#### Hayward Feasibility Study

The preliminary Scope of Services provided below is intended to illustrate the minimum project requirements. Consultants are encouraged to present innovative concepts to produce a complete project. In addition, tasks that you believe are necessary for the completion of the project should be included in your proposal.

\$50,000 has currently been identified for this project from the WQIF grant. Additionally, the City of Hayward has pledged \$50,000 of in-kind services. The project team does not anticipate authorizing services beyond this dollar value unless additional grant funds are identified. The consultant is encouraged to provide thoughts on how the City's services could be effectively utilized, including engineering, community outreach, pilot testing, or other.

#### Task H1: Project Administration and Management

- Within ten (10) working days from issuance of the notice to proceed, Consultant will provide a workflow diagram, with key decision points noted and an associated schedule.
- The Consultant will participate in monthly update phone calls with the project team, beginning immediately during the term of the contract and continuing throughout.
- A kickoff meeting will be held at the beginning of the project with stakeholders to be determined by EBDA, SFEP, and the City in consultation with the Consultant and other Transforming Shorelines partners. Kickoff meeting will be held by the second month of the project, at the latest. This meeting and others identified may be combined with meetings for the First Mile Project where appropriate.
- The Consultant will conduct project management activities, including:
  - Notify EBDA of any changes in scope or budget as soon as possible and propose actions, if necessary, to correct these changes.
  - Maintain communication by being available by phone or e-mail and responding in a timely fashion.

- Maintain project files.
- Provide monthly written progress reports and invoices to EBDA, over the duration of the project, consistent with SFEP's WQIF grant administration requirements. This project is anticipated to take place over six (6) to twelve (12) months.

#### Task H2: Data & Information Collection

- Consultant shall collect and review relevant data to inform the study, including site features, current use practices, and project objectives.
- Consultant shall meet as needed with project partners, stakeholders and additional experts to discuss site conditions and constraints.
- Consultant shall meet at least once with the Expert Panel to discuss guiding principles for the design and lessons learned from the Oro Loma Horizontal Levee Demonstration Project, the Discovery Bay Wastewater Treatment Plant Wetlands, Prado Wetlands Project, and others (may be combined with meeting for the First Mile Project).

#### Task H3: Feasibility Analysis

- Consultant shall analyze the feasibility and relative merits of a minimum of three alternatives:
  - Horizontal Levee
  - Unit Process Open Water Wetlands
  - Combination
- For each alternative, the Consultant shall present a high-level conceptual design, along with analysis including:
  - Nutrient removal
  - Removal of contaminants of emerging concern such as pharmaceuticals
  - Cost
  - Compatibility with wet weather storage function
  - Habitat benefit
  - Sea level rise protection
  - Permitting considerations

#### Task H4: Recommendations and Reporting

- Consultant shall summarize the analysis conducted under Task H3 in a written report. The Consultant shall present the findings to the project team in a meeting. A draft report will be provided at least fourteen (14) days prior to corresponding presentations. The project team will provide feedback that the Consultant shall incorporate into subsequent drafts and materials. Consultant shall allow for one meeting and one round of review with the Expert Panel.
- Based on the analysis from Task 3, Consultant shall provide recommendations on next steps, which may include pilot testing, further engineering analysis, and other tasks. Such recommendations shall be provided in the report.

## **V. PROPOSAL SUBMITTAL REQUIREMENTS**

Proposals must comply with the requirements specified in the section of this RFP entitled “Proposal Submittal Requirements.” The scope of services that the prospective Consultant must provide as part of the agreement with EBDA is specified in the section entitled “Scope of Services.”

Proposals should provide a straight-forward and concise presentation adequate to satisfy the requirements of this RFP. The Consultants shall email their proposal (in PDF format) to the address listed on the front page of the RFP so that the proposal is received no later than the date and time specified. All proposals received after the deadline will be rejected. All materials submitted will become property of EBDA and returned only at EBDA’s option.

Each proposal must contain the following information:

Cover Letter – The cover letter should introduce the Consultant, briefly indicate the type of services provided, and highlight the qualifications of the key project team members envisioned to work on EBDA projects.

Background – Provide a narrative background of the company and its organization.

General Information – Provide the name, address, and telephone number of the Consultant, as well as the name of the person authorized to negotiate contract terms and make binding agreements.

Services – Provide a summary of available services provided by the firm.

Qualifications – Describe the experience of the Consultant. Specifically note experience working with publicly owned treatment works, water agencies or local governments on wetland restoration, enhancement or conservation; experience in biological sciences as it relates to the successful design of nature-based shoreline infrastructure or green infrastructure; and experience with sea level rise and climate change resiliency or adaptation planning in the San Francisco Bay. The Consultant’s experience shall, at a minimum, include representative projects with similar scope and should include the following information:

- Length of time in business
- Office address(es) from which services are expected to be provided, including available manpower and percentage of work to be performed
- Listing of a minimum of five (5) completed projects for agencies in California over the last five (5) years including:
  - General scope
  - Consultant fee
  - Completion date
  - Consultant staff who worked on the project who would be involved in EBDA’s project
  - Name, address, and phone number of a knowledgeable owner or client representative



- Key issues, unique circumstances, or challenges for each project, and how they were resolved
- Specialty areas addressed and sub-consultant involvement

Project Approach – The proposal must provide a description of the intended approach to efficiently and effectively implement both projects to meet EBDA’s needs. The proposed approach shall include the Consultant’s understanding of the desired work; a proposed Work Plan reflecting the provided approach to track, report, and effectively and efficiently complete the work; and a listing of the expected project deliverables associated with each work task. The Work Plan may include additional tasks or sub-tasks the Consultant believes necessary to accomplish the project goals. The approach should include the following:

- Schedule showing the expected sequence of tasks, subtasks, and milestones.
- Staffing plan for each task. Provide an organizational chart that shows the roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between EBDA, Consultant staff, and subcontractors, if any. Describe the approach to managing resources and maintaining quality results. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
- Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Scope of Services (Section IV). Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

Proposed Compensation – The cost proposal shall identify the Consultant’s:

- Hourly rates by positions
- Direct expenses (i.e., travel, high-end computer use, printing, etc.)
- Other costs not identified above

The Consultant may submit a proposal organized according to their preference, provided it meets the requirements of the RFP. Resumes and a company qualification brochure may be added in an appendix at the back of the proposal.

Should a consultant have concerns about meeting any requirements of this RFP, they may include a clearly labeled subsection within an appendix with individual statements specifically identifying their concerns and exceptions. If no exceptions are stated, it is assumed that the Consultant understands all of the requirements of the RFP and sample agreement attached hereto and takes no exceptions to them. The RFP and the Consultant’s proposal shall be included as exhibits to the executed agreement to establish the scope of work of the contract.

#### Required Certifications

As part of the proposal package, Proposers must submit all of the required certifications included as Attachments A through D. The proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer.

## **VI. SELECTION CRITERIA**

EBDA and our project partners are seeking a highly interdisciplinary team with expertise in engineering, design, ecology (including plants and wildlife), hydrology, and permitting/regulatory issues. The successful team will feature a strong project manager with excellent communication skills. Further, we are seeking a team that has direct experience designing nature-based shoreline features, demonstrated experience with creative problem solving, and positive client relationships.

It is the EBDA's intention to select a Consultant that has sufficient expertise to complete the work on time and within budget. EBDA staff will exercise discretion and judgment in evaluating proposals. Criteria for selection will include but not be limited to the following:

- Qualifications and relevant experience of Consultant team, including breadth of expertise
- Understanding of the project
- Approach to providing services
- Demonstrated experience with similar projects
- Cost-effectiveness

## **VII. STANDARD EBDA CONTRACT LANGUAGE**

Inform EBDA if any of the contract language in Attachment G is unacceptable.

## **VIII. CONCLUSION**

### **A. REVIEW OF PROPOSALS**

During the evaluation process, EBDA reserves the right to request additional information or clarifications from proposers. At the discretion of EBDA, Consultants submitting proposals may be requested to be available for interviews as part of the evaluation process. EBDA reserves the right, in its sole discretion, to award the contract to the Consultant of its choice or to not award.

### **B. RIGHT TO REJECT PROPOSALS**

EBDA reserves the right without prejudice to reject any or all proposals.

### **C. QUESTIONS**

Consultants may submit questions on this RFP to [juanita@ebda.org](mailto:juanita@ebda.org) by September 25, 2020. Responses to questions will be provided to all prospective firms.

### **D. SCHEDULE**

EBDA issues RFP	September 15, 2020
Last day for Consultants to submit questions on RFP	September 25, 2020
Proposals are due to EBDA	October 16, 2020

Consultant Interviews  
Selected Consultant will be notified  
Anticipated Commission approval

November 5-6, 2020  
November 9, 2020  
November 19, 2020

**ATTACHMENT A**

**NO COLLUSION DECLARATION**

(To Be Executed by Consultant and Submitted With Proposal)

I, \_\_\_\_\_, declare as follows:

That I am the \_\_\_\_\_ of

\_\_\_\_\_, the party making the attached proposal; that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the proposal price or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true, and, further, that the bidder has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020, at

\_\_\_\_\_, California.

Name of Firm

\_\_\_\_\_

Print Name and Title of Authorized Agent

\_\_\_\_\_

Signature of Authorized Agent

\_\_\_\_\_

Authority: Public Contract Code 7106, CCP 2015.5

## ATTACHMENT B

### CERTIFICATION FOR RESTRICTIONS ON LOBBYING

(To Be Executed by Consultant and Submitted With Proposal)

Consultants who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 34, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

As required by federal regulations, "New Restrictions on Lobbying", at 40 CFR Part 34, I certify to the best of my knowledge and belief that for each bid for an award \$150,000: I hereby certify: 1) No State, Federal, or local appropriated funds have been paid or will be paid, by or on behalf of \_\_\_\_\_, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement; and 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding or making of this Agreement, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

\_\_\_\_\_  
Signature & Title of Authorized Official

\_\_\_\_\_  
Date



## ATTACHMENT C

### Disadvantaged Business Enterprise

(To Be Executed by Consultant and Submitted With Proposal)

\_\_\_\_\_ hereby certifies that all good faith efforts required by 40 CFR Section 33.301 have been made to secure maximum disadvantaged business enterprise (DBE) participation in this Agreement.

BY:

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name and Title of Authorized Official

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

Please include on a separate sheet the names, addresses of all DBEs contacted or that will participate in the Agreement, the scope of work, dollar amount of for each participating DBE. Also describe all efforts which have been made to secure maximum DBE participation.

**All participating DBEs must complete the DBE affidavit, attached.**

## ATTACHMENT C-1

### DBE AFFIDAVIT

(To Be Executed by DBE and Submitted With Proposal)

#### Affidavit of Disadvantaged Business Enterprise

I hereby declare and affirm that \_\_\_\_\_ is a qualifying Disadvantaged Business Enterprise as defined in 40 CFR 33.103 and that I will provide information to document this fact.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.**

BY: \_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name and Title of Authorized Official

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

## ATTACHMENT D

### **Certification of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters**

(To Be Executed by Consultant and Submitted With Proposal)

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

\_\_\_\_\_ hereby 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 from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, a violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If consultant is unable to certify to any of the statements in this certification, it shall attach an explanation to this certification.

THE CONSULTANT, \_\_\_\_\_  
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 *ET. SEQ.* ARE APPLICABLE THERETO.

BY: \_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

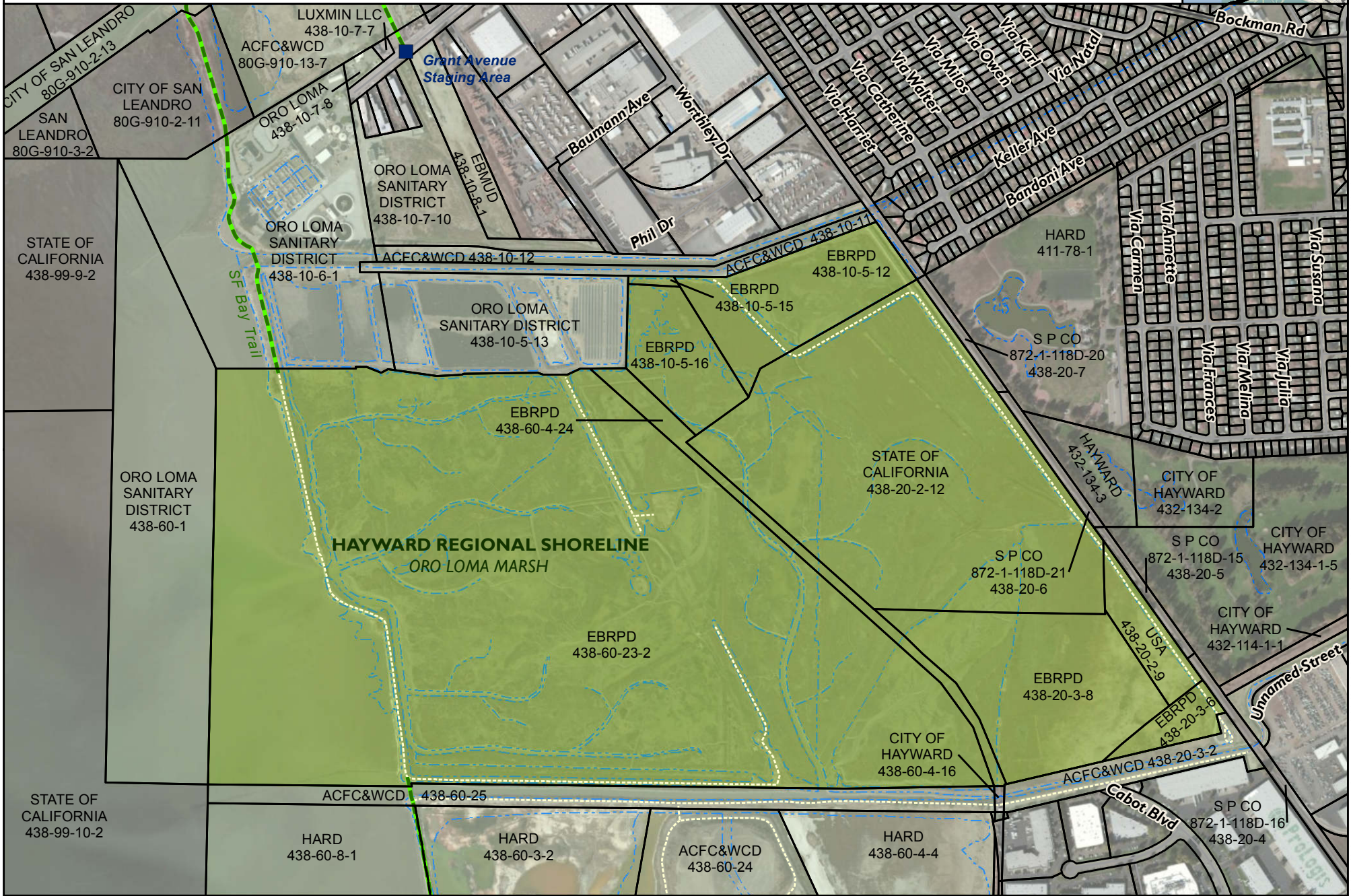
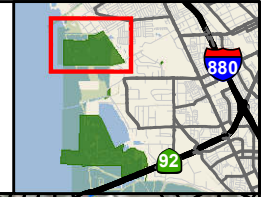
\_\_\_\_\_  
Typed Name and Title of Authorized Official



# Hayward Regional Shoreline Oro Loma Marsh Ownership Map

Regional Parkland (Owned or Operated by EBRPD)  
 Staging Area  Regional Trail  Trail

Feet



# ATTACHMENT F

## Task Order Form

Task Order No. (include FY)	
Title of Task:	
Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule</u> and <u>Detailed Description of Work</u> (attached).</i>
Original Maximum Payment:	
Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
Completion Date:	Date Schedule attached.

**Payment Terms**

*Specify hourly rate for applicable personnel and include estimate of expenses.*

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
<b>Total:</b>					<b>\$5.00</b>

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
<b>TOTAL MAXIMUM PAYMENT</b>		<b>\$6.00</b>



Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

**Task Order #: Title**

1. Description of subtask 1.  
*Deliverable – deliverable name*
2. Description of subtask 2.  
*Deliverable – deliverable name*
3. Description of subtask 3.  
*Deliverable – deliverable name*
4. Etc.

EAST BAY DISCHARGERS AUTHORITY

CONSULTANT

---

Jacqueline Zipkin, General Manager

---

Insert name and title of authorized individual

---

Date:

---

Date:

**ATTACHMENT G  
SAMPLE CONTRACT**

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE EAST BAY DISCHARGERS AUTHORITY AND \_\_\_\_\_**

THIS Agreement for consulting services is made by and between the East Bay Dischargers Authority, hereinafter referred to as "AUTHORITY" and \_\_\_\_\_ hereinafter referred to as "CONSULTANT" as of \_\_\_\_\_.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to AUTHORITY the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, the date of completion specified in Exhibit A, and CONSULTANT shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to CONSULTANT to complete the services required by this Agreement shall not affect the AUTHORITY's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged.
- 1.3 **Assignment of Personnel.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from AUTHORITY of such desire of AUTHORITY, reassign such person or persons.
- 1.4 **Time.** CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy CONSULTANT's obligations hereunder.

**Section 2. COMPENSATION.** AUTHORITY hereby agrees to pay CONSULTANT a sum not to exceed dollars (\$XX,XXX), notwithstanding any contrary indications that may be contained in CONSULTANT's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and CONSULTANT's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. AUTHORITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from AUTHORITY to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all invoices to AUTHORITY in the manner specified herein. Except as specifically authorized by AUTHORITY in writing, CONSULTANT shall not bill AUTHORITY for duplicate services performed by more than one person.

CONSULTANT and AUTHORITY acknowledge and agree that compensation paid by AUTHORITY to CONSULTANT under this Agreement is based upon CONSULTANT's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of CONSULTANT. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which CONSULTANT and its employees, agents, and subcontractors may be eligible. AUTHORITY therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** CONSULTANT shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
  - The beginning and ending dates of the billing period;
  - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
  - At AUTHORITY's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
  - The total number of hours of work performed under the Agreement by CONSULTANT and each employee, agent, and subcontractor of CONSULTANT performing services hereunder;
  - The CONSULTANT's signature;
  - CONSULTANT shall give separate notice to the AUTHORITY when the total number of hours worked by CONSULTANT and any individual employee, agent, or subcontractor of CONSULTANT reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between CONSULTANT and AUTHORITY. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between CONSULTANT and AUTHORITY, if applicable.
- 2.2 **Monthly Payment.** AUTHORITY shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. AUTHORITY shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay CONSULTANT.
- 2.3 **Final Payment.** AUTHORITY shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to AUTHORITY of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** AUTHORITY shall pay for the services to be rendered by CONSULTANT pursuant to this Agreement. AUTHORITY shall not pay any additional sum for any expense or cost whatsoever incurred by CONSULTANT in rendering services pursuant to this Agreement. AUTHORITY shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall CONSULTANT submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 **Hourly Fees.** Fees for work performed by CONSULTANT on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed below are not chargeable to AUTHORITY. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** CONSULTANT is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the AUTHORITY or CONSULTANT terminates this Agreement pursuant to Section 8, the AUTHORITY shall compensate the CONSULTANT for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. CONSULTANT shall maintain adequate logs and timesheets to verify costs incurred to that date.

**2.9** **Authorization to Perform Services.** The CONSULTANT is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**2.10** **Funding Requirements.** It is mutually understood between the CONSULTANT and AUTHORITY that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to AUTHORITY for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, federal or state agency, or AUTHORITY governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

In particular, Federal assistance resulting from an award of United States Environmental Protection Agency (EPA) grant is expected to be utilized for work performed pursuant to this Agreement. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule associated with the Federal award, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate such assistance for failure to ensure reasonable completion of the services within the project period. It is mutually agreed that, if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds. AUTHORITY has the option to terminate the Agreement pursuant to Section 8: Termination and Modification, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

**Section 3.** **FACILITIES AND EQUIPMENT.** Except as set forth herein, CONSULTANT shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. AUTHORITY shall make available to CONSULTANT only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

AUTHORITY shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for CONSULTANT's use while consulting with AUTHORITY employees and reviewing records and the information in possession of the AUTHORITY. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of AUTHORITY. In no event shall AUTHORITY be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4.** **INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, CONSULTANT, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the CONSULTANT and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, CONSULTANT shall provide proof satisfactory to AUTHORITY of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the AUTHORITY. CONSULTANT shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the CONSULTANT's fee (Exhibit B). CONSULTANT shall not allow any subcontractor to commence work on any subcontract until CONSULTANT has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to AUTHORITY. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. CONSULTANT shall maintain all required insurance listed herein for the duration of this Agreement.

**4.1** **Workers' Compensation.** CONSULTANT shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, CONSULTANT may rely on a self-insurance program to meet those

requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the AUTHORITY and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

## **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** CONSULTANT, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. AUTHORITY, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired, or borrowed by the CONSULTANT
- c. For any claims related to this Agreement or the work hereunder, the CONSULTANT's insurance covered shall be primary insurance as respects the AUTHORITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the AUTHORITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the AUTHORITY.

## **4.3 Professional Liability Insurance.**

**4.3.1 General requirements.** CONSULTANT, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$2,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the AUTHORITY for review prior to the commencement of any work under this Agreement.

**4.3.3 Additional Requirements.** A certified endorsement to include contractual liability shall be included in the general liability policy

#### **4.4 All Policies Requirements.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, CONSULTANT shall furnish AUTHORITY with certificates of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the AUTHORITY does not receive the required insurance documents prior to the CONSULTANT beginning work, it shall not waive the CONSULTANT's obligation to provide them. The AUTHORITY reserves the right to require complete copies of all required insurance policies at any time.

**4.4.3 Deductibles and Self-Insured Retentions.** CONSULTANT shall disclose to and obtain the written approval of AUTHORITY for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the AUTHORITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the AUTHORITY, its officers, employees, and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the AUTHORITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**4.4.4 Wasting Policies.** No policy required by this Section 4, except Professional Liability, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

**4.4.5 Waiver of Subrogation.** CONSULTANT hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

**4.4.6 Subcontractors.** CONSULTANT shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.5 Remedies.** In addition to any other remedies AUTHORITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, AUTHORITY may, at its sole option exercise any of the following remedies, which are alternatives to other remedies AUTHORITY may have and are not the exclusive remedy for CONSULTANT's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order CONSULTANT to stop work under this Agreement or withhold any payment that becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** CONSULTANT shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to AUTHORITY, indemnify, and hold AUTHORITY, its officers, employees, agents, and volunteers (collectively, "Indemnitees") harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, ("Claims"). CONSULTANT will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the AUTHORITY shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the AUTHORITY.

With respect to third party claims against the CONSULTANT, the CONSULTANT waives any and all rights of any type of express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of CONSULTANT to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

**Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of AUTHORITY. AUTHORITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise AUTHORITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement. Notwithstanding any other AUTHORITY, state, or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by AUTHORITY, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of AUTHORITY and entitlement to any contribution to be paid by AUTHORITY for employer contributions and/or employee contributions for PERS benefits.

**6.2 CONSULTANT Not an Agent.** Except as AUTHORITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of AUTHORITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind AUTHORITY to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 Compliance with Applicable Laws.** CONSULTANT and any subcontractors shall comply with all laws, regulations, lawful orders and rules applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. CONSULTANT's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.
- 7.3 Other Governmental Regulations.** This Agreement is funded by fiscal assistance from United States Environmental Protection Agency (EPA). CONSULTANT and any subcontractors shall comply with all applicable rules and regulations to which AUTHORITY is bound by the terms of such fiscal assistance program and such terms and conditions as further set forth in Exhibit C attached hereto and incorporated herein. In the event of a conflict between the laws and lawful regulations of any government entities having jurisdiction over the provision of services pursuant to this Agreement, the CONSULTANT shall notify AUTHORITY of the nature and impact of such conflict. The AUTHORITY agrees to cooperate and work with the CONSULTANT in an effort to resolve any conflict.
- 7.4 Licenses and Permits.** CONSULTANT represents and warrants to AUTHORITY that CONSULTANT and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. CONSULTANT represents and warrants to AUTHORITY that CONSULTANT and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.
- 7.5 Nondiscrimination and Equal Opportunity.** CONSULTANT shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by CONSULTANT under this Agreement. CONSULTANT shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of CONSULTANT thereby.

CONSULTANT shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** AUTHORITY may cancel this Agreement at any time and without cause upon written notification to CONSULTANT.

CONSULTANT may cancel this Agreement upon seven (7) days' written notice to AUTHORITY and shall include in such notice the reasons for cancellation.

In the event of termination, CONSULTANT shall be entitled to compensation for services performed to the effective date of termination; AUTHORITY, however, may condition payment of such compensation upon CONSULTANT delivering to AUTHORITY any or all documents, photographs, computer software, video and audio tapes, and other materials provided to CONSULTANT or prepared by or for CONSULTANT or the AUTHORITY in connection with this Agreement.

- 8.2 Extension.** AUTHORITY may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. CONSULTANT understands and agrees that, if AUTHORITY grants such an extension, AUTHORITY shall have no obligation to provide CONSULTANT with compensation beyond the maximum amount provided for in this Agreement.



Similarly, unless authorized by the Contract Administrator, AUTHORITY shall have no obligation to reimburse CONSULTANT for any otherwise reimbursable expenses incurred during the extension period.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** AUTHORITY and CONSULTANT recognize and agree that this Agreement contemplates personal performance by CONSULTANT and is based upon a determination of CONSULTANT's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to AUTHORITY for entering into this Agreement was and is the professional reputation and competence of CONSULTANT. CONSULTANT may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. CONSULTANT shall perform the work contemplated with resources available within its own organization and shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. Any subcontract must contain all required provisions of this Agreement. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with 2 CFR 200.331.

Pursuant to 40 CFR 33.302(a), CONSULTANT shall pay approved subcontractor(s) for satisfactory performance of work performed pursuant to this Agreement no more than 30 days from the CONSULTANT'S receipt of payment from AUTHORITY for such work.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between AUTHORITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to AUTHORITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from AUTHORITY'S obligation to make payments to the CONSULTANT.**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between AUTHORITY and CONSULTANT shall survive the termination of this Agreement.

**8.6 Options upon Breach by CONSULTANT.** If CONSULTANT materially breaches any of the terms of this Agreement, AUTHORITY's remedies shall include, but not be limited to, the following:

**8.6.1** Immediately terminate the Agreement;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by CONSULTANT pursuant to this Agreement;

**8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by CONSULTANT; or

**8.6.4** Charge CONSULTANT the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that AUTHORITY would have paid CONSULTANT pursuant to Section 2 if CONSULTANT had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of CONSULTANT's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that CONSULTANT prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the AUTHORITY. CONSULTANT hereby agrees to deliver those documents to the AUTHORITY upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared

specifically for the AUTHORITY and are not necessarily suitable for any future or other use. AUTHORITY and CONSULTANT agree that, until final approval by AUTHORITY, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 CONSULTANT's Books and Records.** CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the AUTHORITY under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the CONSULTANT to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires CONSULTANT to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the AUTHORITY. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of AUTHORITY or as part of any audit of the AUTHORITY, for a period of 3 years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** CONSULTANT shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** CONSULTANT may serve other clients, but none whose activities within the corporate limits of AUTHORITY or whose business, regardless of location, would place CONSULTANT in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

CONSULTANT shall not employ any AUTHORITY official in the work performed pursuant to this Agreement. No officer or employee of AUTHORITY shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

CONSULTANT hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the AUTHORITY. If CONSULTANT was an employee, agent, appointee, or official of the AUTHORITY in the previous twelve months, CONSULTANT warrants that it did not participate in any manner in the forming of this Agreement. CONSULTANT

understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and CONSULTANT will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CONSULTANT will be required to reimburse the AUTHORITY for any sums paid to the CONSULTANT. CONSULTANT understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.8 Solicitation.** CONSULTANT agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by East Bay Dischargers Authority ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.**

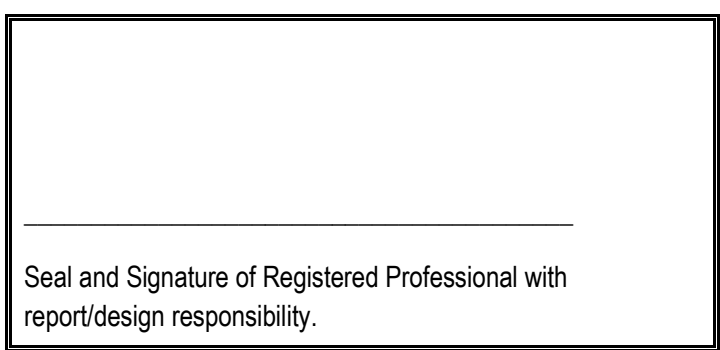
Any written notice to CONSULTANT shall be sent to:

*Name*  
*Company*  
*Address*  
*City, State*

Any written notice to AUTHORITY shall be sent to:

Jacqueline T. Zipkin, P.E., General Manager  
East Bay Dischargers Authority  
2651 Grant Avenue  
San Lorenzo, CA 94580-1841

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, the Schedule of Fees attached hereto and incorporated herein as Exhibit B and the EPA Grant Contract Provisions (Services) attached hereto and incorporated herein as Exhibit C represents the entire and integrated agreement between AUTHORITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A            Scope of Services

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

APPROVED AS TO FORM:

EAST BAY DISCHARGERS AUTHORITY:

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

Eric S. Casher  
Authority Legal Counsel

Jacqueline T. Zipkin, P.E.  
General Manager

(CONSULTANT NAME):

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

(CONSULTANT'S SIGNATOR)

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**COMPENSATION SCHEDULE**

**EPA GRANT CONTRACT PROVISIONS (SERVICES)****Section 1. Federal Grant Conditions**

**1.1 Agreement Subject to EPA Grant Requirements.** This Agreement is subject to a financial assistance contract between AUTHORITY and Association of Bay Area Governments (ABAG), the recipient of United States Environmental Protection Agency (EPA) financial assistance. CONSULTANT must at all times comply with all applicable EPA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between AUTHORITY and ABAG, as they may be amended or promulgated from time to time during the term of this Agreement. CONSULTANT's failure to so comply constitutes a material breach of this Agreement. If such changes cause an increase or decrease in the work to be performed by CONSULTANT or the time for such performance, then the compensation to be paid to CONSULTANT and time of performance will be equitably adjusted.

**1.2 EPA Grant Requirements Control.** The preceding provisions include, in part, certain standard terms and conditions required by the EPA, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by EPA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all EPA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any AUTHORITY requests which would cause it to be in violation of the EPA terms and conditions.

**Section 2. Non-Liability of EPA**

CONSULTANT acknowledges and agrees that, notwithstanding any concurrence by the EPA in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the EPA, the EPA is not a party to this Agreement and will not be subject to any obligations or liabilities to CONSULTANT, or any other party (whether or not a party to that Agreement), pertaining to any matter resulting from the underlying Agreement.

CONSULTANT agrees to include the above clause in each subcontract financed in whole or part with Federal assistance provided by EPA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**2.1 Inclusion of Non-Liability Clause in Subcontracts.** CONSULTANT must include the above clause in each subcontract financed in whole or in part with Federal assistance provided by EPA.

**Section 3. False Statements**

**3.1 Agreement Subject to Program Fraud Civil Act.** CONSULTANT acknowledges that the provisions of the Program Fraud Civil Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.* apply to its actions pertaining to this Agreement. Upon execution of this Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.

**3.2 Penalties for False Statements.** CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Agreement that is financed in whole or in part with Federal assistance originally awarded by EPA under the authority of 33 USC 1330, the federal Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 on CONSULTANT, to the extent the Federal Government deems appropriate.

**3.3 Inclusion of False Statements Clause in Subcontracts.** CONSULTANT must include the above clauses in each subcontract under this Agreement. It is further agreed that the clause will not be modified, except to identify the subcontractor who will be subject to its provisions.

**Section 4. Termination**



**4.1 Termination for Convenience** AUTHORITY, by written notice, may terminate this Agreement, in whole or in part, when it is in the AUTHORITY's interest. If this Agreement is terminated, AUTHORITY shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

**4.2 Termination for Default [Breach or Cause]** If CONSULTANT fails to perform in the manner called for in the Agreement, or if the CONSULTANT fails to comply with any other provisions of the Agreement, the AUTHORITY may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the CONSULTANT setting forth the manner in which CONSULTANT is in default. CONSULTANT will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement.

With respect to Change Order(s), costs incurred by CONSULTANT will be allowable to the extent that they meet all of the requirements set forth below. They must:

**4.2.1** Be made in conformance with the Scope of Work and all other provisions of the Agreement;

**4.2.2** Be necessary in order to accomplish the Agreement;

**4.2.3** Be reasonable in an amount for the goods or services purchased;

**4.2.4** Be actual net cost to CONSULTANT (i.e., the price paid minus any refunds, rebates, or other items of value received by CONSULTANT that have the effect of reducing the cost actually incurred);

**4.2.5** Be incurred (and be for work performed) after the effective date of the Agreement or Change Order unless specific authorization from the AUTHORITY to the contrary is received;

**4.2.6** Unless permitted otherwise by Federal statute or regulation, conform with EPA guidelines and regulations, and the Office of Management and Budget Super Circular 2 C.F.R. Part 200, as applicable;

**4.2.7** Be satisfactorily documented;

**4.2.8** Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by AUTHORITY; and

**4.2.9** Be supported by properly-executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges.

CONSULTANT must include these clauses in each subcontract under this Agreement.

## **Section 5. Inspection**

CONSULTANT and any subconsultant shall permit AUTHORITY, ABAG, and the EPA to review and inspect the activities and files associated with performance of this Agreement at all reasonable times during the performance period of this Agreement.

## **Section 6. Disadvantaged Business Enterprises**

This Agreement is subject to 40 CFR Part 33 entitled "Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs". CONSULTANT shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. CONSULTANT shall carry out applicable requirements of 40 CFR part 33 in the award and administration of subcontracts. Failure by the CONSULTANT to carry out these

requirements is a material breach of this Agreement which may result in the termination of this Agreement or other remedies the AUTHORITY deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments;(2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the CONSULTANT from future bidding as non-responsible.

**6.1 Good Faith Efforts** Pursuant to 40 CFR Section 33.301, CONSULTANT shall make the following good faith efforts whenever procuring construction, equipment or service subcontracts under this Agreement. Records documenting compliance with the good faith efforts shall be retained:

**6.1.1** Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

**6.1.2** Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

**6.1.3** Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.

**6.1.4** Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

**6.1.5** Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

**6.2 Termination of DBE Subconsultant** CONSULTANT shall notify AUTHORITY prior to any termination of a DBE subcontractor for convenience. If a DBE subcontractor fails to complete work under the subcontract for any reason, CONSULTANT shall employ the good faith efforts described in 40 CFR 33.301 if soliciting a replacement subcontractor even if AUTHORITY has achieved its fair share objectives under 40 CFR Part 33.

**6.3 DBE Retention of Records** CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

**6.4.1** Upon completion of the Agreement, a summary of these records shall be prepared and submitted and shall be certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory final report is submitted to the Contract Administrator.

**6.5 DBE Decertification** If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any such changes shall be reported by CONSULTANT to AUTHORITY's Contract Administrator within thirty (30) calendar days.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section 6.

## **Section 7. Nondiscrimination/Title VI Compliance**

In carrying out this Agreement, CONSULTANT shall comply with the following statutory and regulatory requirements: (1) Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. Section 2000e, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance; (2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; (3) The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance; and (4) 40 CFR Part 7 which implements EPA's civil rights requirements under the preceding statutes.

## **Section 8. Recycled Products**

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, CONSULTANT is required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), CONSULTANT may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price. In all subcontracts of \$10,000 or more, CONSULTANT must give competitive preference to products and services that meet these criteria and contain recycled materials identified in the EPA guidelines.

## **Section 9. Patent Rights**

Rights to inventions made under this Agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212. Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act.

## **Section 10. Rights in Data and Copyright**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this Agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, CONSULTANT acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this Agreement as a result of: 1) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; 2) termination or expiration of this

Agreement. In addition, EPA may authorize another grantee to use copyrighted works or other data developed with EPA funds provided under this Agreement to perform another grant when such use promotes efficient and effective use of Federal grant funds.

**Section 11. Fly America**

CONSULTANT must comply with 49 U.S.C. Section 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10.131 through 301-10-143, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, CONSULTANT must submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements.

**Section 12. Compliance with Environmental Standards [Applicable where Federal Funding Will Exceed \$150,000]**

Where use of Federal assistance exceeds \$150,000, CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**12.1 Violation Reporting.** CONSULTANT must immediately report each violation to AUTHORITY and understands that AUTHORITY will, in turn, report each violation as required to assure notification to EPA and the appropriate EPA Regional Office.

CONSULTANT shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by EPA.

**Section 13. Debarred Contractors/Bidders**

**13.1 Notification of Authority.** CONSULTANT, including any of its officers or holders of a controlling interest, and subcontractors must inform AUTHORITY whether or not they are or have been debarred, suspended, or otherwise declared ineligible for award of federally-funded contracts pursuant to 2 C.F.R. Part 180, Subpart C. If CONSULTANT or a subcontractor is included on the list or determined ineligible during the performance of this Agreement, CONSULTANT must so inform AUTHORITY.

**13.2 Inclusion in Subcontracts.** CONSULTANT shall further require the inclusion of a similar term and condition in any subsequent lower tier covered transactions. CONSULTANT acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the AUTHORITY may result in the delay or negation of this Agreement, or pursuant of administrative remedies, including suspension and debarment. CONSULTANT may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether a subconsultant is presently excluded or disqualified.

**13.3 Consultant Certification** CONSULTANT’s signature affixed herein to the Agreement shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

**13.3.1.** Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

13.3.2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

13.3.3. Does not have a proposed debarment pending; and

13.3.4. 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 (3) years.

**13.4 Exceptions** Any exceptions to this certification must be disclosed to AUTHORITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by EPA.

#### **Section 14. Lobbying Restrictions [Applicable where federal funding will exceed \$150,000]**

**14.1 Funds Restricted** CONSULTANT shall not use any funds received under this Agreement to support activities designed to influence or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement and must comply with the provisions of "New Restrictions on Lobbying" at Title 40 CFR Part 34. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding or making of this Agreement, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**14.2 Subconsultants** CONSULTANT shall ensure that each subconsultant performing work pursuant to the terms of this Agreement complies with the lobbying restrictions contained in the provisions cited herein above and ensure all subcontracts contain the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards with all of its subconsultants performing work under this Agreement in an amount of \$100,000 or greater and require that subconsultants submit certification and disclosure forms accordingly.

**14.3 Prohibited Expenditures** In accordance with the Byrd Anti-Lobbying Amendment, CONSULTANT and any subconsultant who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

#### **Section 15. Acknowledgement Requirements for EPA Assistance**

CONSULTANT agrees that any reports, documents, publications or other materials developed for public distribution pursuant to this Agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement 99T87701 to the Association of Bay Area Governments. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

#### **Section 16. Scientific Integrity Terms and Conditions**

CONSULTANT acknowledges that AUTHORITY must comply with EPA's Scientific Integrity Policy when conducting, supervising, and communicating science and when using or applying the results of science. Scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. In furtherance of AUTHORITY'S obligations pursuant to such Policy, CONSULTANT shall:

**16.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA information quality guidelines, quality policy, and peer review policy.

**16.2** Prohibit all employees and subcontractors, including scientists, managers, and other leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.

**16.3** Adhere to EPA's Peer Review Handbook, 4th Edition, for the peer review of scientific and technical work products generated with assistance from EPA grants which, by definition, are not primarily for EPA's direct use or benefit.

**16.4** Require that reviews regarding the content of a scientific product that are conducted by the project manager and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.

**16.5** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees and subcontractors who assist with developing or applying the results of scientific activities.

**16.6** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.

**16.7** Document any independent review of the scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body. Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

**16.8** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, CONSULTANT employees and subcontractors, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.

**16.9** Prohibit retaliation or other punitive actions toward employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. CONSULTANT shall avoid the appearance of retaliatory actions.

**16.10** CONSULTANT shall act honestly and refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C. Research misconduct does not include honest error or differences of opinion.