

**EAST BAY DISCHARGERS AUTHORITY  
REQUEST FOR PROPOSALS  
FOR  
CEQA CONSULTING 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:  
Wednesday, May 5, 2021 at 2:00 p.m.**

# REQUEST FOR PROPOSALS FOR CEQA SERVICES

Supporting technical documents and background material are available for download at <https://ebda.org/projects/ceqa-consulting-services/>. Questions regarding this RFP must be submitted before April 23, 2021 at 5:00 p.m. by e-mail to [juanita@ebda.org](mailto:juanita@ebda.org) with the subject line "CEQA RFP". Answers will be compiled in a "Questions & Answers" document posted on the <https://ebda.org/projects/ceqa-consulting-services/>.

## I. INTRODUCTION

The **EAST BAY DISCHARGERS AUTHORITY** (hereinafter "EBDA") located at 2651 Grant Avenue, San Lorenzo, CA 94580 is hereby requesting proposals from experienced planning and environmental consulting firms to assist in the preparation of an environmental assessment under the California Environmental Quality Act (CEQA). EBDA is requesting qualifications from firms with extensive experience in preparing initial studies, negative declarations/mitigated negative declarations, and environmental impact reports for communities in California. 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 (Member Agencies). 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.

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), which consolidates effluent from the Cities of Pleasanton and Livermore and Dublin San Ramon Services District. EBDA does not have sufficient staff capacity to prepare the necessary CEQA analysis using existing staff. The Consultant retained by EBDA will, therefore, assist EBDA staff in fulfilling EBDA's duties under CEQA with respect to the project.

## III. PROJECT DESCRIPTION

EBDA is currently in discussions with Cargill, Incorporated (Cargill), a large agribusiness that operates salt ponds in Newark, regarding a project to enhance its harvest of commercial salts and then generate a brine of residual mixed sea salts (MSS) that would be discharged through the EBDA system. The Cargill Newark facility takes in Bay water and runs it through a series of evaporation ponds, recovering commercial products, including traditional NaCl (table salt) and magnesium chloride. Various less prevalent salts in Bay water for which a commercial outlet had not yet been found are what make up the MSS that this project will further process. In anticipation of sea level rise, Cargill wishes to proactively accelerate harvest of the MSS, and they have determined that discharge of residual salts to the EBDA system is the most sustainable and cost-effective method to manage the final disposition of any remaining salts.

The project would involve construction of facilities at the Cargill site to harvest, dissolve, and pump the MSS, and construction of a pipeline to convey the MSS brine from the Newark facility to the EBDA system. The pipeline would connect just north/downstream of EBDA member Union Sanitary District (USD). It is anticipated that brine would be discharged from the pipeline into the EBDA system at an average rate ranging from 0.86 million gallons per day (MGD) to 2 MGD, as the accelerated salt harvesting and removal project is completed. Figure 1 shows a schematic of the EBDA system and the new proposed pipeline.



Figure 1 - EBDA System and Proposed Project

The pipeline will cross under the cities of Newark, Fremont, and Union City. A preliminary schematic of the pipeline alignment is included as Attachment A.

EBDA is the California Environmental Quality Act (CEQA) Lead Agency for the project to connect and discharge Cargill MSS brine through the EBDA system. EBDA is seeking a Consultant to develop appropriate CEQA documentation for the project.

#### **IV. SCOPE OF SERVICES**

Cargill previously retained consulting firm AECOM to develop an Initial Study for the proposed project. Under the engagement subject to this RFP, the Consultant and EBDA will review the Initial Study prepared by AECOM to assess its completeness and appropriateness. The Consultant will then be requested to provide a recommendation on the next step for environmental assessment – specifically, whether a Mitigated Negative Declaration or Environmental Impact Report should be prepared. EBDA notes that the AECOM Initial Study indicates that a MND is a viable course for the CEQA review. Upon direction from EBDA, the Consultant will then prepare the appropriate CEQA document. The Consultant will be responsible for incorporating any public or agency comments regarding the potential impacts on the natural and built environments, and analyze ways in which any significant effects/impacts of the project might be avoided or mitigated, as required by CEQA.

The Consultant may be required to attend meetings with EBDA and member agency staff, scoping meetings, and/or public hearings and should have offices within reasonable proximity to San Lorenzo and the Bay Area. Opportunities for teleconferencing will be provided when possible and as-appropriate during the pandemic.

It is assumed that EBDA will publish any required printed copies of any environmental documents prepared by the Consultant. The Consultant will be responsible for preparing and providing staff with any required Notices of Preparation, Availability, or Determination, and may additionally be requested to provide filing services with the Alameda County Clerk and/or the State Clearinghouse.

All deliverables and work produced by the Consultant, whether in hard copy or electronic form, will become public record and the property of EBDA.

#### **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 proposal shall be no more than 10 pages in length, excluding the cover letter, resumes and any other appendices. 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, including the proposed project lead, envisioned to work on EBDA's project. The Cover Letter shall include 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.

Background – Provide a brief narrative background of the company and its organization, as well as a summary of available services provided by the firm.

Qualifications – Describe the relevant experience of the Consultant. Specifically note experience working with wastewater agencies on treatment and disinfection and/or on pipeline construction. 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 four (4) projects completed for agencies 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
- Any experience working with the San Francisco Bay Conservation and Development Commission

Project Approach – The proposal must provide a description of the intended approach to efficiently and effectively implement the project 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 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.
- Discussion of the Consultant's general approach to CEQA analyses for pipeline projects, including how the Consultant goes about recommending MND versus EIR.

Disclosure of Previous Work – The project will involve Cargill and the cities of Newark, Fremont, and Union City. As part of the proposal package, Proposers must disclose any work they have done in the past five (5) years for Cargill, Newark, Fremont, or Union City and any work for which the Proposer is currently under contract with Cargill, Newark, Fremont, or Union City. In addition, Proposers must disclose any work they have done for any other anticipated responsible agency, including the Regional Water Quality Control Board, San Francisco Bay Region.

No Collusion Declaration – As part of the proposal package, Proposers must submit the No Collusion Declaration included as Attachment B. The proposal and declaration shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer.

Proposed Compensation (separate file) – 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
- Estimated labor hours

The cost proposal and any other compensation information shall be submitted as a separate document, clearly marked as the cost proposal. Cost proposals will be considered sealed and will not be reviewed as part of the qualifications-based selection process.

The Consultant may submit a proposal organized according to their preference, provided it meets the requirements of this 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.

## **VI. SELECTION CRITERIA**

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

- Demonstrated knowledge and familiarity with the East Bay, and similar urban and suburban communities in California. This includes knowledge of BCDC and its approval processes. Firms should be located within proximity to the Bay Area.
- Experience in preparing CEQA environmental documents for similar projects.
- Demonstration of an appropriate and cost-efficient method of approach in preparing and delivering environmental documents, including specific services to be performed, quality control methods, and any other measures necessary to ensure a quality legally-defensible product prepared on time and within budget.
- Responsiveness to the RFP, including demonstrated commitments to communication and client service, as well as thoroughness, adequacy, and clarity of information provided.
- Lack of direct conflicts of interest with Cargill. Potential conflicts of interest with the cities of Newark, Fremont, or Union City will be evaluated on a case-by-case basis.

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

Inform EBDA if any of the contract language in Attachment C 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 April 23, 2021. Responses to questions will be provided to all prospective firms.

### **D. SCHEDULE**

Last day for Consultants to submit questions on RFP  
Proposals are due to EBDA  
Consultant Interviews (if applicable)  
Selected Consultant will be notified  
Anticipated Commission approval

April 23, 2021  
May 5, 2021  
Week of May 17, 2021  
May 24, 2021  
June 17, 2021

**ATTACHMENT A**  
**Preliminary Pipeline Alignment**

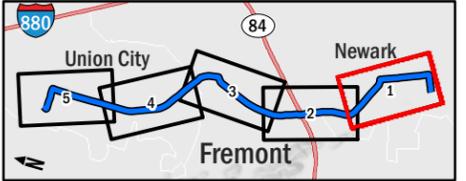
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— City Street Alternative

ESRI, 2019

**AECOM**  
 Client  
 Project name & full title  
 ADDITIONAL PROJECT INFORMATION



### CARGILL PUMP STATION ALIGNMENT ALTERNATIVES

*City Streets Alternative*

Page 1 of 5

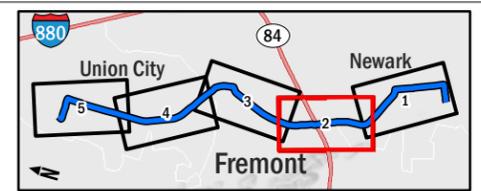
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— City Street Alternative

ESRI, 2019

**AECOM**  
 Client  
 Project name & full title  
 ADDITIONAL PROJECT INFORMATION



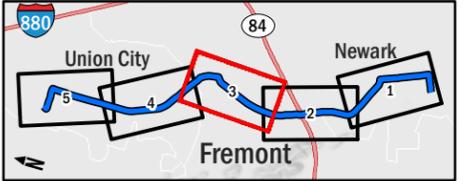
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— City Street Alternative

ESRI, 2019

**AECOM**  
 Client  
 Project name & full title  
 ADDITIONAL PROJECT INFORMATION



### CARGILL PUMP STATION ALIGNMENT ALTERNATIVES

City Streets Alternative  
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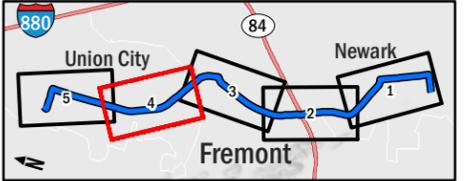
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— City Street Alternative

ESRI, 2019

**AECOM**  
Client  
Project name & full title  
ADDITIONAL PROJECT INFORMATION



**CARGILL PUMP STATION ALIGNMENT ALTERNATIVES**

City Streets Alternative  
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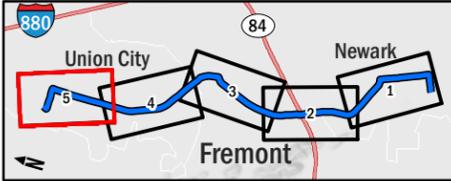
**Tie-in (near ARV @ Station 268+91)**



City Street Alternative

ESRI, 2019

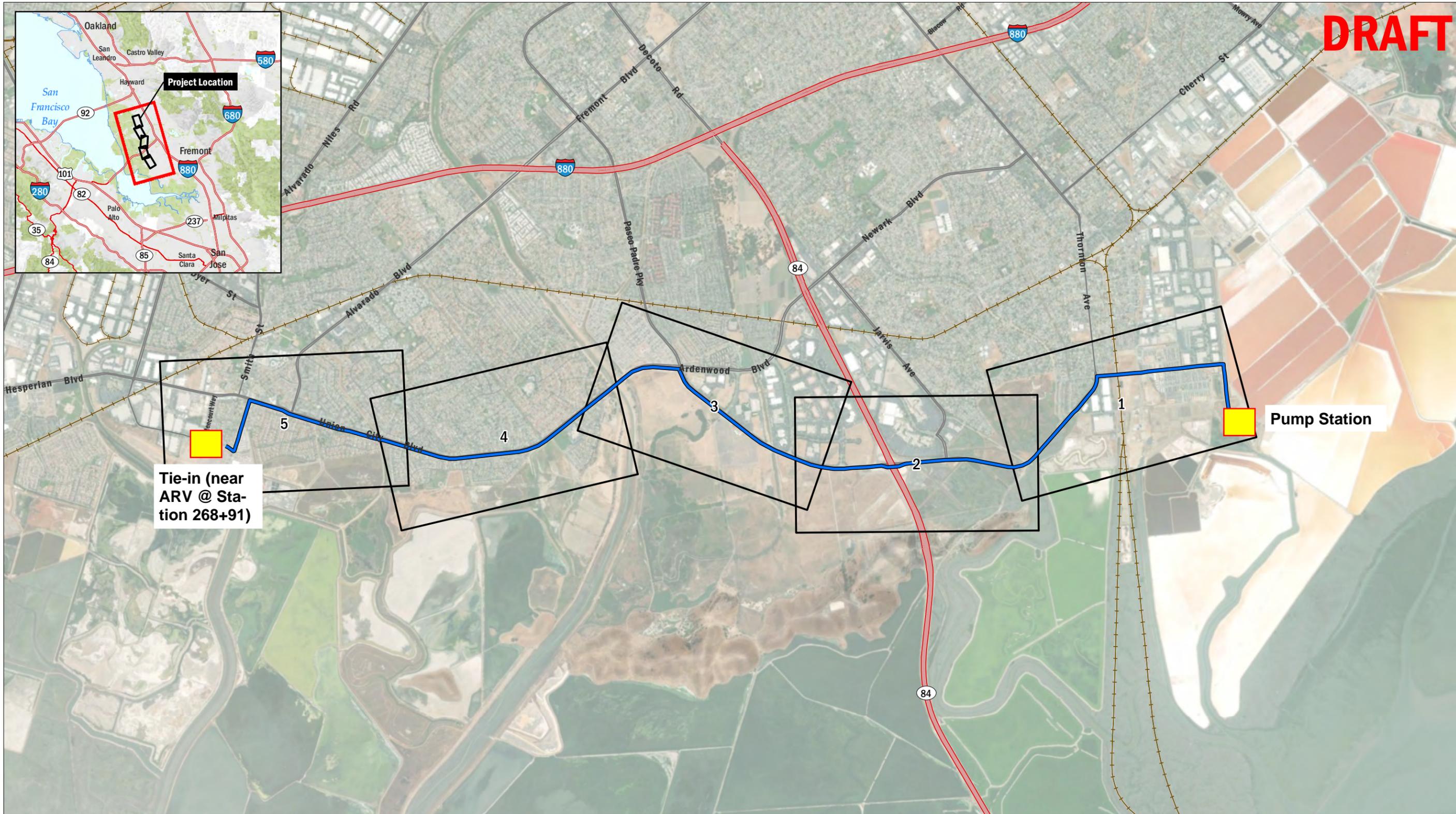
**AECOM**  
Client  
Project name & full title  
ADDITIONAL PROJECT INFORMATION



**CARGILL PUMP STATION ALIGNMENT ALTERNATIVES**

City Streets Alternative  
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**DRAFT**



— City Streets Alternative

ESRI, 2019

**ATTACHMENT B**  
**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 \_\_\_\_\_, 2021, 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 C**  
**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.

**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 sole 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.

**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 without regard to principles of conflicts of laws.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations 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.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, 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.
- 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 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.

- 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, including but not limited to the indemnification provisions in Section 5 of this Agreement, 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.
- 9.4 Confidentiality of Records.** In order to maintain the protection and confidentiality of attorney client communications and work product, Consultant shall restrict access to confidential and privileged information, including communications from AUTHORITY's attorneys, financial, technical, engineering, geologic, title, accounting, statistical data and other information provided by AUTHORITY and/or AUTHORITY's attorneys, in whatever format such documents may exist, and including oral or verbal communications, only to authorized employees of Consultant pertinent to the services being performed. Consultant shall implement and follow an internal documented process to vet project personnel to ensure that no person with a past, current and/or pending conflict of interest shall have access to confidential information related to the services, unless expressly authorized by AUTHORITY. Consultant understands that failure to maintain these obligations could have adverse consequences such as waiver of privileges and disclosure of confidential and/or privileged information. The procedures Consultant will implement are intended to prevent this from occurring.
- 9.5 Notice of Order to Disclose.** In the event Consultant is required by any court or legislative or administrative body (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) to disclose any information acquired in performing Services under this Agreement, Consultant shall provide AUTHORITY with at least ten (10) calendar days' prior written notice of such requirement in order to allow AUTHORITY an opportunity to seek an appropriate protective order. Consultant shall exercise its best efforts to preserve the confidentiality of the information, including obtaining protective orders and supporting AUTHORITY in intervention.
- 9.6 Obligations Survive the Termination of the Agreement.** Consultant's obligations and covenants under this Section shall survive the termination of this Agreement.

## **Section 10 CONFLICT OF INTEREST**

- 10.1 No Concurrent Work Creating Conflict of Interest.** Consultant shall not perform or enter into any agreement to perform services with regard to any site in California for any other person or entity if the performance of the services could result in an Actual or Potential Conflict with Consultant's obligations under this Agreement, except with the prior written consent of AUTHORITY. An "Actual or Potential Conflict with Consultant's

obligations under this Agreement” is defined as the Consultant’s performance of work and/or services for any other person or entity, where such work and/or services are materially adverse to Consultant’s obligations under this Agreement. An Actual or Potential Conflict includes the following specific circumstances, without limiting the generality of the foregoing:

- a. Services prohibited by Subsection 10.2;
- b. Breach of obligations in Subsection 10.5;
- c. Breach of obligations in Subsection 10.6;
- d. Any services that are or give the appearance of being incompatible or in conflict with Consultant’s obligations under this Agreement; and,
- e. Any business association, interests, or circumstances that could influence Consultant’s judgment or quality of Services performed under this Agreement.

**10.2 No Concurrent Work For Other Entities on Matter.** During the term of this Agreement, under no circumstances shall Consultant agree to provide consulting services to any entity involved in the permitting, design, construction, financing or otherwise involved in the matter for which Consultant has agreed to provide AUTHORITY its services under this Agreement.

**10.3 No Knowledge of Conflict.** Consultant represents and affirms that, as of the Effective Date of this Agreement, Consultant has no knowledge of any Actual or Potential Conflict with Consultant’s obligations under this Agreement, which would conflict in any manner with the performance of the Services contemplated by this Agreement. Consultant represents that it has disclosed to AUTHORITY in writing, attached hereto as Attachment B, any recent and current relationships it is aware of that may appear to present an Actual or Potential Conflict with Consultant’s obligations under this Agreement.

**10.4 AUTHORITY to Determine Conflicts.** The final determination of whether an Actual or Potential Conflict with Consultant’s obligations under this Agreement exists shall be made by AUTHORITY.

**10.5 Warranty of No Conflicts.** Consultant expressly represents and warrants that Consultant is unaware of any such Actual or Potential Conflict with Consultant’s obligations under this Agreement as of the Effective Date of this Agreement. Consultant agrees that Consultant will not provide any consulting or technical services to the following parties, or their affiliates, during the term of this Agreement without obtaining prior written consent from AUTHORITY, as the performance of such services could result in an Actual or Potential Conflict with Consultant’s Obligations under this Agreement:

Cargill, and affiliated and related entities;

The City of Union City, CA;

The City of Newark, CA; or

The City of Fremont, CA.

- 10.6 No Employees with Actual or Potential Conflicts to Perform Services.** Only employees of Consultant who have been vetted in relation to any past, current and/or pending Consultant projects for parties other than AUTHORITY both in and outside of California will perform these Services. Any past project/client interests that are identified and that may be perceived as an Actual or Potential Conflict with Consultant's obligations under this Agreement will be disclosed and agreed to in writing to AUTHORITY before an employee is approved to perform the Services.

**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.** 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.

\_\_\_\_\_  
Seal and Signature of Registered Professional with  
report/design responsibility.

**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A and B 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  
Exhibit B            Schedule of Fees

**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.

The Parties have executed this Agreement as of the Effective Date.

APPROVED AS TO FORM:

EAST BAY DISCHARGERS AUTHORITY:

By: \_\_\_\_\_  
Eric S. Casher  
Authority Legal Counsel

By: \_\_\_\_\_  
Jacqueline T. Zipkin, P.E.  
General Manager

(CONTRACTOR NAME):

By: \_\_\_\_\_  
(CONTRACTOR'S SIGNATOR)

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**COMPENSATION SCHEDULE**

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